



Bangko Sentral ng Pilipinas

CIRCULAR NO. 388 Series of 2003

The Monetary Board, in its Resolution No. 679 dated May 15, 2003, approved the following guidelines that consolidate/clarify existing regulations on: (1) the sale of foreign exchange (FX) for non-trade transactions by Authorized Agent Banks (AABs), Non-Bank BSP-Supervised Entities (NBBSEs) and their subsidiary/affiliate forex corporations; and (2) the authority to sell FX by NBBSEs and subsidiary/affiliate forex corporations of AABs and NBBSEs.

1. The definition of terms **for purposes of this Circular** is shown in Annex "A".
2. For sale of FX to residents to cover payments to foreign beneficiaries for non-trade purposes, other than those that are foreign currency loan-/investment related, the following documents shall be required:
 - a. Sale not exceeding US\$5,000
 - application to purchase FX using the attached format
 - b. Sale exceeding US\$5,000
 - notarized application using the format in Attachment 1 and supported by documents listed in Item A of Annex B
3. The AABs/NBBSEs/Forex Corporations shall see to it that this limit on sale of FX is not breached by the splitting of an FX purchase into smaller amounts so as to make it appear that the purchase does not violate the prescribed limit.

There is deemed to be a splitting of FX purchase if the total sales of FX to any one purchaser within a 20 calendar-day period exceeds US\$5,000. This limit shall be applied on a consolidated basis for AABs/NBBSEs/Forex Corporations.

4. For sale of FX, **regardless of amount**, for payment of non-trade obligations that are foreign currency loan- or foreign investment-related, the documents listed in Items B and C of Annex B, together with the application to purchase FX (using the attached format), shall be required.

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5. NBBSEs, including Forex Corporations **shall not** sell foreign exchange to:

a. Non-residents; and

b. Residents for -

- 1) Investment purposes (whether domestic or abroad) including capital repatriation and remittance of profits and dividends thereon;
- 2) Payment of FX obligations to residents other than AABs;
- 3) Payment of unregistered foreign currency loans/obligations to non-resident financial institutions. However, outstanding unregistered loans/obligations as of October 27, 2000 (effectivity date of Circular No. 264) may continue to be serviced by forex corporations; and
- 4) Payment of FCDU loans not eligible to be serviced with FX purchased from the banking system. However, FCDU loans outstanding as of October 27, 2000 may continue to be serviced by forex corporations.

6. AABs **shall not** sell foreign exchange to residents for payment of FX obligations to residents other than AABs.

7. Regardless of amount, sale of FX by NBBSEs including forex corporations for payment of importations shall be subject to the documentation requirements under Items I.c.1, I.c.2, II.b.2 and II.c of BSP Circular-Letter dated January 24, 2002.

Payments for unregistered importations of residents shipped under DA/OA arrangements prior to the effectivity of this Circular may be serviced by forex corporations.

8. **Unless otherwise indicated, original documents shall be presented to the AAB/NBBSE/Forex Corporation on or before maturity/delivery date of spot/forward contract to sell FX and stamped "FX SOLD", indicating the date and amount of FX sold and signed by the seller's authorized signatory.**

Copies of all duly marked supporting documents for the sale of FX, including proofs of payment shall be retained by AABs/NBBSEs/Forex Corporations and shall be made available to the BSP for verification. Said copies shall be marked "Original Documents Presented as Required" and duly signed by the seller's authorized signatory.

9. The seller/remitter of FX shall ensure that applicable Philippine taxes related to the: a) sale of FX; b) remittance of FX; and c) the underlying FX transaction have been paid and that the remittance is net of such taxes. For this purpose, the seller/remitter of FX shall require submission of receipt(s) evidencing payment of applicable taxes.

Any violation of this Circular shall be subject to the penalty provisions under R.A. No. 7653 (The New Central Bank Act) and other existing banking laws and regulations.

The provisions of Circular No. 287 dated July 26, 2001, Circular-Letters dated September 17, 1997, October 2, 1997, October 31, 2000, July 26, 2001, August 9, 2001 (non-trade transactions) and May 17, 2002 are hereby repealed. The provisions under Items 1, 2 and 3 of Circular No. 264 dated October 27, 2000, Item 3 of Circular-Letter dated August 24, 2000, Sections 2, 29 and Appendix 11 of Circular No. 1389 dated April 13, 1993, as amended, and other BSP issuances that may be inconsistent with the provisions of these implementing guidelines are hereby amended.

