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

November 13, 2013

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

OFFICE OF THE GOVERNOR
CENTRAL FILES
J. Dela Rosa
RECEIVED BY
TIME 11:28 a.m. DATE 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes
Legislative Secretary

Enclosures (38)

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 **Bill No. 170-32 (LS), "AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104, AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND 8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND",** was on the 12th day of November 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 15th day of Nov, 2013, at 11:28 o'clock A.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. 170-32 (LS)
As 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 SUBSECTION (w) TO § 8104, AND TO *AMEND* §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND 8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that legislative action is needed to improve the government of Guam's ability to meet its obligations to fund the Retirement Fund Defined Benefits Plan.

The statutory limitations in the Defined Benefits Plan pertaining to investments should *not* result in unintended consequences, such as encouraging the Government of Guam Retirement Fund (Fund) to take undue investment risks, or permitting disproportionate risks for some asset classes and some investment vehicles, which might result in an imprudent investment portfolio.

I Liheslaturan Guåhan finds that the investment limitations in current law must be updated and revised to expand the Fund's opportunity to improve the risk adjusted return of the investment portfolio for the benefit of the Retirement Fund as a whole.

I Liheslaturan Guåhan finds inconsistent treatment in provisions allowing investments in various equity categories, while prohibiting investments in non-investment grade corporate bonds, even though all bond categories (including high-yield) can be safer and more protected under stress scenarios than equities because of established capital structure priorities.

I Liheslaturan Guåhan further finds similar inconsistent treatment in provisions that allow bond investments so long as they are included in the applicable bond benchmark (e.g., the U.S. Aggregate Index), while prohibiting equity investments in certain non-U.S. headquartered companies even though such companies do most of their businesses in the U.S. and are included in applicable U.S. equity benchmarks (e.g., the Russell 1000 Index and the Russell 2000 Index).

I Liheslaturan Guåhan further finds that current statutes limiting non-U.S. investments, which had a historical purpose of controlling risks in under-developed markets, are no longer relevant today and may be significantly inconsistent with global opportunity sets.

I Liheslaturan Guåhan further finds that, for purposes of quantitative limitations, further clarity is needed when classifying investments by asset classes

(e.g., stocks and bonds) and by the vehicles used to purchase such stocks and bonds (e.g., in mutual funds, exchange traded funds, index funds).

I Liheslaturan Guåhan further finds that capital requirements for non-locally chartered bank custodians and for investment agents should be updated and more clearly defined in accordance with Federal Deposit Insurance Corporation Regulations, and increased in accordance with the level of assets under Fund management since the statute was enacted.

I Liheslaturan Guåhan further finds that the fiduciary duties of the Board of Trustees of the Fund should expressly reflect that their investment decisions respecting individual assets should be evaluated not in isolation, but in the context of the Fund's portfolio as a whole, and as part of an overall investment strategy having risk and return objectives reasonably suited to the Fund.

Accordingly, the Board of Trustees' decisions or actions in discharging their fiduciary duties should be reviewed in light of the facts and circumstances existing at the time of such decision or action, and not by hindsight.

Based on these findings, *I Liheslaturan Guåhan* intends to amend the Defined Benefits Plan statute: (1) to allow investments in non-investment grade U.S. corporate bonds, up to eight percent (8%) of the Fund at cost and investments in U.S. and non-U.S. stocks, either directly or indirectly through purchases in investment funds or exchange traded funds, up to seventy percent (70%) of the Fund at cost; (2) to clarify that such quantitative limitations on direct and indirect investments in specific asset classes are separate from the quantitative limitations for the investment vehicles (e.g., investment funds or exchange traded funds); (3) to increase the capital base required for non-locally chartered bank custodians and for investment agents to One Billion Dollars ($1,000,000,000); and (4) to expressly state how the Board of Trustees'

investment decisions should be evaluated based on risk and return objectives reasonably suited to the Fund.

Section 2. A new Subsection (w) is hereby *added* to §8104 of Article 1, Chapter 8, Title 4, Guam Code Annotated, to read:

"(w) *Tier 1 Capital shall* have the meaning set forth in regulations promulgated by the Federal Deposit Insurance Corporation as codified in the Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to time."

Section 3. §8139.1 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8139.1. Fiduciary Duties.**

(a) The members of the Board of Trustees stand in a fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management of the Fund.

(b) The members of the Board of Trustees *shall* discharge their duties with respect to management of the Retirement Fund:

(1) solely in the interest of the members and beneficiaries of the Fund, and for the exclusive purpose of providing benefits to members and beneficiaries and defraying reasonable expenses of administering the Fund;

(2) with the care, skill, and prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) by diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the Fund.

