



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

**CIRCULAR NO. 524
Series of 2006**

Subject : Implementation of the Delivery by the Seller of Securities to the Buyer or to his Designated Third Party Custodian

Pursuant to Monetary Board Resolution No. 361 dated 23 March 2006, the following rules and regulations to govern the implementation of the Delivery by the Seller of Securities to the Buyer or to his Designated Third Party Custodian, are hereby issued as follows:

Section 1. Statement of Policy. Pursuant to the policy of the Bangko Sentral ng Pilipinas to promote the protection of investors in order to gain their confidence in the securities market as enunciated under Circular Nos. 392 and 428 dated 23 July 2003 and 27 April 2004, respectively, the following rules/guidelines shall be observed by banks and non-bank financial institutions (NBFIs) under BSP supervision in their dealings in securities whether they are acting as seller, buyer, agent or custodian.

Section 2. Distinction Between a Custodian and a Registry. A securities custodian is a BSP-accredited bank or NBFIs designated by the investor to perform the functions of safekeeping, holding title to the securities either in a nominee or trustee capacity, reports rendition, mark-to-market valuation, administration of dividends or interest earnings and representation of clients in corporate actions. It may also perform value added services such as collecting and paying and securities borrowing and lending as agent. A BSP-accredited custodian is considered a third party if it has no subsidiary or affiliate relationship with the issuer or seller of securities.

On the other hand, a securities registry, other than the Bureau of Treasury, is a BSP-accredited bank or NBFIs designated or appointed by the issuer to maintain the securities registry book either in electronic or in printed form. It records the initial issuance of the securities and subsequent transfer of ownership and issues registry confirmation to the buyers/holders. Except as otherwise provided in existing BSP regulations, a BSP-accredited securities registry is considered a third party if it has no subsidiary or affiliate relationship with the issuer of securities.

Section 3. Registry of Scripless Securities of the Bureau of Treasury. The Bureau of Treasury, as operator of the Registry of Scripless Securities (RoSS), which serves as the official registry for government securities, is not subject to BSP accreditation and is exempted from the independence requirement under the Circular.

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Section 4. Delivery of Securities. Pursuant to existing BSP regulations, securities sold on a without recourse basis shall be delivered by the seller to the purchaser, or to his designated BSP-accredited custodian which must not be a subsidiary or affiliate of the issuer or seller.

Section 5. Mode of Delivery. If the securities sold are certificated, delivery shall be effected physically to the purchaser, or to his designated BSP-accredited custodian. The certificate must be transferred to and registered under the name of the purchaser and properly recorded in the registry book. On the other hand, delivery of immobilized or dematerialized securities shall be effected by means of book entry transfer to the appropriate securities account of either: (1) the purchaser in a registry of said securities; or (2) the purchaser's designated custodian in a registry of said securities. Book-entry transfer to a sub-account for clients under the primary account of the seller will not be deemed compliant with this requirement. The delivery must be supported by a confirmation of book-entry transfer to be issued by the securities registry in case of name on registry or by a confirmation receipt to be issued by the custodian in case of delivery to the purchaser's designated custodian.

Section 6. Client Information. Selling or dealing banks shall inform their clients of the requirements under Section Nos. 3 and 4 above, together with the complete list of all BSP-accredited custodians. The selling or dealing bank or NBFIs must inform their clients that the choice of custodian is the sole prerogative of the securities purchaser. The seller or dealer may, however, indicate to their clients their preferred custodian. Attached as Annex "A" is a suggested template of the letter to the client.

Section 7. Custodianship Agreement. The securities owner/purchaser shall enter into a custodianship agreement with a BSP-accredited third-party custodian of his choice. However, the securities purchasers/owners may designate/appoint through a special power of attorney (SPA) a representative or agent for the purpose of opening and maintaining an account with the BSP-accredited third-party custodian: Provided, that if the securities seller or dealer is appointed as an agent, its authority shall be limited to the opening of the custodianship account and the execution of trade transactions (i.e. buying and selling instructions including relaying of instructions to the custodian to receive or deliver securities in order to consummate the buy/sell transactions). It shall be the responsibility of the custodian to protect the interest of the client by ensuring that the agent is acting within the scope of his authority.

Section 8. Authority of the Securities Owner/Purchaser to Revoke Special Power of Attorney (SPA). Whenever a securities owner/purchaser executes an SPA designating/appointing an agent to open and maintain a custodianship account with a BSP-accredited third party custodian pursuant to Section No. 6 above, said SPA shall clearly stipulate that the appointment of the agent is revocable at the instance of the securities owner/purchaser or his agent. Any revocation by either party shall be made in writing and must be given to the other party and to the custodian. The custodian is hereby enjoined to acknowledge and respect said right of

the client. It is, however, understood that the revocation of the SPA shall be without prejudice to any transaction executed by the agent or custodian prior to said party's knowledge of the revocation. Upon revocation of the SPA, the custodian shall deal directly with the securities owner or his newly appointed agent. However, the custodian has the right to impose additional reasonable conditions similar to those being imposed on separate custody accounts maintained directly by individual or corporate clients.