This Circular shall take effect immediately.

FOR THE MONETARY BOARD:



RAFAEL B. BUENAVENTURA
Governor

May 26, 2003

DEFINITION OF TERMS

FOR PURPOSES OF THIS CIRCULAR, the following terms shall mean:

1. **Trade transactions** shall refer to export and/or import transactions.
2. **Non-trade transactions** shall refer to all other FX transactions not included in the definition of trade transactions. These shall include foreign currency loans and foreign investments.
3. **Authorized Agent Banks (AABs)** shall refer to all categories of banks (except Offshore Banking Units (OBUs) duly licensed by the Bangko Sentral ng Pilipinas.

It is understood that each category of bank should function within the operational parameters defined by existing laws/regulations for the specific bank category to which they respectively belong. A rural bank or a thrift bank cannot engage in transactions which may involve opening/negotiating export or import letters of credit or such other type of banking transactions as these do not form part of the normal banking operations of banks in their category as provided under existing laws, rules and regulations (Circular-Letter dated July 17, 1992).

4. **Non-Bank BSP-Supervised Entities (NBBSEs)** shall refer to non-bank entities that fall under the supervisory authority of the Bangko Sentral ng Pilipinas under R.A. No. 7653 (The New Central Bank Act), R.A. No. 8791 (The General Banking Law of 2000) and other special laws. These include Non-Bank Financial Institutions Performing Quasi Banking Function (NBQBs), subsidiary/affiliate of AABs/NBQBs engaged in allied activities and trust entities.
5. **Subsidiary** shall refer to an entity as defined in Appendix 9 of the Manual of Regulations for Banks and Subsection 4654Q.1 of the Manual of Regulations for Non-Bank Financial Institutions.
6. **Affiliate** shall refer to an entity as defined in Appendix 9 of the Manual of Regulations for Banks and Subsection 4654Q.1 of the Manual of Regulations for Non-Bank Financial Institutions.
7. **Forex Corporations, whether or not named as such**, shall refer to entities which are subsidiaries/affiliates of Authorized Agent Banks (AABs)/Non-bank BSP-Supervised Entities (NBBSEs) whose business include buying and selling of foreign exchange.

8. **Resident** shall refer to –
- a. an individual citizen of the Philippines residing therein; or
 - b. an individual who is not a citizen of the Philippines but is permanently residing ^{1/} therein; or
 - c. a corporation or other juridical person organized under the laws of the Philippines; or
 - d. a branch, subsidiary, affiliate, extension office or any other unit of corporations or juridical persons which are organized under the laws of any country and operating in the Philippines.
9. **Non-resident** shall refer to an individual, a corporation or other juridical person not included in the definition of resident.
10. **Financial Institutions** shall refer to business organizations that offer a broad base of financial services or specialize in specific financial functions, products, or services, e.g. banks, investment houses, pension funds, pawnshops, credit unions, investment companies, insurance companies, securities brokers and dealers, stock exchanges, mutual funds, trust corporations, leasing companies, financing companies, credit card companies, companies engaged in foreign exchange dealership/brokerage and others that deal in money.

^{1/} Residents include any individual, citizen or otherwise, who has resided in the Philippines for a year or more, as defined in the 1996 IMF Balance of Payments Textbook

**MINIMUM DOCUMENTATION REQUIREMENTS FOR THE SALES OF FX
FOR NON-TRADE PURPOSES BY AUTHORIZED AGENT BANKS (AABs) /
NON-BANK BSP-SUPERVISED ENTITIES (NBBSEs) AND THEIR
SUBSIDIARY/AFFILIATE FOREX CORPORATIONS**

