

## 1121 PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) MARKET PARTICIPANTS AND PERA INVESTMENT PRODUCTS

The following are the guidelines on the qualification/accreditation of PERA Market Participants and PERA Investment Products which are being issued pursuant to R.A. No. 9505, also known as the PERA Act of 2008 (PERA Act), and its implementing Rules and Regulations (the PERA Rules).

The operational guidelines on the administration of the personal equity and retirement account are found in *Appendix 114*.

**Applicability.** These guidelines apply to banks, trust entities<sup>1</sup> and other entities determined by the Bangko Sentral as eligible that seek to be qualified/ accredited and are qualified/accredited as PERA Market Participants, and to PERA Investment Products that are considered eligible by the Bangko Sentral for PERA purposes.

### **Eligibility criteria.**

a. *PERA investment products.* The following PERA investment products are considered to be Bangko Sentral-eligible PERA investment products: *Provided*, That with respect to Items “(1)” and “(2)” below, they are issued by Bangko Sentral-supervised entities with CAMELS rating of not lower than “3” or its equivalent, to wit:

- (1) Unit investment trust fund (UITF);
- (2) Debt-instruments such as, but not limited to, long term negotiable certificate of deposits and unsecured subordinated debt;
- (3) Deposits; and
- (4) Government-issued securities.

In the case of UITF, the existing approval process shall be observed. The Bangko Sentral may allow other category of investment products or outlets for PERA purposes: *Provided*, That the product is non- speculative, readily marketable, and with a track record of regular income payments to investors.

b. *PERA market participants*

<b>PERA Market Participants</b>	<b>Eligible Entities</b>
Administrator	Banks, trust entities and other entities as may be determined by the Bangko Sentral as eligible to act as PERA Administrator

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Investment Manager	Trust entities and other entities as may be determined by the Bangko Sentral as having the qualifications to be accredited as PERA Investment Manager
Cash Custodian	Banks
Securities Custodian	Banks and trust entities
Investment Product Provider	Any Bangko Sentral-supervised entity that wishes to offer PERA Investment Product to Contributors

**Qualification/Accreditation requirements.**

a. *As an Administrator.* The Bangko Sentral shall issue a Qualification Certificate as Administrator to an entity upon compliance with the following requirements:

(1) The applicant maintains a net worth of at least Php100 million at all times.

*Net worth* shall refer to the combined capital accounts of the Administrator which shall mean the total of the unimpaired paid-in capital, surplus and undivided profits, less:

- (a) The one percent (1%) of the book value of the total volume of PERA assets administered and other capital adjustments as may be required by the Bangko Sentral;
- (b) Total outstanding unsecured credit accommodations, both direct and indirect, extended by the Administrator to DOSRI; and
- (c) Appraisal surplus or appreciation credit as a result of appreciation or an increase in the book value of the assets of the Administrator.

*DOSRI* cited in Item "1(b)" above shall refer to that provided in Sec. 341 (*Definitions*): *Provided*, That for purposes of this provision, references to a bank as an entity shall be understood to include references to any other type of entity acting as Administrator.

(2) It has adopted a Manual of Corporate Governance approved by the Bangko Sentral, and is in full compliance therewith.

(3) It has a clear and sufficient organization plan or structure of its personnel who will perform the PERA administration functions, stating the definition of the duties and responsibilities as well as the line and staff functional relationships.

(4) It possesses adequate systems and technological capabilities, and the necessary technical expertise and personnel to administer all types of PERA investment products, ensure the

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proper recording and tracking of a contributor's PERA, and perform the other required functions of an Administrator.

- (5) It has sufficient personnel who have undergone the requisite training prescribed by the Bangko Sentral to educate the contributor on:
  - (a) The nature of a PERA;
  - (b) Privileges, conditions and requirements of a PERA;
  - (c) The risks and benefits of each type of PERA investment products; and
  - (d) Respective roles of the Administrator, Investment Manager and Custodian.
  