(c) *Unless* otherwise provided in this Chapter, investment and management decisions respecting individual assets *shall* be evaluated *not* in isolation, but in the context of the Fund's portfolio as a whole, and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Fund.

(d) A Trustee's decision or action in discharging his or her fiduciary duties *shall* be reviewed in light of the facts and circumstances existing at the time of such decision or action, and *not* by hindsight."

Section 4. Subsection (j) of §8143 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"(j) Before the Board may approve by resolution the acquisition of real property consisting of physical assets under §4225.16 of the Government Code, as amended, codified as §8159 of Title 4 GCA, the following steps must be taken:

(1) the proposed acquisition must be reviewed and recommendations must be submitted to the Board by an investment agent as defined under §8145 of this Chapter;

(2) the completion of an in-house evaluation of the proposed acquisition must be completed;

(3) a review of the proposed acquisition as to legal sufficiency must be made by the Attorney General; and

(4) a review and recommendation must be submitted by three (3) members of the Board of Trustees.

At *no* time *shall* an acquisition considered under this Subsection (j) be made that would provide an immediate investment return which is less than

the average rate of investment return that the Fund is receiving overall on its alternative investment portfolio."

Section 5. §8144 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8144. Custodian.** The Board *shall* engage one or more custodians to assume responsibility for the physical possession of fund assets or evidences of assets. The custodian *shall* submit such reports, accountings and other information in such form and at such times as requested by the Board. All costs incurred for custodial services *shall* be a direct charge to Investment Income. The custodian *shall* hold all assets for the account of the Government of Guam Retirement Fund, and *shall* act *only* upon the instructions of the Board, its *ex-officio* director or a member, committee or agent so authorized by the Board. No custodian shall be engaged unless it:

(a) has been continuously engaged in rendering custody services for a period of ten (10) or more years; and

(b) is organized under the laws of the United States or a state or territory thereof; and

(c) has Tier 1 capital in excess of One Billion Dollars ($1,000,000,000) in any rolling 12 month period; and

(d) is a member of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereto; or

(e) notwithstanding any of the above, any locally chartered bank may be a custodian of the Retirement Fund."

Section 6. §8145 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"§ **8145. Investment Agent.**

(a) In order to secure expert advice and counsel, the Board may engage an investment agent to serve as investment counsel, which *shall* be either an investment counsel or a bank trust department as hereinafter qualified; and one or more investment agents to serve as investment manager(s) to manage asset classes identified by the Board upon the recommendation of investment counsel. All costs incurred in this connection *shall* be a direct charge to investment income.

(b) *No* person, firm or corporation *shall* be eligible for employment as investment counsel which acts as principal for its own account or as broker for a client other than the Fund in connection with the sale of any security to or the purchase of any security from the Fund.

(c) *No* investment agent *shall* be engaged *unless*:

(1) the principal business of the person, firm or corporation selected by the Board consists of rendering investment supervisory services, that is, the giving of continuous advice as to the investment of Funds on the basis of the individual needs of each client; and

(2) the principal ownership or control of such person, firm or corporation rests with individuals who are actively engaged in such business; and

(3) such person, firm or corporation and its predecessors have been continuously engaged in such business for a period of ten (10) or more years; and

(4) such person, firm or corporation is registered as an investment adviser under the laws of the United States of America as from time to time in effect; and is in good standing with the Financial Industry Regulatory Authority (FINRA) and the Security and Exchange Commission (SEC) on a continuous and ongoing basis; and

(5) the contract between the Board and the investment agent is of no specified duration and is voidable at any time by either party; and

(6) such person, firm or corporation certifies in writing, to the Board, that the assets under its direct investment supervision are in excess of One Billion Dollars ($1,000,000,000) in any rolling 12 month period.

(d) The Board *shall not* engage a bank trust department *unless* it:

(1) certifies in writing, to the Board, that the assets under its direct investment supervision are in excess of One Billion Dollars ($1,000,000,000) in any rolling 12 month period; and

(2) has been, together with its predecessors, continuously engaged in supervising investments for a period of ten (10) or more years; and

(3) is organized under the laws of the United States or a state or territory thereof; and

(4) has Tier 1 capital in excess of One Billion Dollars ($1,000,000,000) in any rolling 12 month period; and

(5) is a member of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereto.

(e) The Board, or its designee under § 8143(a), *shall* establish and may from time to time change operating arrangements with the investment agent in order to facilitate efficient management and timely investment action.