A. Sales of Foreign Exchange for Non-trade purposes under Section 2 of Circular No. 1389 s. 1993, as amended	
Purposes	Documents Required
1. Travel Funds (Only for permanent residents of the Philippines)	Presentation of applicant's passport, and passenger ticket, copies of which shall be retained. For travel funds over US\$10,000, the following shall be additionally required: - Copy of applicant's/Sponsor's Income Tax Return (ITR) duly stamped by the BIR; - Travel authority from the applicant's company/office/agency if he is being sponsored by said company/office/agency; and - Invitation from foreign sponsoring institution, if applicable.
2. Educational Expenses/Student Maintenance	- Statement of enrollment or acceptance by the school abroad; - School bills/statements of account covering tuition and other school fees; and - Applicant's notarized certification that he is not under scholarship, or if under scholarship, a notarized certification that the amount applied for is to cover his expenses, not being covered by the scholarship.
3. Correspondence Studies AABs/NBBSEs/Forex Corp. may sell foreign exchange to cover tuition fees for correspondence studies, which shall be directly remitted to the correspondence school. Issuance of draft may be allowed but it should be made payable to the correspondence school.	- Proof of admission or enrollment in correspondence school; and - Billings from the school abroad which shall include assessment of fees and other charges related to the course.

4. Medical Expenses	1. Travel documents of patient; and 2. Certification issued by hospital abroad on the treatment to be administered to the patient including cost estimate; or statement of account with the hospital/bills of expenses from hospital/treatment center abroad, whichever is applicable.
5. Support of Dependents Abroad AABs may sell foreign exchange covering the monthly living allowance abroad of a child not more than 21 years of age, spouse or parent of a Philippine resident.	1. Consular certificate or its equivalent documents to prove that the dependent is residing abroad dated not earlier than one year from FX application date; 2. Certified true copy of birth certificate, marriage contract, adoption papers, whichever is applicable, to prove that dependent is the wife, husband, child or parent of the remitter applicant; 3. Applicant's notarized certification that the dependent is not gainfully employed abroad; and 4. Copy of remitter's ITR duly stamped by the BIR.
6. Emigrants' assets	1. Proof of residence of emigrant/ beneficiary abroad; 2. Proof of ownership of the asset(s) by emigrant/beneficiary abroad; 3. In case of income from real properties, a statement of rentals/income earned; 4. In case of transfer of proceeds of capital assets, copy of deed of sale; 5. In case of capital transfer of testate and intestate inheritance and legacies: a. Copy of court order approving the partition and distribution of estate; b. Copy of the extra-judicial settlement and partition duly registered with Register of Deeds. 6. For transfer of proceeds of life insurance benefits, proof of receipt of the proceeds of the policy; 7. For remittance of proceeds of sales of personal property, copy of deed of sale; 8. In case of transfer of proceeds of sale of shares of stock, deed of sales or broker's sales invoice; and 9. In case of retirement benefits, evidence of receipt of retirement benefits.

7. Salary/bonus/dividend/ other benefits of foreign expatriates (including peso savings)	1. Employment contract/ Certification of employer on the amount of compensation paid to the foreign national during the validity of the contract stating whether the same had been paid in foreign exchange or in pesos, and if in foreign exchange, proof that the foreign exchange was previously sold for pesos to AABs; 2. Photocopy of the ACR and DOLE Alien Employment Permit of the foreign national; 3. Applicant's notarized certification that the FX remitted is net of local expenses incurred or net of previous transfers abroad; and 4. If amount to be remitted comes from sources other than salaries, information regarding the sources supported by appropriate documents should be submitted.
8. Producers' Share in Movie Revenue /TV Film Rentals	1. Statement of remittable share rental; and 2. Copy of distributorship contract.
9. Commissions on Exports due Foreign Agents	1. Agency agreement; and 2. Agent's Statement of Account/Computation of commission in accordance with agency agreement.
10. Freight Charges on Exports/ Imports	1. Bills/Statements of account on freight charges; and 2. Copy of Bill of Lading.
11. Foreign Advertising Costs	1. Copy of advertising agreement; and 2. Original statement of accounts or bills or invoices.
12. Subscriptions to foreign magazines or periodicals	Billing/Statement of Account.
13. Charters and Leases of Vessels/Aircrafts and other types of leases.	1. Charter or Lease of Vessels/Aircrafts or lease agreement; and 2. Billing/Statement of Account.
14. Membership dues and registration fees to the association abroad	1. Proof of membership in the foreign or international association; and 2. Billings for membership dues/registration fees.