- (6) It has adopted the following forms that the Administrator shall use in dealing with the Contributor and his PERA:
  - (a) Pre-Acceptance Disclosure Policy described in PERA Rule 6.A.2.a;
  - (b) Client Suitability Assessment Questionnaire referred to in PERA Rule 6.A.2.b(i);
  - (c) Risk Disclosure Statement, which shall include the standard minimum information referred to in PERA Rule 6.A.2.d; and
  - (d) Contract between the Contributor and the Administrator referred to in PERA Rule 6.A.2.c.
  
- (7) It has a board-approved policy on fees and charges to be imposed for its services as Administrator which shall be subject to Bangko Sentral approval.

Failure to satisfy any of the above requirements shall be a ground for the denial of the application, without prejudice to the re-filing of an application.

An Administrator who has been issued with a "Qualification Certificate" shall then file an application for accreditation with the PERA Processing Office of the BIR to complete its application process to become a PERA Administrator.

b. *As an Investment Manager.* The Bangko Sentral shall accredit an entity as an Investment Manager upon submission of a written application certified by the Chief Executive Officer (CEO) together with the following documentary requirements:

- (1) Written supervision and control procedures for the conduct of the investment management functions;
- (2) Proof of at least five (5) years of experience in professional investment management;
- (3) Certified true copy of educational, professional/technical or other academic qualifications of its principal officers;

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- (4) Copy of its form contract to be utilized. The agreement between the contributor and the Investment Manager shall contain the following minimum contents:
- (a) Overall investment philosophy, standards and practices of the Investment Manager; and
  - (b) Validation of contributor's Client Suitability Assessment and Investment Policy Statement made by contributor's Administrator referred to in PERA Rule 6.A.2.b (i) and (ii); and
- (5) A schedule of commission charges and/or other fees it will charge for its services.

c. *As a custodian*

*Cash custodian.* In addition to the standard pre-qualification requirements for the grant of banking authorities enumerated in *Appendix 5*, banks applying for authority to act as cash custodian for PERA shall also comply with the following conditions:

- (1) The applicant bank must have complied with the minimum capital required under Sec. 121 (*Minimum capitalization*); and
- (2) The Bank's CAMELS composite rating in its latest examination is not lower than "3" with Management component score of not lower than "3".

*Securities custodian.* Only banks and other entities with trust license which have complied with the requirements under Sec. 431 (*Pre-qualification requirements for a securities custodian/registry*) may be accredited as securities custodian.

For purposes of this Section, the Bangko Sentral may provide for such other requirements or qualifications as it may deem necessary for the qualification/ accreditation of a supervised entity as a PERA Market Participant.

***Application for qualification/accreditation.*** An eligible supervised entity seeking qualification/accreditation as PERA Market Participant (Administrator, Investment Manager, Cash Custodian or Securities Custodian) shall file an application for qualification/accreditation with the appropriate department of the Bangko Sentral. The application shall be signed by the CEO and shall be accompanied by the following documents:

- a. Certified true copy of the resolution of the entity's board of directors authorizing the application;
- b. Certification signed by the CEO that the entity has complied with all the relevant qualification/accreditation requirements enumerated under this Section and an undertaking to comply with the aforementioned requirements while it acts as an Administrator, Investment

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Manager, Cash Custodian and/or Securities Custodian; and

- c. Relevant PERA forms, Board-approved policy on fees and charges, and proof of compliance with this Section insofar as the application of the Administrator is concerned.

The qualification/accreditation of PERA Market Participants and accreditation of PERA Investment Products granted by the Bangko Sentral shall be valid until revoked.

**Security for the faithful performance of Administrators.** As a security for the faithful performance of its duties under the PERA Act, an administrator shall hold eligible government securities, equivalent to at least one percent (1%) of the book value of the total volume of PERA assets administered, earmarked in favor of the Bangko Sentral: *Provided*, That the administrator shall issue an authorization in favor of the Bangko Sentral to withdraw, dispose and disburse the proceeds thereof to settle any claims arising from the breach of its duties as evidenced by a final and executory court order: *Provided, further*, That the administrator shall not withdraw, transfer or replace such earmarked securities without prior written instruction from the Bangko Sentral. The security for the faithful performance of the administrator's duties shall be in addition to and shall be treated separately from the capital, surplus, and undivided profits of the administrator

For this purpose, eligible government securities shall consist of evidence of indebtedness of the Republic of the Philippines or of the Bangko Sentral or any other evidence of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or such other kinds of securities which may be declared eligible by the Monetary Board: *Provided*, That, such securities shall be free, unencumbered, and not utilized for any other purpose: *Provided, further*, That such government securities shall have remaining maturities of not more than three (3) years from the date the securities have been earmarked in favor of the Bangko Sentral.