(f) *No* investment *shall be* made *unless* in the opinion of the investment agent it is an appropriate investment for the Fund and is an authorized investment under §§ 8143 through 8159, inclusive, or in the absence of such opinion, unless preceded by a resolution of the Board directing the investment."

Section 7. § 8146 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8146. General Investment Limitations.** *No* investment *shall* be made if, after such investment, the Fund would own:

(a) any combination of obligations of any one political subdivision, corporation or other single issuing entity in excess of five percent (5%) of Fund assets at cost. This limitation *shall not* apply to general obligations of the United States, investments authorized under § 8150, or general obligations of the government of Guam.

(b) any combination of investment instruments as covered by § 8151, Subsection (b) of § 8154, Subsection (b) of § 8156, and Subsection (b) of § 8157 in excess of thirty-five percent (35%) of Fund assets at cost.

(c) Obligations or other investments issued or guaranteed by the government of Guam in excess of ten percent (10%) of Fund

assets at cost; provided, however, that this limitation *shall not* apply to such obligations or other investments that are unconditionally guaranteed as to principal and interest by, or supported by lease assignment from, another entity whose principal business is outside of Guam, and whose obligations are authorized investments under §§ 8143 through 8159, inclusive."

Section 8. § 8149 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8149. Same: Bank Deposits; Other Cash Equivalents.**

(a) Interest-bearing time deposits, demand deposits, and cash sweep deposit accounts in banks organized under the laws of the United States or any state or territory thereof; provided, that said bank:

(1) has Tier 1 capital in excess of One Billion Dollars ($1,000,000,000) in any rolling 12 month period; and

(2) is a member of the Federal Reserve System; and

(3) together with any predecessors, have been conducting a banking business for a continuous period of ten (10) or more years; or

(4) any bank or savings and loan association chartered in Guam, and is a member of the Federal Deposit Insurance Corporation or the Federal Home Loan Bank System.

(b) Cash equivalents purchased in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; in amounts and for durations approved by the Board in connection with the management of uninvested cash balances; such purchases *shall* be excluded from limitations of §8158(e) and § 8158.1(b)."

Section 9. §8150 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8150. Same: Bonds of United States and Federal Instrumentalities.**

(a) Bonds or other evidence of indebtedness of the United States of America, or any of its agencies or instrumentalities, when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof;

(b) Debt securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation that are backed by pools of mortgage loans and guaranteed as to timely repayment of principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or

(c) Non-mortgage-related bonds or other evidence of indebtedness of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(d) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; such purchases *shall* be excluded from the limitations of §8158(e) and §8158.1(b)."

Section 10. § 8151 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8151. Same: Bonds Issued by National Governments Other Than the United States.** Bonds and other evidences of indebtedness which are direct obligations of, or secured by, the full faith and credit of national governments other than the United States, where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness, provided that:

(a) the issuer *shall not* be in default in the payment of principal or interest on any bonds or other evidences of indebtedness; and

(b) the investment agent determines that such an investment would be employed by a prudent person acting in a like capacity and familiar with such matters would use in the investment of a fund with like character and with like aims; and

(c) *no* investment *shall* be made in any one (1) issue described in this Section in an amount in excess of ten percent (10%) of such issues.

(d) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; such purchases *shall* be excluded from the limitations of §8158(e) and §8158.1(b)."

Section 11. §8152 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8152. Same: Bonds of States and Territories.**

(a) Bonds or other evidences of indebtedness which are direct obligations of or secured by the full faith and credit of, any state or territory of the United States, or the District of Columbia, where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness; but the issuer *shall not* be in default in the payment of principal or interest on any bonds or other evidences of indebtedness.

(b) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158, or in exchange-traded funds

authorized under §8158.1; such purchases *shall* be excluded from the limitations of §8158(e) and §8158.1(b)."

Section 12. §8153 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8153. Same: Public Revenue Bonds.** Bonds or other obligations which are payable from revenues or earnings specifically pledged therefore of a public utility, state, municipally or territorially owned, either directly or through civil division, authority or public instrumentality of a state or territory or municipality; provided that:

(a) the laws of the state or territory or municipality authorizing the issuance of such bonds or other obligations require that rates for service *shall* be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges, and both principal and interest of such bonds or obligations; and

(b) *no* such bonds or other *obligations* shall be in default in the payment of principal or interest.

Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; such purchases *shall* be excluded from the limitations of §8158(e) and §8158.1(b)."