Section 9. Reports of the Custodian. Periodic reports of the custodian on account balances shall be rendered at least quarterly and shall reflect the mark-to-market valuation of the security in accordance with existing BSP regulations. It shall be delivered, mailed or electronically transmitted directly to the securities owner unless the securities owner gives a written request or instruction directly to the custodian to deliver said reports to a person/entity named therein. Said request/instruction of the securities owner shall indicate that he is appointing an agent/ representative for the purpose, notwithstanding contrary advice of the BSP.

Aside from the periodic reports, the custodian shall also issue confirmation of transfers of ownership as they occur in either electronic or printed form delivered directly to the securities owner, unless the securities owner gives a written request or instruction directly to the custodian to deliver the confirmation reports to a person/entity named therein.

Section 10. Right of the Securities Owner to Sell his Securities. Subject to the requirements of existing laws and regulations, securities owners shall have the right to choose the best buyers of his securities in the secondary market, without limiting himself to the original selling or dealing bank that he transacted with. The securities seller or dealer shall not impose any condition that will impair this right of the securities owner or leave him no alternative except to sell his securities exclusively to the selling or dealing bank.

Section 11. Undelivered Securities. In cases where banks or NBFIs under BSP supervision maintain custody of securities which were sold prior to the effectivity of Circular No. 457 to clients who are unable or unwilling to take delivery of said securities pursuant to the provisions of Circular No. 392 but who declined to deliver their existing securities to a BSP-accredited third party custodian, said banks/financial institutions shall:

- a. report on a quarterly basis to the appropriate supervising and examining department of SES the volume of said securities broken down into maturity dates, type of security, ISIN or applicable certificate or reference number, and registry
- b. ensure that said securities under custody are segregated from their proprietary holdings

Section 12. Compliance with the Anti-Money Laundering Act of 2001. 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, in lieu of the face-to-face contact with client, subject to the following conditions:

- a. the seller/issuer is also a covered institution;
- b. the seller/issuer certifies to the custodian that it has performed its own KYC screening on the client ;
- c. the custodian has unchallenged access to the KYC records/documents of the referring seller/issuer pertaining to the referral client;
- d. the custodian maintains a record of the referral together with the minimum information/documents required under the law and its implementing rules and regulations; and
- e. the seller/issuer must provide the custodian with the following minimum information/documents:

For individual clients:

1. Name;
2. Present address;
3. Permanent address;
4. Date and place of birth;
5. Nationality;
6. Nature of work and name of employer or nature of self-employment/business;
7. Contact numbers;
8. Tax identification number, Social Security System number or Government Service and Insurance System number;
9. Specimen signature; and
10. Source of fund(s);

For corporate clients:

1. Articles of Incorporation/Partnership;
2. By-laws;
3. Official address or principal business address;
4. List of directors/partners;

5. List of principal stockholders owning at least two percent (2%) of the capital stock;
6. Contact numbers;
7. Beneficial owners, if any;
8. Authorized signatories;
9. Board/Partnership Resolution on the authority of the signatories; and
10. Verification of the identification and authority of the person purporting to act on behalf of the client.

Section 13. Safekeeping of Customers' Identification Documents. The BSP accredited third-party custodian may entrust to the referring seller/dealer the safekeeping and maintenance of the customer identification documents supporting its KYC certification provided that:

- a. The BSP accredited custodian has received a certification from the seller/dealer that it has in its possession all required KYC documents and the custodian shall maintain a list of such documents;
- b. The accredited custodian shall have unhampered access to the KYC documents for its own verification; and
- c. KYC or customer identification documents shall be made available to regulators for verification upon request.

Notwithstanding Section Nos. 12 and 13, the custodian is not precluded from conducting its own KYC activities and maintaining direct custody of the KYC documents of its clients.

Section 14. Sanctions

Without prejudice to the penal and administrative sanctions provided for under sections 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 15. 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:


NESTOR A. ESPENILLA, JR.
Officer-In-Charge

31 March 2006

Attachment: Template of Letter to Investor

TEMPLATE OF LETTER TO INVESTOR

Dear Investor:

We wish to inform you that the Bangko Sentral ng Pilipinas (BSP), in July of 2003 issued **Circular No. 392, Series of 2003**, which requires all securities sold by banks on a **"without recourse basis"** (i.e. the bank has no liability to the buyer of securities in paying the obligation due on the security) to be delivered to the buyer/purchaser of securities through any of the following means:

- (a) **If the security is evidenced by a certificate of indebtedness**, the certificate must be transferred in the name of the purchaser/buyer and physically delivered to the purchaser/buyer or to his designated BSP-accredited third party custodian.
- (b) **If the security is immobilized or dematerialized** (i.e., that the security is not evidenced by a certificate of indebtedness and instead security account is created in the electronic books of the registry in the name of the purchaser/buyer or his designated custodian):
 - i. The security must be delivered by book-entry transfer to the appropriate securities account of the buyer in the registry of said securities which must be evidenced by a confirmation in writing by the registrar to the buyer. The confirmation of sale or document of conveyance shall be physically delivered by the seller or dealer to the buyer, or
 - ii. The security must be delivered by book-entry transfer to the appropriate securities account of the BSP-accredited third party custodian designated by the buyer/purchaser in the registry of said securities which must be evidenced by a confirmation in writing by the registrar to the said BSP-accredited third party custodian, who shall in turn issue to the securities owner a delivery receipt acknowledging receipt of the securities

Circular 392 is part of a package of reforms to support the development of the domestic capital market through enhanced investor protection and greater market transparency. It provides for a more defined role and responsibilities for the custodians and registrars and a stricter supervision and regulation thereof by the BSP. It aims to provide the client with the following benefits:

- a. Full control and possession of the securities purchased;
- b. Independent validation of the existence of securities purchased;
- c. Regular reporting of securities holdings; and
- d. Capability to choose most competitive counter-parties in case of sale, pledge, transfer, and lending of securities.

Moreover, Circular No. 392, which amends CBP Circular 437-74, seeks to address the changes in the legal framework brought by the developments in the market, i.e. where purchase of securities may be evidenced not only by transfer of certificates but also by electronic book-entry transfer of ownership in the books of the registrar for said security.

As an investor, therefore, of securities which is dematerialized or scripless, you have **the option** to require your dealer/broker to deliver the securities to you by requiring them to have the securities registered directly in **your name** in the **registry** of said securities or by requiring them to have the securities registered in the name of the **BSP accredited third party custodian** of your choice who in turn will credit your securities account with them.

The **registry** is a BSP-accredited bank or non-bank financial institution (NBFI) designated or appointed by the Issuer to (1) maintain the securities registry book; (2) record the (a) issuance of the securities and (b) subsequent transfers of ownership thereof; and (3) issue registry confirmation to the buyers/holders of security.

The **custodian**, on the other hand, is a BSP-accredited bank or NBFI designated by the investor to safekeep the security by allowing it to hold title to the security; either in a nominee or trustee capacity, to enable it to perform the following administrative functions/services related to investing in a security or various securities: i). Mark to market valuation of security that will enable the client to know the value of his investment at any period in time; ii) compute and collect the interest due on the security; iii) render statements on outstanding securities under safekeeping; iv) represents the client (per its instruction) in the events of default or breach of contract of the issuer; and v) lend the security of the clients as "agent" that will enable the client to earn additional income on the security.

The registrars and custodians underwent a rigorous evaluation process by the BSP to determine whether they have the following: i) adequate capital to cover for potential operating risks related to performing its custody functions; ii) competent management team to manage the company with responsibility and proper corporate ethics; iii) robust technology system to operate the custody business efficiently; and iv) favorable track record or significant experience in the custody business or related business. They will also

undergo regular audit by the BSP to ensure that they comply with BSP rules and regulations and will be subject to penalties and administrative sanctions for any violation thereof.

As of date, BSP has accredited the following registrars and custodians: Bank of the Philippine Islands, CITIBANK N. A., Deutsche Bank, Hongkong and Shanghai Banking Corporation, Philippine Depository and Trust Corporation, and Standard Chartered Bank.

The Registry of Scripless Securities (RoSS) operated by the Bureau of Treasury (BTR) which is acting as a registry for government securities, is automatically accredited as securities registry. However, the BTR, as registry, cannot act as custodian of government securities pursuant to the opinion of the Secretary of Justice rendered on 17 January 2005 due to irreconcilable conflict of loyalties that is anathema to agency if the same institution were to act as registrar and custodian at the same time.

The custodian shall render periodic reports on your account balances on a quarterly basis, or at such interval as you may require. Moreover, the custodian shall issue to you a confirmation of any transfer of ownership as it occurs, in either electronic or printed forms. Said reports shall be delivered/mailed directly at your address unless you give a written instruction directly to the custodian to deliver the said reports to your designated person/entity. You are, however, required to acknowledge in the written instruction that you are designating another person/entity to receive the periodic reports from the custodian, notwithstanding contrary advice of the BSP.

Please note that the above-mentioned arrangements may change once the BSP issues more detailed implementing rules and guidelines to the above-mentioned circulars. We will update you if and when these developments occur.

Please fill up and sign the required documentation of your chosen custodian and we will forward the same to them so that your securities account can be opened as soon as possible. You may, however, designate/appoint an agent for this purpose. In either case, the custody arrangement may or may not entail additional fees.

If you have any further questions, please call us so that we can refer the matter to the appropriate custodian/registrar.

Very truly yours,