15. Port Disbursements abroad of aircraft and vessels of Philippine registry or chartered/leased by domestic operators.	1. Copy of contract or agreement; and 2. Statement of accounts/bills/invoices.
16. Mail fees /International settlement of accounts for telegraph, telegram, radio, satellite and other communication facilities.	1. Copy of contract or agreement; and 2. Statement of account/bills/invoices.
17. Salvage fees	1. Copy of contract for salvage services; and 2. Statement of accounts/bills/invoices.
18. Income taxes due to Foreign Governments from foreign nationals	1. Copy of DOLE-approved contract of employment; and 2. Copy of income tax return covering the income tax payment sought to be remitted.
19. Services / Consultancy/ Management/ Marketing/ Distributorship Fees with foreign firms or individuals	1. Copy of the pertinent agreement; and 2. Statement/Computation of fees due.
20. Retainers' fees Foreign exchange payments by residents to foreign professionals acting as liaison, counsel, agent or representative abroad.	1. Copy of the agreement/contract; and 2. Billings / invoices from the beneficiary.
21. Insurance/Reinsurance Premium	Billings/Invoices from foreign insurer/ reinsurer
22. Claims for losses and other payments of insurance companies/brokers abroad	Billings/Invoices of insurance companies/ brokers abroad.
23. Net Peso Revenues of Foreign Airlines/Shipping Companies	1. Copy of the General Sales Agency Agreement or certified copy of the Bilateral Air Agreements; and 2. Statement of Net Peso Revenues (Peso Receipts less Disbursements) for the period covered by the remittance.
24. Royalty/Copyright/Franchise/ Patent/ Licensing Fees	1. Copy of Contract/Agreement; and 2. Statement/ Computation of the Royalty/ Copyright/Patent /Licensing fee.

25. Remittance of Net Peso Revenue collected by embassies of foreign countries	Certification from the Ambassador/Embassy authorized officer that the Peso amount applied for conversion to foreign currency is net of local expenses.
26. Payment of FX obligations by Philippine credit card companies to international credit card companies (e.g. Visa International and Mastercard International) including peso collection from local credit card holders as payment of bills received from non-resident merchants and other fees/charges.	1. Settlement report from international credit card companies identifying the nature of various obligations; 2. Schedule showing summary of the foreign currency billings received from international credit card companies abroad and the corresponding peso collection thereof; and 3. Letter of undertaking or sworn certification stating that local credit card company has not purchased foreign exchange in excess of the amount of their foreign currency requirement.
B. Sales of FX for payment of foreign currency loans covered by Sections 22 to 31 of Circular 1389 s. 1993, as amended.	
Foreign Currency Loan Payments 1. Medium/ Long-term Foreign Currency Loans (with original maturities of over 1 year)	Documents should all be originals unless otherwise indicated. Banks shall indicate sales of FX, whether on spot or forward basis, on the prescribed documents. 1.a BSP registration letter and accompanying "Schedule of Principal and Interest Payments on BSP-registered Foreign Credits" (Schedule RA-2); and where applicable, "Schedule of Payments for Fees & Other Charges on BSP-Registered Foreign Loan" (Schedule RA-2.1). The FX selling AAB/NBBSE/Forex Corporation shall duly fill up the originals of the appropriate schedules to record the FX sale; and 1.b Copy of billing statement from creditor. Amounts that may be purchased shall be limited to maturing amounts on scheduled due dates indicated in the registration letter. Remittance of FX purchased shall coincide with the due dates of the obligations to be serviced, unless otherwise approved by the BSP. or:

