



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

CIRCULAR No 407

Series of 2003

TO : ALL BANKS, NON-BANKS WITH QUASI BANKING FUNCTIONS (NBQBs) and THEIR SUBSIDIARIES/ AFFILIATES AUTHORIZED TO ENGAGE IN DERIVATIVES TRANSACTIONS

SUBJECT: MINIMUM DOCUMENTARY REQUIREMENTS FOR FOREIGN EXCHANGE (FX) FORWARD AND SWAP TRANSACTIONS

Section 1. Statement of Policy

As enunciated in Bangko Sentral ng Pilipinas (BSP) Circular No. 102 dated December 29, 1995 (Section X602 of the Manual of Regulation for Banks), as amended, it is the policy of the BSP to deepen the Philippine financial markets. Towards this end, banks and their customers may hedge thru financial derivatives products their FX obligations and/or exposures eligible for servicing by the banking system under Circular No. 1389 dated April 13, 1993, as amended.

As a rule, banks, NBQBs and their subsidiaries/affiliates duly authorized to engage in derivatives transactions under Circular No. 297 dated September 17, 2001 may only enter into derivatives contracts with their customers where either party to the transaction is hedging eligible actual FX obligations or existing FX exposures.

To ensure that such financial derivatives products are not used for activities that destabilize the FX market, the guidelines as well as minimum documentary requirements for FX forwards and swaps as indicated herein shall be strictly adhered to.

Section 2. Definition of Terms

"Foreign exchange obligation" shall refer to an actual FX commitment to a non-resident or any Authorized Agent Bank (AAB) where the amount, payment tenor and party have been determined.

"Foreign exchange exposure" shall refer to an FX risk arising from an existing commitment to or from a non-resident or AAB which leads to payment of an FX obligation or receipt of an FX asset based on verifiable documents on deal date.

"Resident" shall refer to -

- a. An individual citizen of the Philippines residing therein; or

MAG-IMPOK SA BANGKO

- b. An individual who is not a citizen of the Philippines but is permanently residing 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, except Offshore Banking Units.

"Non-resident" shall refer to an individual, a corporation or other juridical person not included in the definition of resident.

"Foreign Exchange Swap" refers to a transaction involving the actual exchange of two currencies (principal amount only) on a specific date at a rate agreed on deal date (the first leg), and a reverse exchange of the same two currencies at a date further in the future (the second leg) at a rate (different from the rate applied to the first leg) agreed on deal date.

"Foreign Exchange Forward" refers to a transaction involving the exchange of two currencies at a rate agreed on deal date for value or delivery (cash settlement) at some time in the future (more than two business days later).

"Non-Deliverable Forward (NDF)" refers to the forward FX contract where only the net difference between the contracted forward rate and the market rate shall be settled at maturity.

Section 3. Documentation

Minimum documentary requirements for FX forward and swap transactions in the attached Annex "A" shall be presented on or before deal date to the banks, NBQBs and their subsidiaries/affiliates.

Unless otherwise indicated, documents as per Annex "A" shall be stamped "DELIVERABLE/FX HEDGED" or "NON-DELIVERABLE/FX HEDGED" upon presentation/submission indicating the date and amount hedged and signed by authorized officer of the banks, NBQBs and their subsidiaries/affiliates. Copies of all duly marked supporting documents shall be retained by the banks/NBQBs and/or their subsidiaries/affiliates and shall be made available to the BSP for verification. Said copies shall be marked "DOCUMENTS PRESENTED AS REQUIRED" and signed by the servicing entity's authorized signatory.

No double hedging shall be allowed covering the same underlying FX obligation/exposure.

Section 4. Tenor/Maturity of FX Forward or Swap

- a. FX Forwards (whether deliverable or non-deliverable) and Swaps (sale of FX at first leg and purchase of FX at second leg)

The tenor/maturity shall not be longer than: (i) the maturity of the underlying FX obligation; or (ii) the approximate due date or settlement of the FX exposure. However, for foreign currency loans, the tenor of the deliverable FX forward shall be co-terminus with the maturity of the underlying obligation. This shall not preclude pretermination of the contract due to prepayment provided prior BSP approval is obtained.

The FX proceeds of deliverable FX forward contracts shall be immediately remitted or paid to the non-resident supplier/beneficiary or AAB except for foreign investments where said FX proceeds are reconverted to Philippine pesos and re-invested in eligible peso instruments such as those listed in Item A.2.2 of Annex "A" hereof.

- b. Swaps (purchase of FX at first leg and sale of FX at second leg)

The tenor/maturity of swap contracts shall not be less than thirty (30) calendar days but not longer than: (i) the maturity of the underlying FX obligation; or (ii) the approximate due date of settlement of the FX exposure. In case of prepayments of foreign currency loans covered by swaps, banks shall ensure that such prepayments are allowed under the covering loan agreement.