The requirement for the above-mentioned government securities to have remaining maturity of not more than three (3) years from date of deposit with the Bangko Sentral shall no longer apply starting 31 March 2018.

- a. *Valuation of securities and basis of computation of the basic security deposit requirement.*

*Prior to 31 March 2018:*

- (1) For purposes of determining compliance with the security for the faithful performance of administrators under the PERA Act, the amount of securities so earmarked shall be based on their book value, that is, cost as increased or decreased by the corresponding discount or premium amortization.

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(2) The base amount for the basic security deposit shall be the average of the month-end balances of administered assets for the immediately preceding calendar quarter.

Effective 31 March 2018, the provisions under Item “a(1)” above shall no longer apply. The following provisions on the valuation of government securities shall be adopted starting 31 March 2018:

Government securities deposited with the Bangko Sentral shall be measured at fair value according to the marking-to-market guidelines for government securities under *Appendix 28*, subject to applicable haircuts.

The haircuts that shall be applied to the government securities shall be as follows:

Residual Maturity	Minimum Haircut (in Percent) for Basic Security Deposit
3 years and below	0.0
>3 years up to 5 years	2.0
>5 years	4.0

b. *Compliance period; Sanctions.* The administrator shall have one (1) week from the end of every calendar quarter within which to replenish any deficiency in the security requirements as abovementioned, by depositing with the Bangko Sentral, government securities pursuant to existing regulations to comply with the basic security deposit requirement.

Effective 31 March 2018, the administrator shall also comply with the basic security deposit requirement in the following manner:

(1) *Quarterly compliance.* The administrator shall comply with the basic security deposit requirement on a quarterly basis. In determining quarterly compliance, the fair value of government securities used as compliance with the basic security deposit requirement shall be reckoned as of the end of the calendar quarter and the base amount for the basic security deposit requirement provided under Item “a” of this Section (*Security for the faithful performance of administrators*) shall be applied.

Haircuts for government securities as provided under Item “a” of this Section (*Security for the faithful performance of administrators*) shall be applied on the fair value of the government securities used as compliance with the basic security deposit.

(2) *Compliance upon withdrawal, replacement or redemption.* The administrator shall ensure that it

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will continue to comply with the basic security deposit requirement after every withdrawal, replacement or redemption of government securities within the quarter period. In determining compliance, the basic security deposit requirement shall be the amount computed as of the quarter-end preceding the date of withdrawal, replacement or redemption pursuant to Item “a” of this Section (*Security for the faithful performance of administrators*). The fair value of the remaining government securities, adjusted for the relevant haircuts, shall also be based on amounts reported as of the quarter-end preceding the date of withdrawal, replacement or redemption pursuant to Item “a” of this Section (*Security for the faithful performance of administrators*).

Administrators shall develop and maintain systems to ensure compliance with the required basic security deposit as prescribed under existing regulations.

An administrator which incurs a deficiency with the basic security deposit within the quarter, or reports a deficiency with the basic security deposit as of the end of the quarter and fails to deposit securities to comply with the said requirement within the one (1)-week grace period, shall be considered deficient with the basic security deposit requirement from the date the deficiency is incurred up to the date the deficiency is corrected or the succeeding quarter-end, whichever comes earlier.

Any non-compliance with the security requirements shall be subject to Sections 36 and 37 of R.A. No. 7653 also known as the New Central Bank Act as amended, without prejudice to the imposition of other sanctions as the Monetary Board may consider warranted under the circumstances that may include the suspension or revocation of the entity’s authority to engage in PERA administration, and such other sanctions as may be provided by law.