Section 13. §8154 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8154. Same: Bonds of Domestic and Foreign Corporations; Index-Eligible Securities.**

(a) Bonds of Domestic Corporations. Bonds, debentures, notes and other evidences of indebtedness of any corporation, or corporations created

or existing under the laws of the United States, or of any of the states or territories of the United States, or the District of Columbia, which are *not* in default either as to principal or interest, provided that:

(1) such bonds or other evidence of indebtedness are rated within the four (4) highest categories of two (2) nationally recognized and published rating services which have been approved by the Board and the investment agent; or

(2) in case such bonds or other evidence of indebtedness are *not* so rated by two (2) such services, investments in such lesser-ranked domestic corporate bonds *shall not* exceed eight percent (8%) of the Fund at cost; *unless* the net earnings available for fixed charges over a prior period of five (5) fiscal years next preceding the date of investment have averaged per year and during either of the last two (2) years have been, after depreciation and after taxes, *not less than:*

(A) two (2) times its average annual fixed charges over the same period, in the case of any public utility company;

(B) one and one-half (1½) times its average annual fixed charges over the same period, in the case of any finance company; or

(C) three (3) times its average annual fixed charges over the same period, in the case of any other company.

(3) *No more than* two percent (2%) of the Fund at cost *shall* be invested in the obligations of any one (1) domestic corporation or other single domestic issuing entity described in this Subsection.

(b) Bonds of Foreign Corporations. Bonds, debentures, notes and other evidences of indebtedness of any corporation, or corporations created or existing under the laws of nations other than the United States which are

not in default either as to principal or interest; provided, that the investment agent in its informed opinion, determines that such an investment would be employed by a prudent person acting in a like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims. *No more than* one and one-half percent (1½%) of the Fund at cost *shall* be invested in the obligations of any one (1) foreign corporation or other single issuing foreign entity described in this Subsection.

(c) *No* investment *shall* be made in any one (1) issue described in Subsections (a) and (b) of this Section in an amount in excess of ten percent (10%) of such issues.

(d) Other Securities in the U.S. Aggregate Bond Index. Bonds, debentures, notes and other evidences of indebtedness which are denominated in U.S. dollars, investment-grade, fixed-rate and of the quality of fixed income securities covered by the U.S. Aggregate Bond Index.

(e) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; such purchases *shall* be excluded from the limitations of §8158(e) and §8158.1(b)."

Section 14. §8156 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8156. Same: Domestic and Foreign Preferred Stock.**

(a) Domestic Preferred Stock. Domestic preferred or guaranteed stock or shares of any institution created or existing under the laws of the United States or of any state, district or territory thereof or the District of Columbia; provided that:

(1) All publicly held prior obligations and prior preferred stock, if any, of such institution at the date of acquisition are eligible as investments under §§ 8143 through 8160; and

(2) the net earnings of the institution available for fixed charges over a period of five (5) fiscal years next preceding the date of investment have averaged per year, and during either of the last two (2) years have been, after depreciation and after income taxes, *no less than*:

(A) two times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any public utility company; or

(B) three (3) times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any other company.

For purposes of this Subsection, the term *preferred dividend requirements shall* mean cumulative and noncumulative dividends on all preferred stock of the issuer, whether paid or not.

(b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or shares of any institution created or existing under the laws of nations other than the United States which are *not* in default either as to principal or interest; provided, that the investment agent in its informed opinion, determines that such an investment would be employed by a prudent person acting in a like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims.

(c) Limitations:

(1) *No* investment *shall* be made in any one issue described in Item (1) of Subsection (a) of this Section in an amount in excess of ten percent (10%) of such issues.

(2) *No* more than two percent (2%) of the Fund at cost shall be invested in the preferred stock of any one issuing domestic company.

(3) *No* more than two percent (2%) of the Fund at cost shall be invested in the preferred stock of any one issuing foreign company.

(4) The aggregate of all investments authorized under this Section *shall not* exceed fifteen percent (15%) of Fund assets at cost.

(5) Preferred stock authorized under this Section may be purchased and held in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; such purchases *shall* be excluded from the limitations of §8158(e) and §8158.1(b)."