Section 5. Cancellations, Roll-overs or Non-delivery of FX Forward Contracts

All cancellations, roll-overs or non-delivery of FX forward contracts, whether purchases or sales, shall be subject to the following guidelines to determine the validity thereof:

- a. **Eligibility Test** - forward contracts must be supported by documents listed in Annex "A" hereof.
- b. **Frequency Test** - the reasonableness of the cancellation, roll-over or non-delivery shall be based on the results of the evaluation of the justification/explanation submitted by banks as evidenced by appropriate documents.
- c. **Counterparty Test** - the cancellation or roll-over of forward contracts must be duly acknowledged by the counterparty to the contract as shown in documents submitted by banks, e.g., there should be *conforme* of

counterparty as evidenced by the counterparty signature on pertinent documents.

- d. **Mark-to-Market Test** – the booking or recording in the books of accounts of the profit or loss on contracted forward contracts and cash flows/settlement to counterparties must be fully supported by appropriate documents such as authenticated copy of debit/credit tickets, schedules showing among others, mark-to-market valuation computation, etc.

Section 6. NDF Contracts with Non-residents

NDF contracts to sell FX to non-residents shall continue to be covered by the provisions of Circular No. 135 dated July 22, 1997 and Circular No. 344 dated August 9, 2002.

Section 7. Compliance with Anti-Money Laundering Rules

All transactions under this Circular shall comply with existing regulations on Anti-Money Laundering.

Section 8. Reporting Requirements

Banks, NBQBs and their subsidiaries/affiliates duly authorized to engage in derivatives transactions shall continue to be covered by the BSP's existing reporting requirements on financial derivatives. Cancellations, roll-overs or non-delivery of deliverable forward contracts shall be reported electronically in excel format to the BSP not later than two (2) banking days after reference week using the format prescribed in Annex "B".

Swap contracts with non-bank resident counterparties involving purchase of FX at the initial leg by said banks, NBQBs and their subsidiaries/affiliates from non-bank counterparties shall likewise be reported electronically in excel format to the BSP not later than two (2) banking days after reference week using the format prescribed in Annex "C".

Above-cited reports shall be transmitted to e-mail address lod@bsp.gov.ph.

Section 9. Sanctions

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.

Failure to comply with Section 5 hereof (Cancellations, Roll-overs or Non-delivery of Forward Contracts) shall result in the exclusion of the forward contracts in the computation of the bank's consolidated daily position starting from day 1, i.e., when the individual contracts were entered into. Violations of the prescribed FX position limits shall be subject to the sanctions provided under Circular Letter dated March 13, 1998.

Furthermore, reports required under Section 8 hereof are considered as major reports (Category A) for purposes of imposing sanctions on delayed, erroneous or amendatory reports as prescribed under the appropriate BSP Manual of Regulations.

Counterparties that habitually cancel deliverable forwards without proper justification may be subject of a BSP watchlist.

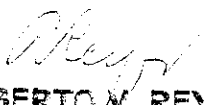
Section 10. Repealing Clause

The provisions of Circular Letters dated October 24, 1997 (on cancellations or non-delivery of outstanding forward sales contracts) and March 13, 2003 (providing a maximum 6-month tenor for forward contracts) **and all other BSP issuances that may be inconsistent with the provisions of this Circular** are hereby repealed.

Section 11. Effectivity

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

For the Monetary Board:


ALBERTO V. REYES
Officer-In-Charge

Attachments

10 September 2003

GUIDELINES AND MINIMUM DOCUMENTARY REQUIREMENTS FOR FOREIGN EXCHANGE (FX) FORWARD AND SWAP TRANSACTIONS

The following is a list of minimum documentary requirements for FX forward and swap transactions to cover FX obligations and exposures. Unless otherwise indicated, **original** documents* shall be presented **on or before deal date** to banks, non-banks with quasi-banking functions (NBQBs) and their subsidiaries/affiliates authorized to engage in financial derivatives activities.

A. FORWARD SALE OF FX TO COVER OBLIGATIONS – DELIVERABLE AND NON-DELIVERABLE

1. FORWARD SALE OF FX – TRADE (includes trades with banks other than the issuing/booking bank)

1.1 Trade Transactions

1.1.1 Under Letters of Credit

- a. Copy of LC opened; and
- b. Accepted draft, or
Commercial invoice / Bill of Lading

1.1.2 Under Documents against Acceptances (DA) / Open Account (OA) Arrangements

- a. BSP registration letter or copy of Records of Goods Imported (RGI) received and acknowledged by the BSP;
- b. Copy of commercial invoice; and
- c. Copy of Bill of Lading, or
Shipping guarantee

In addition to the above requirements, the bank/NBQB and their subsidiaries/affiliates shall require the purchaser to submit a notarized Letter of Undertaking that:

- i. At maturity date of the forward contract, it shall comply with the documentation requirements on sale of FX for trade transactions under Circular-Letter dated January 24, 2002, as amended; and
- ii. No double hedging has been obtained by the client for the covered transactions.

