



Bangko Sentral ng Pilipinas

MAYNILA, PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 304
Series of 2001

The Monetary Board, in its Resolution No. 1651, dated October 18, 2001, approved the following guidelines that shall govern the issuance of long-term negotiable certificates of time deposit (LTNCD) with a minimum maturity of five (5) years:

A. PRIOR BANGKO SENTRAL NG PILIPINAS (BSP) APPROVAL

No LTNCD shall be issued without the prior approval of the BSP.

B. APPLICATION FOR AUTHORITY OF THE ISSUING BANK

An application for authority on each issue/issue program of LTNCD shall be filed with the appropriate supervising and examining department of the BSP; *Provided*, That the issue period of an issue program of two or more tranches shall not exceed one year from approval.

The application shall be signed by the President/Country Manager (branch of a foreign bank) of the bank. It shall be accompanied by a certified true copy of the resolution of the bank's board of directors authorizing the issuance of LTNCD indicating, among others, the issue size, offering period, purpose or intended use of proceeds thereof, Registry Bank, Underwriter/Arranger, Selling Agent(s) and Market Maker(s).

C. PRE-QUALIFICATION REQUIREMENTS

1. ISSUING BANK

A bank applying for authority to issue an LTNCD shall comply with the following requirements:

- a. It has complied with the following capital adequacy requirements:
 - 1) Minimum capitalization as defined under Subsection X106 of the Manual of Regulations for Banks; and
 - 2) Risk based capital adequacy ratio under Circular No. 280 dated March 29, 2001 within the sixty (60) days immediately preceding the date of application.



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- b. It has not incurred net weekly reserve deficiencies within eight (8) weeks immediately preceding the date of application;
- c. It has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management in the last two preceding examinations prior to the date of application, more particularly:
 - 1) the ceilings on credit accommodations to directors, officers, stockholders and related interests (DOSRI);
 - 2) liquidity floor requirements for government deposits;
 - 3) single borrower's loan limit; and
 - 4) investment in bank premises and other fixed assets.
- d. It maintains adequate provisions for probable losses commensurate to the quality of its asset portfolio but not lower than the required valuation reserves as determined by the BSP;
- e. It does not have float items outstanding for more than sixty (60) calendar days in the "Due From/To Head Office/Branches/Offices" accounts and the "Due From Bangko Sentral" account exceeding one percent (1%) of the total resources as of date of application;
- f. It has no past due obligations with the BSP or with any government financial institution;
- g. It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system;
- h. It has a CAMELS Composite Rating of at least 3 in the last regular examination; and
- i. It is a member of the Philippine Deposit Insurance Corp. (PDIC) in good standing.

2. **REGISTRY BANK**

- a. It may be a universal bank, a commercial bank, or such other specialized entity that may be qualified by the Monetary Board;
- b. In the case of a universal bank or a commercial bank:
 - 1) it must be a third party:

- a) with no subsidiary/affiliate relationship with the Issuing Bank; and
 - b) which is not related to the Issuing Bank in any manner that would undermine its independence.
- 2) It must have adequate facilities and the organization to do the following:
 - a) maintain the Electronic Registry Book (ERB);
 - b) deliver transactions within the agreed trading period; and
 - c) issue registry confirmations to holders of LTNCDs.
- 3) It must have a CAMELS Composite Rating of at least 3 in the last regular examination.

3. UNDERWRITER/ARRANGER

- a. It is either a universal bank or an investment house; *Provided*, That if an offering is on a best effort basis, such Arranger may also be a commercial bank:
- b. It must be a third party, such that:
 - 1) it has no subsidiary/affiliate relationship with the Issuing Bank; and
 - 2) it is not related in any manner that would undermine the objective conduct of due diligence.
- c. Underwriters must be well-capitalized and must have adequate risk management as evidenced by compliance with C.1(a), (d), (g) and (h) as may be applicable.

4. SELLING AGENT

It may be any financial institution, with dealership or brokering license, under the regulatory supervision of the BSP.

5. MARKET MAKER

- a. It must not be the Issuing Bank;
- b. It must be a third party which is not related to the Issuing Bank in any manner that would undermine its independence;
- c. It must be a financial institution, with dealership or brokering license, under the regulatory supervision of the BSP; and

- d. It must be well-capitalized and must have adequate risk management as evidenced by compliance with C.1(a), (d), (g) and (h) as may be applicable.