2. Short-term Foreign Currency Loans (with original maturity of up to 1 year) a. Loans from offshore creditors (banks and non-banks)	2.a BSP letter-authority for the borrower to purchase FX to service specific loan account/s and where applicable, the “Schedule of Foreign Exchange Purchases from the Banking System”. The FX selling AAB/NBBSE/Forex Corporation shall record the date/s and amount/s of FX sold on the original BSP letter-authority or where there is an accompanying schedule for FX purchases, on the original of such schedule; and 2.b Copy of billing statement from creditor. Amounts that may be purchased shall be limited to the unutilized balance of the letter-authority. Remittance of FX purchased shall coincide with the due dates of the obligations to be serviced, unless otherwise approved by the BSP. 1.a BSP approval or registration letter showing loan terms and borrower's receiving copy of its report on short-term loans submitted to BSP's International Operations Department (IOD). The FX selling AAB/NBBSE/Forex Corporation shall stamp “FX SOLD”, the date/s of sale and the amount/s involved on the original BSP approval/registration letter; and 1.b Copy of billing statement from creditor. Amounts that may be purchased shall be limited to: (a) amounts/rates indicated in the BSP approval or registration letter; or (b) the outstanding balance of the loan indicated in the report, whichever is lower. Remittance of FX purchased shall coincide with the due dates of the obligations to be serviced, unless otherwise approved by the BSP.
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b. Loans from FCDUs/OBUs	1.a BSP approval or registration letter showing loan terms or certification from the lending bank on the amount outstanding. The FX selling AAB/NBBSE/Forex Corporation shall stamp “FX SOLD”, the date/s of sale and the amount/s involved on the original BSP approval/registration letter or bank certification; and 1.b Copy of billing statement from creditor. Amounts that may be purchased shall be limited to: (a) amounts/rates indicated in the BSP approval or registration letter; or (b) the outstanding balance of the loan indicated in the bank certification, whichever is lower. Remittance of FX purchased shall coincide with the due dates of the obligations to be serviced, unless otherwise approved by the BSP. Or: 2.a For loans not requiring BSP approval/ registration, promissory Note (PN) certified as true copy by the Head of the lending bank’s Loans Department and certification from the lending bank: i. on the principal amount still outstanding; ii. that the loan is eligible for servicing with FX purchased from the banking system in line with existing regulations; iii. That the loan was used to finance trade transactions (as well as pre-export costs in the case of FCDU loans of exporters) of the borrower; and iv. The date when the loan account has been reported to the appropriate BSP department/office under the prescribed forms. This may be dispensed for new loans which may not have been reported yet to BSP as of date of application to purchase FX.
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	The FX selling AAB/NBBSE/Forex Corporation shall stamp “FX SOLD”, the date of sale and the amount/s involved on the original certification from the lending bank; and 2.b Copy of billing statement from creditor. Amounts that may be purchased shall be limited to amounts/rates indicated in the bank certification or PN, whichever is lower. Remittance of FX purchased shall coincide with the due dates of the obligations to be serviced, unless otherwise approved by the BSP. Note: For unregistered foreign currency loans/obligations to non-resident financial institutions and FCDU loans not eligible to be serviced with FX purchased from the banking system outstanding as of October 27, 2000 but which may be serviced by Forex corporations, copies of the following documents shall be required: a. Loan agreement/promissory notes; and b. Billing statements from creditor.
C. Sales of FX for capital repatriation/ remittance of dividend/profits/earnings and outward investments under Sections 32 to 44 of Circular 1389 s. 1993, as amended	
1. Capital Repatriation of: a. Investment in PSE-Listed securities	1. If directly registered with BSP or if the selling/remitting bank is the registering custodian bank: a. Broker's sales invoice; and b. Original Bangko Sentral Registration Document (BSRD). 2. If the selling/remitting bank is not the registering custodian bank: a. Broker's sales invoice; and b. Original BSRD Letter-Advice from the registering custodian bank.

b. Direct Foreign Investments	Equity	1. Original BSRD; 2. Proof of Sale or relevant documents showing the amount to be repatriated; in case of dissolution/capital reduction, proof of distribution of funds/assets such as statement of net assets for liquidation; 3. Clearance from appropriate department of the BSP-Supervision and Examination Sector (SES) for banks, or from the Insurance Commission for insurance companies, or from the Department of Energy for oil companies; 4. Detailed computation of the amount applied for in the attached format prepared by authorized officer of investee firm (Attachment 2); and 5. Pertinent audited financial statements.
c. Investments in Peso Government Securities, Money Market Instruments or 90-day Time Deposits		1. Original BSRD; and 2. Confirmation of Purchase (COP), Confirmation of Sale (COS) or Deed of Sale, Matured Contract for Money Market Instruments or Matured Certificate of Time Deposit.
2. Remittance of Profits/Earnings	Dividends/	1. Original BSRD or BSRD Letter-Advice from Registering Custodian Bank (if remitting/selling bank is not the registering custodian bank for PSE-listed shares); 2. Schedule showing name/address of investor, BSRD No., gross amount of cash dividend, tax withheld and net amount (for PSE-listed shares); 3. Board Resolution covering the dividend declaration (evidenced by Corporate Secretary's Sworn Certification, for direct equity investments or Dividend Notice, for PSE-listed shares); 4. Audited/Interim Financial Statements covering the dividend declaration period (for direct foreign equity investments); and 5. For direct foreign equity investments, clearance from BSP-SES (for banks), Insurance Commission (for insurance companies), or Department of Energy or the