* If copy is indicated, it shall mean photocopy, electronic copy or facsimile of original

1.1.3 Direct Remittance

Original shipping documents indicated in item II.a of Circular Letter dated January 24, 2002.

2. *NON-TRADE TRANSACTIONS*

Only non-trade transactions with specific due dates shall be eligible for forward contracts, subject to the same documentation requirements under Circular No. 388 dated May 26, 2003 on the sale of FX for non-trade purposes.

2.1 Foreign Currency Loans owed to non-residents or AABs

2.1.1 Deliverable Forwards

The maturing portion of the outstanding eligible obligation, i.e., those that are registered by the BSP, including interest and fees thereon as indicated in the BSP registration letter, may be covered by a deliverable forward subject to the documentary requirements under Circular No. 388 dated May 26, 2003, except that the creditor's billing statement shall be submitted only on or before the maturity date of the contract.

2.1.2 NDFs

The outstanding eligible obligation, i.e., those that are registered by the BSP, including interests and fees thereon as indicated in the BSP registration letter may be covered by a non-deliverable forward subject to the documentary requirements under Circular No. 388 dated May 26, 2003 except the creditor's billing statement which need not be submitted.

The amount of the forward contract shall not exceed the outstanding amount of the underlying obligation during the term of the contract.

2.2 Inward Foreign Investments

The outstanding amount of sales/maturity proceeds due for repatriation to non-resident investors pertaining to BSP-registered investments in:

- a. PSE-listed shares of stock;
- b. government securities;

- c. money market instruments; and
- d. peso time deposits with a minimum tenor of 90 days

may be covered by forward FX contracts subject to the presentation of the original BSRD on or before deal date, except that for Item 2.2.a above, the broker's sales invoice shall also be presented.

Sales proceeds of BSP-registered investments in shares of stock that are not listed in the PSE may be covered by a deliverable forward contract only if determined to be outstanding and payable on a specific future date as indicated in the Contract To Sell/Deed of Absolute Sale and subject to the same documentary requirements under Circular No. 388 dated May 26, 2003.

B. FORWARD SALE OF FX TO COVER EXPOSURES – DELIVERABLE AND NON-DELIVERABLE

1. *TRADE (includes trades with banks other than the issuing/booking bank)*

1.1 Under LC

- a. Copy of LC opened; and
- b. Proforma Invoice, or
Sales Contract / Purchase Order

1.2 Under DA/OA

Any of the following where delivery or shipment shall be made not later than one (1) year from deal date:

- a. Sales Contract
- b. Confirmed Purchase Order
- c. Accepted Proforma Invoice
- d. Shipment/Import Advice of the Supplier

In addition to the above requirements, the bank/NBQB and their subsidiaries/affiliates shall require the purchaser to submit a notarized Letter of Undertaking that:

- i. At maturity of the forward contract, it shall comply with the documentation requirements on the sale of FX for trade transactions under Circular-Letter dated January 24, 2002, as amended; and

- ii. No double hedging has been obtained by the client for the covered transactions.

2. *NON-TRADE (NON-DELIVERABLE)*

BSP-registered foreign investments without specific due dates are considered FX exposures. As such, the outstanding balance of this investment, appearing in the covering BSRD may only be covered by an NDF contract, based on its market/book value on deal date, subject to prior BSP approval under Circular No. 135 dated July 22, 1997 and presentation of the covering BSRD and the proof that the investment still exists (e.g. stock certificate, or broker's buy invoice, or confirmation of sale, or certificate of investment in money market instruments, or certificate of peso time deposits). Hedging for permanently assigned capital required for Philippine branches of foreign banks/firms is not allowed.

C. FORWARD PURCHASE OF FX

FX forward contracts shall be subject to the institution's "Know Your Customer" policy of the institution and the AMLA guidelines of the BSP. In addition, counterparties must be limited to those which are manifestly eligible to engage in FX forwards as part of the normal course of their operations and which satisfy the institution's suitability and eligibility rules for such transactions.