D. ADDITIONAL REQUIREMENTS FOR THE ISSUANCE OF LTNCD

After a bank's application to issue an LTNCD has been approved, it may issue the same, subject to the submission of the following additional requirements:

1. At least fifteen (15) days before the date of offering:
 - a) Written waiver of the secrecy of deposits on said LTNCD by the Issuing Bank, its subsidiaries, affiliates and wholly or majority-owned or controlled entities of such subsidiaries and affiliates;
 - b) Information disclosure and the terms and conditions of the LTNCD issuance;
 - c) Promotional materials; and
 - d) Specimen of the proposed registry confirmation and purchase advice from each Selling Agent/Market Maker which will evidence sale of the LTNCD.
2. Within ten (10) days after issuance of the initial and subsequent tranches:

Written notice to the appropriate BSP supervising department of the actual date of initial/tranche offering accompanied by a certification by the President/Country Manager that the pre-qualification requirements under C.1 have been complied with up to the time of offering.

E. FUNCTIONS/RESPONSIBILITIES OF THE PARTIES INVOLVED

The respective parties shall have, among others, the following functions/responsibilities:

1. **Registry Bank:**

- a. Generates and maintains the ERB;
- b. Records any transfer of ownership;
- c. Issues and sends registry confirmation to holders;
- d. Functions as paying agent for periodic interest and principal payments; and
- e. Monitors compliance with the prohibition on holdings of LTNCD, as prescribed under Item H hereof.

examination purposes. Any information obtained from an examination of said LTNCD shall be held strictly confidential.

H. **PROHIBITION ON HOLDINGS OF LTNCD**

The Issuing Bank including its related companies (subsidiaries and affiliates and wholly or majority-owned or controlled entities of such subsidiaries and affiliates) cannot be a holder of the LTNCD of the Issuing Bank.

The Issuing Bank shall provide the Registry Bank with an updated list of all related companies. The Registry Bank shall submit to BSP within ten (10) banking days from end of reference month, a report on the compliance with the above prohibition. This report shall be a "Category B" report.

For purposes of this Circular, an affiliate is an entity, at least twenty percent (20%) but not exceeding fifty percent (50%) outstanding voting stock of which is, owned by the Issuing Bank.

I. **AGREEMENTS BETWEEN ISSUING BANK AND REGISTRY BANK/SELLING AGENT(S)/MARKET MAKER(S)**

The agreements between the Issuing Bank and the Registry Bank/Market Makers/Selling Agents shall comply with the provisions of Sec. X169 of the Manual of Regulations (MOR) on bank service contracts. The Issuing Bank shall be liable for any damages to investors/depositors caused by actions of said Registry Bank, Selling Agent(s)/Market Maker(s) contrary to the agreements entered into.

J. **MINIMUM FEATURES**

1. **Form; denomination** - An LTNCD shall be in scripless form with a third party Registry Bank maintaining the Electronic Registry Books. To have legal effect, it shall comply with the provisions of R.A. No. 8792 (Electronic Commerce Act) particularly on the existence of an assurance on the integrity, reliability and authenticity of the LTNCD in electronic form. LTNCDs shall be registered in the name of individuals or corporations, negotiable and prenumbered serially. The minimum denomination shall be at the discretion of the Issuing Bank.
2. **Currency** - Denomination shall be in Philippine pesos.
3. **Term** - The minimum maturity of the LTNCD shall be five (5) years.
4. **Primary Offering/Secondary Trading** - The initial offering shall be executed through an Underwriter or an Arranger. Subsequent negotiation

2. Underwriter/Arranger

- a. Conducts due diligence on the Issuing Bank and determines the valuation/pricing of the primary issue;
- b. Prepares the prospectus/information disclosure/ updates for multi-tranche issues;
- c. Formulates the distribution/allocation plan for the initial offering and ensures proper and orderly distribution of the primary sale/issue of the LTNCD;
- d. Disseminates information to prospective depositors/investors of LTNCDs on the terms and condition of the issue (including information of non-pretermination by the depositor prior to original maturity and the liquidity mechanism in secondary trades) and the rights and obligations of the holder, Issuer, Market Maker/Selling Agent, Underwriter/Arranger and Registry Bank; and
- e. When selling to its clients, it must perform the functions/responsibilities of the Selling Agent under Item E.3(a) and (b).

3. Selling Agent

- a. Verifies identity of each investor and applies other standards to combat money laundering as required under BSP Circular Nos. 251, 253 and 279; and
- b. Issues the purchase advice for the primary offering of the LTNCD.

4. Market Maker

- a. Sets independent pricing for the secondary trading of LTNCDs;
- b. Posts daily the bid and offer prices for the LTNCDs on the screen of at least one of the information providers until the operation of a fixed income exchange for LTNCDs;
- c. Verifies identity of each investor and applies other standards to combat money laundering as required under BSP Circular Nos. 251, 253 and 279;
- d. Issues the purchase advice for the secondary sale of the LTNCD; and
- e. Ensures secondary market transfers and registration in coordination with the Registry Bank.

F. CHANGE OF UNDERWRITER/ARRANGER, REGISTRY BANK, SELLING AGENT(S)/MARKET MAKER(S)

After an application for authority to issue LTNCD has been approved by the BSP, the Issuing Bank cannot change its Underwriter/Arranger, Registry Bank, Selling Agent(s) and Market Maker(s) without the prior approval of the BSP.

