



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

CIRCULAR NO. 428
Series of 2004

Pursuant to Monetary Board Resolution No. 515 dated 15 April 2004, the rules and regulations that shall govern securities custodianship and securities registry operations of banks and non-bank financial institutions (NBFIs) under Bangko Sentral ng Pilipinas (BSP) supervision, are hereby issued as follows:

Section 1. Statement of Policy

It is the policy of the BSP to promote the protection of investors in order to gain their confidence and encourage their participation in the development of the domestic capital market. Therefore, the following rules and regulations are promulgated to enhance transparency of securities transactions with the end in view of protecting investors.

Section 2. Applicability of this Regulation

This regulation shall govern securities custodianship and securities registry operations of banks and NBFIs under BSP supervision. It shall cover all their transactions in securities as defined in Section 3 of the Securities Regulation Code (SRC), whether exempt or required to be registered with the Securities and Exchange Commission (SEC), that are sold, borrowed, purchased, traded, held under custody or otherwise transacted in the Philippines where at least one of the parties is a bank or an NBFI under BSP supervision. However, this regulation shall not cover the operations of stock and transfer agents duly registered with the SEC pursuant to the provisions of SRC Rule 36-4.1 and whose only function is to maintain the stock and transfer book for shares of stock.

Section 3. Prior Bangko Sentral ng Pilipinas Approval

Banks and NBFIs under BSP supervision may act as securities custodian and/or registry only upon prior Monetary Board approval.

Section 4. Application for Authority

A BSP-supervised entity desiring to act as securities custodian and/or registry shall file an application with the appropriate supervising and examining department of the BSP. The application shall be signed by the highest ranking officer of the bank/NBFI and shall be accompanied by a certified true copy of the resolution of the bank's/NBFI's board of directors authorizing the bank/NBFI to engage in securities custodianship and/or registry and, in the case of a branch of a foreign bank, approval

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by its highest ranking regional officer with proof of delegated authority from the bank's board of directors.

Section 5. Pre-qualification Requirements for a Securities Custodian/Registry:

- a. It must be a bank or a non-bank financial institution under BSP supervision;
- b. It must have complied with the minimum capital accounts required under existing regulations, as follows:

Domestic Banks

Its adjusted capital accounts is at least equal to the amount required under Subsection X106.1 of the Manual of Regulations for Banks or the amount required for thrift banks operating in Metro Manila, whichever is higher.

Branches of foreign banks

The minimum capital required under Subsection X121.4 of the Manual of Regulations for Banks.

NBFIs

Adjusted capital of at least ₱ 300 million or such amounts as may be required by the Monetary Board in the future.

- c. Its risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application (*for banks only*);
- d. It must have a CAMELS composite rating of at least "4" (as rounded off) in the last regular examination;
- e. It must have in place a comprehensive risk management system approved by its board of directors (or equivalent management committee in the case of foreign bank branches) appropriate to its operations characterized by a clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal control and complete, timely and efficient risk reporting systems. In this connection, a manual of operations (which includes custody and/or registry operations) and

other related documents embodying the risk management system must be submitted to the appropriate supervising and examining department at the time of application for authority and within thirty (30) days from updates.

- f. It must have adequate technological capabilities and the necessary technical expertise to ensure the protection, safety and integrity of client assets, such as:
 - 1. It can maintain an electronic registry dedicated to recording of accountabilities to its clients; and
 - 2. It has an updated and comprehensive computer security system covering system, network and telecommunication facilities that will:
 - a. limit access only to authorized users;
 - b. preserve data integrity; and
 - c. provide for audit trail of transactions.
- g. It has complied, during the period immediately preceding the date of application, with the following:
 - 1. ceilings on credit accommodation to DOSRI; and
 - 2. single borrower's limit.
- h. It has no reserve deficiencies during the eight weeks (8) immediately preceding the date of application;
- i. It has set up the prescribed allowances for probable losses, both general and specific, as of date of application;
- j. It has not been found engaging in unsafe and unsound practices during the last six (6) months preceding the date of application;
- k. It has generally complied with laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management;
- l. It has submitted additional documents/information which may be requested by the appropriate supervision and examination department, such as, but not limited to:
 - 1. Standard custody/registry agreement and other standard documents;
 - 2. Organizational structure of the custody/registry business;