D. FX SWAP TRANSACTIONS

1. *FX SALE (first leg)/FORWARD FX PURCHASE (second leg) (with non-bank counterparties) –*

The same minimum documentary requirements for sale of FX under BSP Circular No. 388 dated May 26, 2003 for non-trade transactions, and Circular-Letter dated January 24, 2002 for trade transactions, as amended, shall be presented **on or before deal date.**

2. *FX PURCHASE (first leg)/FORWARD FX SALE (second leg) (with non-bank counterparties) -*

The first leg of the swap will be subject to the institution's "Know Your Customer" policy and the AMLA guidelines of the BSP and will require the conversion of foreign currency to pesos. The second leg of the swap transaction will be subject to the swap contract between the counterparties.

Banks/NBQBs and their subsidiaries/affiliates shall: (a) retain copies of supporting documents pertaining to the underlying transaction (e.g., BSP approval or registration [for BSP-approved/registered foreign currency loans and investments], promissory note, loan agreement, stock certificate, certificate of time deposit, proof of FCDU deposit, shipping documents) which shall be made available to the BSP for verification; and (b) submit copies of the covering swap contracts to the BSP-Treasury Department within three (3) days from the execution of the swap contract.

Swap contracts of this type with non-residents shall, however, require prior BSP approval.

Deadline: Weekly within two (2) banking days
after end of reference week
Submission: IOD at e-mail address: iod@bsp.gov.ph

Universal/Commercial Bank

For the Week Ending _____

Report on Foreign Exchange Swaps With Non-banks ^{*/}

Where the First Leg is a Purchase of Foreign Exchange Against Pesos

Deal Date	Deal Slip No.	Non-bank Swap Counterparty			Source of FX						First Leg				PHP Sales Amount	Second Leg				PHP Purchases Amount
		Name 1/	Residency Indicator	Purpose	Type	BSP Approval	Orig. Availment Date 2/	Final Maturity Date 2/	Counterparty Name 1/ 3/	Residency Indicator	Value Date	FX Rate	Ccy	FX Purchases Amount		Maturity Date	Forward FX Rate	Ccy	FX Sales Amount	
ccyymmdd			1 - resident 2 - non-resident				ccyymmdd	ccyymmdd		1 - resident 2 - non-resident	ccyymmdd	99.99999	AAA	999,999,999.99	#####	ccyymmdd	99.99999	AAA	999,999,999.99	999,999,999.99
				1 - hedging-banking books 2 - hedging-trading books 3 - trading (non-hedging)																
						1 - Proceeds of FCDU loan 2 - Proceeds of OBU loan 3 - Proceeds of offshore loan 4 - Proceeds of intercompany advances 5 - Proceeds of foreign investment 6 - Proceeds of exports 9 - Others (specify nature)														
						1 - With BSP approval 2 - Without BSP approval														

1/
2/
3/
*/

Use capital letters; indicate complete business name; for individuals use the format "SURNAME, FIRST NAME, MIDDLE NAME"
For foreign currency loans and intercompany advances
If foreign loan, indicate name of creditor; if foreign investment, indicate name of investor; if export proceeds, indicate foreign buyer, etc.
Excluding cross currency swaps

Deadline: Weekly within two (2) banking days
after end of reference week
Submission: IOD at e-mail address: iod@bsp.gov.ph

Bank
For the Week Ending _____
Report on Cancellations, Roll-overs and Non-delivery
of Foreign Exchange Forward Purchase and Sale Contracts */

Transaction					Justification	Value Date		Non-bank Counterparty			Underlying Transaction				Purchases			Sales		
Deal Date	Deal Slip No.	Roll-over/Cancellation				Original	New	Name ^{1/}	Residency Indicator	Purpose	Counterparty Name ^{2/}	Residency Indicator	Trans. Code	BSP Approval	FX Rate	Ccy	Amount	Forward FX Rate	Ccy	Amount
		Type	Ccy	Amount																
ccymmdd			AAA	999,999,999.99		ccymmdd	ccymmdd		1 - resident 2 - non-resident			1 - resident 2 - non-resident			99.99999	AAA	999,999,999.99	99.99999	AAA	999,999,999.99
			FC - Full Cancellation FR - Full roll-over/renewal PC - Partial cancellation PR - Partial roll-over/renewal						1 - hedging-banking books 2 - hedging-trading books 3 - trading (non-hedging)			1 - FCDU loan 2 - OBU loan 3 - Offshore loan 4 - Intercompany advances 5 - Foreign investment 6 - Export proceeds 7 - Importations (except USD Trust Receipts) 8 - USD Trust Receipts (for NDFs only) 9 - Others 1 - With BSP approval 2 - Without BSP approval								

^{1/} Use capital letters; indicate complete business name; for individuals use the format "SURNAME, FIRST NAME, MIDDLE NAME"
^{2/} If foreign loan, indicate name of creditor; if foreign investment, indicate name of investor; if export proceeds, indicate foreign buyer, etc.
*/ Excluding cross currency swaps