Section 15. §8157 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8157. Same; Common Stock.**

(a) Common or capital stock of any institution or entity created or existing under the laws of the United States, or any state, district, or territory thereof, or of the District of Columbia or of any foreign country; provided that, with respect to *at least* fifty percent (50%) of the investments at cost purchased directly under this Section:

(1) the issuing institution, entity, or a predecessor thereto, has reported a profit in *at least* four (4) of the five (5) fiscal years next preceding the date of investment, or alternatively in *at least* seven (7) of the ten (10) fiscal years next preceding the date of investment; and

(2) the institution, entity or such predecessor has paid cash dividends on its common or capital stock in *at least* four (4) of the five (5) years next preceding the date of investment, or alternatively in *at least* seven (7) of the ten (10) fiscal years next preceding the date of investment; and

(3) total cash dividends have *not* exceeded total earning in the five (5) years next preceding the date of investment; and

(4) on the date of investment, the issuer *shall not* be in default in payment of principal or interest on any of its publicly held bonds or other evidences of indebtedness; and any contingent interest, cumulative and noncumulative preferred dividends and dividends on prior common or capital stock *shall* have been paid in full.

No more than five percent (5%) of the Fund *shall* be invested directly in the common or capital stock of anyone issuing domestic company described in this Section.

(b) Common or capital stock of any institution or entity created or existing under the laws of nations other than the United States; provided, that the investment agent determines that such an investment would be employed by a prudent person acting in a like capacity and familiar with such matters would use in the investment of a fund with like character and with like aims. *No more than* one and one-half percent (1½%) of the Fund at cost *shall* be invested directly in the common or capital stock of anyone issuing foreign company described in this Section.

(c) *No* direct investment *shall* be made in any one (1) issue described in this Section in an amount in excess of ten percent (10%) of such issues.

(d) Common or capital stock of any institution or entity created or existing under the laws of the United States, or any state, district, or territory

thereof, or of the District of Columbia, or of any foreign country, purchased and held in investment funds authorized under §8158, or in exchange-traded funds authorized under §8158.1; such purchases being excluded from the limitations of §8158(e) and §8158.1(b).

(e) The aggregate amount of all direct and indirect investments under this Section at cost *shall not* exceed seventy percent (70%) of the Fund."

Section 16. § 8158 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8158. Investment Funds.**

(a) Common or capital shares of any investment trust or mutual fund (including any index fund) registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended; provided, that the cost of the shares acquired is no greater than their net asset value on the date of acquisition.

(b) Units in any common trust fund or commingled fund (including any index fund) maintained by a custodian meeting the requirements of Title 4 GCA, § 8144, and advised or sub-advised by an investment management organization meeting the requirements of Title 4 GCA, § 8145.

(c) Preferred shares of any investment trust or mutual fund (including any index fund) registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended; provided that:

(1) the number of issued and outstanding common or capital shares multiplied by their asset value per share, plus;

(2) the number of issued and outstanding preferred shares, multiplied by their par or stated value, is *at least* fifty percent (50%) greater than the number of issued and out-standing preferred shares,

multiplied by their par or stated value. For purposes of this Section, the number of issued and outstanding shares *shall* be taken as of the latest available public report of such investment trust or mutual fund. Preferred shares as described in this Subsection *shall not* be subject to the provisions of §8156.

(d) The term *net asset value* as used in this Section *shall* mean the total quoted or estimated market value of all securities or other assets owned, less that total of all determinable liabilities, as reported by such common trust fund, commingled fund, investment trust or mutual fund.

(e) Limitation:

(1) The investment in units, preferred, common and capital stock of any one common trust fund, commingled fund, investment trust or mutual fund *shall not* exceed five percent (5%) of the Fund at cost; and

(2) The aggregate of all investments under this Section, *except* for investment fund purchases of cash equivalents authorized under §8149, bonds authorized under §§8150 through 8154, domestic and foreign preferred stock authorized under §8156, and common or capital stock authorized under §8157, *shall not* exceed thirty percent (30%) of the Fund at cost."

Section 17. §8158.1 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 8158.1. Exchange Traded Funds.**

(a) Units *or* shares of any exchange traded fund (ETF) established as an open-end investment management company *or* a unit investment trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended. Although ETFs may

trade at prices established throughout the trading day, like any other listed equity security trading in the secondary market on an exchange, the units *or* shares described in this Subsection *shall not* be subject to the provisions of §8157. Although ETFs are unit investment trusts, the units *or* shares described in this Subsection *shall not* be subject to the provisions of §8158.

(b) The investment in units *or* shares of any one exchange traded fund *shall not exceed* twenty percent (20%) of the Fund at cost."

Section 18. Effective Date. This Act *shall* become effective upon enactment.

Section 19. Severability. *If* any provision of this Act or its application to any person or circumstances is held invalid, the invalidity *shall* not affect any other provision or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.