3. Transaction flow; and
4. For those already in the custody or registry business, a historical background for the past three years;
- m. It shall be conducted in a separate unit headed by a qualified person with at least two years experience in custody/registry operations; and
- n. It can interface with the clearing and settlement system of any recognized exchange in the country capable of achieving a real time gross settlement of trades.

Section 6. Functions and Responsibilities of a Securities Custodian

A Securities Custodian shall have the following basic functions and responsibilities:

- a. Safekeeps the securities of the client;
- b. Holds title to the securities in a nominee capacity;
- c. Executes purchase, sale and other instructions;
- d. Performs at least a monthly reconciliation to ensure that all positions are properly recorded and accounted for;
- e. Confirms tax withheld;
- f. Represents clients in corporate actions in accordance with the direction provided by the securities owner;
- g. Conducts mark-to-market valuation and statement rendition;
- h. Does earmarking of encumbrances or liens such as, but not limited to, Deeds of Assignment and court orders; and

In addition to the above basic functions, it may perform the following value-added service to clients:

- i. Acts as a collecting and paying agent: *Provided*, That the management of funds that may be collected shall be clearly defined in the custody contract or in a separate document or agreement attached thereto: *Provided, further*, That the custodian shall immediately make known to the securities owner all payments made and collections received with respect to the securities under custody;

- j. Securities borrowing and lending operations as agent.

Section 7. Functions and Responsibilities of a Securities Registry

- a. Maintains an electronic registry book;
- b. Delivers confirmation of transactions and other documents within agreed trading periods;
- c. Issues registry confirmations for transfers of ownership as it occurs;
- d. Prepares regular statement of securities balances at such frequency as may be required by the owner on record but not less frequent than every quarter; and
- e. Follows appropriate legal documentation to govern its relationship with the Issuer.

Section 8. Protection of Securities of the Customer

A custodian must incorporate the following procedures in the discharge of its functions in order to protect the securities of the customer:

- a. *Accounting and recording for securities*

Custodians must employ accounting and safekeeping procedures that fully protect customer securities. It is essential that custodians segregate customer securities from one another and from its proprietary holdings to protect the same from the claims of its general creditors.

All securities held under custodianship shall be recorded in the books of the custodian at the face value of said securities in a separate subsidiary ledger account "*Securities Held Under Custodianship*" if booked in the Bank Proper or the subsidiary ledger account "*Safekeeping and Custodianship – Securities Held Under Custodianship*", if booked in the Trust Department. *Provided*, That securities held under custodianship where the custodian also performs securities borrowing and lending as agent shall be booked in the Trust Department.

b. Documentation

The appropriate documentation for custodianship shall be made and it shall clearly define, among others, the authority, role, responsibilities, fees and provision for succession in the event the custodian can no longer discharge its functions. It shall be accepted in writing by the counterparties.

The governing custodianship agreement shall be pre-numbered and this number shall be referred to in all amendments and supplements thereto.

c. Confirmation of Custody

The custodian shall issue a custody confirmation to the purchaser or borrower of securities to evidence receipt or transfer of securities as they occur. It shall contain, as a minimum, the following information on the securities under custody:

1. Owner of securities;
2. Issuer;
3. Securities type;
4. Identification or serial numbers;
5. Quantity;
6. Face value; and
7. Other information, which may be requested by the parties.

d. Periodic Reporting

The custodian shall prepare at least quarterly (or as frequent as the owner of securities will require) securities statements delivered to the registered owner's address on record. Said statement shall present detailed information such as, but not limited to, inventory of securities, outstanding balances, and market values.