G. WAIVER OF THE SECRECY OF DEPOSITS FOR MARKET MAKERS

A Market Maker who holds an LTNCD for its own account must issue a waiver of the secrecy of deposits in favor of the Bangko Sentral ng Pilipinas for

in secondary trading must be executed through authorized Market Maker(s).

K. PURCHASE ADVICE AND REGISTRY CONFIRMATION

1. The Purchase Advice and Registry Confirmation shall conspicuously contain the following caveat:

- a. *This LTNCD cannot be terminated by the holder nor the Issuing Bank before (maturity date). However, negotiations/transfers from one holder to another does not constitute pretermination.*

- b. *All negotiations/transfers of this LTNCD prior to maturity must be coursed through a Market Maker.*

(Item K.1.a above shall apply if the Issuing Bank commits no pre-termination of the LTNCD. Otherwise it shall read as follows):

- a. *This LTNCD cannot be terminated by the holder before (maturity date). However, it may be preterminated at the instance of the Issuer Bank upon prior notice to the holder on record. Negotiations/transfers from one holder to another does not constitute pretermination.*

2. The Selling Agent/Market Maker shall issue a Purchase Advice to evidence initial purchase/secondary trading of LTNCD with the original copy given to the holder.

3. The Registry Bank shall issue a Registry Confirmation to evidence ownership of the LTNCD, with the original copy given to the holder.

L. REQUIRED RESERVES

LTNCDs shall have a statutory regular reserves of 2% and liquidity reserves of 0%.

M. ISSUE SIZE AND AGGREGATE CEILING

An Issuing Bank can issue LTNCDs up to three hundred percent (300%) of its total capital accounts as defined under Sec. X106/X121.5 (branches of foreign banks) of the MOR: Provided, That each issue/issue program size does not exceed five billion pesos. This ceiling shall be subject to a regular review by the BSP.

N. DEPOSIT INSURANCE COVERAGE

The LTNCDs shall be insured with the PDIC, subject to applicable rules and regulations, among others, on maximum insurance coverage.

O. PRETERMINATION BY THE ISSUER

LTNCDs may be preterminated by the Issuing Bank, subject to the following conditions:

1. The Information Disclosure, Purchase Advice and Registry Confirmation shall include the information that the LTNCD may be preterminated by the Issuing Bank;
2. Thirty (30) days prior notification must be given to the appropriate supervising and examining department of the BSP together with the justification for the pretermination;
3. Thirty (30) days prior notification to holders of record;
4. Notwithstanding any agreement to the contrary, the Issuer shall shoulder the tax due on the interest income already earned by the holders;
5. The Issuing Bank's reserve positions shall be recomputed retroactively based on the applicable reserve rate(s) for regular time deposits during the affected periods;

If the recomputed amounts result in a reserve deficiency, the Issuing Bank shall be fined with the corresponding monetary penalties. The preceding monetary penalty, however, shall not be imposed if pretermination by the issuer is due to a change in law or regulation that will increase the cost of maintaining the LTNCDs.

P. NON-PRETERMINATION BY THE HOLDER

Presentation of the LTNCD to the Issuing Bank for payment before the maturity date is not allowed. However, negotiation or transfer from one holder to another shall not constitute pretermination of the LTNCD.

Q. SANCTIONS

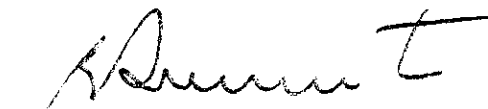
Without prejudice to the other sanctions prescribed under Section 37 of R.A. No. 7653 and the provisions of Section 16 of R.A. No. 8791, the following sanctions will be imposed on any Issuing Bank, Registry Bank and other parties

for failure to perform their respective functions/responsibilities and for non-disclosure or misrepresentation of information.

1. On the Issuing Bank – Suspension of its authority to issue LTNCDs, disqualification from future issuance of LTNCDs and a monetary penalty of ₱ 30,000.00 for each violation.
2. On the Registry Bank - Disqualification to be a Registry Bank for one year and a monetary penalty of ₱ 30,000.00 for each violation.
3. On all authorized Selling Agents/Market Makers - Disqualification to be appointed as Selling Agent/Market Maker for one year and a monetary penalty of ₱ 30,000.00 for each violation.
4. On the Certifying Officer - A fine of ₱5,000.00 per banking day from the time of required disclosure up to the time disclosure was made; or from the time misrepresentation was made up to the time the information was corrected.
5. On the Responsible Officer – A fine of ₱30,000.00 for participating or confirming in the non-disclosure or misrepresentation of information.

This Circular shall take effect immediately.

For the Monetary Board:


RAFAEL B. BUENAVENTURA
Governor

October 25, 2001