***Grounds for suspension or revocation of qualification/accreditation of administrator, investment manager of custodian.*** The qualification of an administrator, and the accreditation of an investment manager and custodian may be refused, restricted, suspended or revoked by the Bangko Sentral if, after due notice and hearing, the Bangko Sentral determines that the applicant or licensee has:

- a. Willfully violated any provision of the PERA Act, the PERA Rules or any regulations and issuances by the Bangko Sentral made pursuant thereto, or any other law administered by the Bangko Sentral relevant to its function as a PERA Market Participant, or not providing prudential standards for asset management or has aided, abetted, counseled, commanded, induced or procured such violation;
- b. Failed to supervise, with a view to preventing such violation, a person associated to the applicant or licensee by virtue of an arrangement or other types of arrangement and who commits such

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violation;

- c. Willfully made or caused to be made a materially false or misleading statement in the application for qualification/accreditation or report filed with the Bangko Sentral, or has willfully omitted to state any material fact that is required to be stated therein or necessary to make the statement therein not misleading;
- d. Failed to maintain the qualifications or requirements for accreditation prescribed under the PERA Rules, these guidelines or has failed to maintain compliance with any of them;
- e. Failed to carry on and manage its PERA-related business and activities in a proper, diligent and efficient manner to the prejudice of the Contributor;
- f. Been subject to regulatory sanctions for (a) violations, which the Bangko Sentral determines to affect its operation conditions and ability as a PERA Market Participant, such as but not limited to violations affecting required capitalization and/or solvency, or (b) any act or behavior prejudicial to the PERA Contributors;
- g. Been enjoined or restrained by a competent body from engaging in securities, banking or insurance activities;
- h. Failed to enforce or monitor PERA contribution limits entitled to tax incentives; or
- i. Failed to manage or adequately address conflicts of interest in the performance of its functions, which may be identified by the Bangko Sentral as prejudicial to the interests of the PERA Contributor.

For purposes of this Subsection, the term “*competent body*” shall include a foreign court of competent jurisdiction and a foreign financial regulator.

**Penalty.** A fine of not less than Php50 thousand nor more than Php200 thousand or imprisonment of not less than six (6) years and one (1) day to not more than twelve (12) years or both, such fine and imprisonment at the discretion of the court, shall be imposed upon any person, association, partnership or corporation, its officer, employee or agent, who, acting alone or in connivance with others, shall:

- a. Act as administrator, custodian or investment manager without being properly qualified or without being granted prior accreditation by the Bangko Sentral;
- b. Invest the contribution without written or electronically authenticated authority from the contributor, or invest the contribution in contravention of the instructions of the contributor;



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- c. Knowingly and willfully make any statement in any application, report, or document required to be filed under the PERA Act, which statement is false or misleading with respect to any material fact;
- d. Misappropriate or convert, to the prejudice of the contributor, contributions to and investments or income from the PERA;
- e. By gross negligence, cause any loss, conversion, or misappropriation of the contributions to, or investments from the PERA; or
- f. Violate any provision of the PERA Act or rules and regulations issued pursuant to the PERA Act.

Notwithstanding the foregoing, any willful violation by the accredited administrator, custodian or investment manager of any of the provisions of the PERA Act, the PERA Rules, relevant rules and regulations issued by the Bangko Sentral or other terms and conditions of the authority to act as administrator, custodian or investment manager may be subject to the administrative sanctions provided for in applicable laws such as those set forth in Section 37 of R.A. No. 7653, as amended.

The above penalties shall be without prejudice to whatever civil and criminal liability provided for under applicable laws for the same act or omission such as those set forth in Sections 35 and 36 of R.A. No. 7653, as amended.

**Reportorial requirements.** An entity qualified/accredited by the Bangko Sentral to be a PERA Market Participant shall comply with the reportorial requirements that may be prescribed by the Bangko Sentral.

*(Circular No. 998 dated 1 March 2018, 890 dated 02 November 2015, M-2014-045 dated 02 December 2014 and Circular No. 860 dated 28 November 2014)*

Footnotes

1. Trust entity shall refer to a (a) bank or non-bank financial institution, through its specifically designated business unit to perform trust functions, or (b) trust corporation, authorized by the Bangko Sentral ng Pilipinas to engage in trust and other fiduciary business under Section 79 of R.A. No. 8791 (the General Banking Law of 2000) or to perform investment management services under Section 53 of R.A. No. 8791.