Section 9. Independence of the Registry and Custodian

A BSP-accredited securities registry must be a third party with no subsidiary/affiliate relationship with the issuer of securities while a BSP-accredited custodian must be a third party with no subsidiary/affiliate relationship with the issuer or seller of securities. A bank/NBFI accredited by BSP as securities custodian may, however, continue holding securities it sold under the following cases:

- a. where the purchaser is a related entity acting in its own behalf and not as agent or representative of another; and

- b. where the purchaser is a non-resident with existing global custody agreement governed by foreign laws and conventions wherein the bank/NBFI is designated as custodian or sub-custodian.

Purchases by non-residents that are exempted from the independence requirement of this Section shall, however, be subject to all other provisions of this Circular.

Section 10. Registry of Scripless Securities of the Bureau of the Treasury

The Registry of Scripless Securities (RoSS), operated by the Bureau of the Treasury, which is acting as a registry for government securities is deemed to be automatically accredited for purposes of this Circular and is likewise exempted from the independence requirement under Section 9. However, securities registered under the RoSS shall only be considered delivered if said securities were transferred by means of book entry to the appropriate securities account of the purchaser or his designated custodian. Book entry transfer to a sub-account for clients under the primary account of the seller shall not constitute delivery for purposes of this Circular and of Circular No. 392 dated 23 July 2003.

Section 11. Confidentiality

A BSP-accredited securities custodian/registry shall not disclose to any unauthorized person any information relative to the securities under its custodianship/registry. The Management shall likewise ensure the confidentiality of client accounts of the custody or registry unit from other units within the same organization.

Section 12. Compliance with Anti-Money Laundering Laws/Regulations

For purposes of compliance with the requirements of R.A. No. 9160, otherwise known as the "Anti-Money Laundering Act of 2001," as amended, particularly the provisions regarding customer identification, record keeping and reporting of suspicious transactions, a BSP-accredited custodian may rely on referral by the seller/issuer of securities: Provided, That it maintains a record of such referral clearly stating that customer identification had been conducted by the seller/issuer.

Section 13. Basic Security Deposit

Securities held under custodianship whether booked in the Trust Department or carried in the regular books of the bank/NBFI shall be subject to a security deposit for faithful performance of duties at the rate of 1/25 of 1% of the total face value or ₱500, 000.00 whichever is higher.

However, securities held under custodianship where the custodian also performs securities borrowing and lending as agent shall be subject to a higher basic

security deposit of 1% of the total face value. For this purpose, the following subsidiary ledger account shall be created in the Trust Department Books:

"Safekeeping and Custodianship - Securities Held Under Custodianship with Securities Borrowing and Lending As Agent"

Compliance shall be in the form of government securities deposited with the BSP eligible pursuant to existing regulations governing security for the faithful performance of trust and other fiduciary business.

Section 14. Reportorial Requirements to the BSP

An accredited securities custodian shall comply with reportorial requirements that may be prescribed by the BSP, which shall include as a minimum, the face and market value of securities held under custodianship.

Section 15. Sanctions

Without prejudice to the penal and administrative sanctions provided for under Section 36 and 37, respectively of the R.A. No. 7653 (The New Central Bank Act), violation of any provision of this Circular shall be subject to the following sanctions/penalties depending on the gravity of the offense:

First Offense –

- a. Fine of up to ₱10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- b. Reprimand for the directors/officers responsible for the violation.

Second Offense –

- a. Fine of up to ₱20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- b. Suspension for ninety (90) days without pay of directors/officers responsible for the violation.

Subsequent Offenses–

- a. Fine of up to ₱30,000 a day for the institution for each violation from the date the violation was committed up to the date it was corrected;

- b. Suspension or revocation of the authority to act as securities custodian and/or registry; and
- c. Suspension for one hundred twenty (120) days without pay of the directors/officers responsible for the violation.

Section 16. Effectivity

This Circular shall take effect fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


ALBERTO V. REYES
Officer-in-Charge

27 April 2004