	National Power Corporation (for oil/natural gas/geothermal companies). 6. Detailed computation of the amount applied for in the attached format (Attachment 2).
3. Outward Investment	1. A project feasibility study, investment proposal/subscription agreement, bond/stock offering circular and such other documents showing the nature and place of the investment; 2. A written undertaking to inwardly remit and sell for pesos thru AABs the dividends/earnings or divestment proceeds from outward investments funded by FX purchased from AAB as required therein; 3. BSP approval and registration (for outward investment exceeding an aggregate of US\$6million per investor per year funded by FX purchased from AABs; 4. Regardless of amount, submission of clearance: (a) from the appropriate department of the BSP-Supervision and Examination Sector (SES) for investments of banks; and (b) from the Insurance Commission for investments of insurance companies; and 5. Copy of investor's latest Income Tax Return (ITR) duly stamped by the BIR.

APPLICATION TO PURCHASE FOREIGN EXCHANGE

Reference No. _____

TO: _____
(Name of Bank/NBBSE/Subsidiary/Affiliate Forex Corporation)

(Address)

I/We hereby apply to purchase foreign exchange with the following details:

APPLICANT:
Name : _____
Address : _____
Tel. No./Fax No./E-mail Address: _____
Tax Identification No.: _____
SSS/GSIS/Voter's ID No./Drivers Lic. No. (For Individual) _____

AMOUNT APPLIED FOR (Specify foreign currency) _____

PURPOSE:

☐ for trade _____

☐ for foreign investments _____

☐ for foreign currency loans _____

☐ for other non-trade accounts _____

BENEFICIARY (Except for travel purpose)

Beneficiary's Name: _____

Address: _____

I hereby certify that no foreign exchange has been purchased either on spot or deliverable forward basis and/or no swap contract/s has/have been entered into covering the same underlying transaction and that the foregoing information are true and correct.

Date of Application

Signature Over Printed Name

Notarization: **FOR AMOUNTS IN EXCESS OF USD 5,000**

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200__, affiant exhibiting his Community Tax Certificate No. _____ issued at _____ on _____.

NOTARY PUBLIC

Doc. No. _____
Page No. _____
Book No. _____
Series No. _____

COMPUTATION SHEET

Name of FX Selling Bank : _____ Date of FX Sale: _____

TYPE OF FOREIGN INVESTMENT TRANSACTION☐ Remittance of Cash Dividends/Profits☐ Repatriation of Capital

Name of Investee Firm: _____

Name of Investor: _____

REMITTANCE OF CASH DIVIDENDS/PROFITS

Record Date : _____
 Payment Date: _____
 Amount of Dividends/Share
 or Rate of Profits: _____

<u>BSRD No.</u>	<u>Base Shares Registered</u>	<u>Dividends/Profits per Share</u>	<u>Total Amount (PHP)</u>
_____	_____	_____	_____
	A. Gross Peso Amount Remittable		_____
	B. Less: Taxes/Charges		_____
	C. Net Peso Amount Remittable		_____
	D. Foreign Exchange Applied for Remittance (C ÷ FX rate *)		_____

REPATRIATION OF CAPITAL

<u>BSRD No.</u>	<u>Total Amount/ No. of Shares Registered</u>	<u>Outstanding Balance Before This Repatriation</u>	<u>Amount/No. of Shares Applied for Repatriation</u>
_____	_____	_____	_____
	A. Total No. of Shares/Amount Applied for Repatriation		_____
	B. Selling Price/Share (if applicable)		_____
	C. Gross Peso Amount Repatriable (A x B)		_____
	D. Taxes/Charges		_____
	E. Net Peso Amount Repatriable (C - D)		_____
	F. Foreign Exchange Applied for Repatriation (E ÷ FX rate*)		_____

Prepared by:

 Signature over Printed Name
 of Authorized Representative
 of Applicant

 Company Affiliation of
 Investor's Representative

 Date

*/ To be supplied by FX Selling Bank