

431 SECURITIES CUSTODIANSHIP AND SECURITIES REGISTRY OPERATIONS

The following rules and regulations shall govern securities custodianship and securities registry operations of banks under Bangko Sentral regulations.

The guidelines to implement the delivery of securities are provided in *Appendix 66*.

Violation of any provision of the guidelines in *Appendix 66* shall be subject to the sanctions/penalties under this Section.

Statement of policy. It is the policy of the Bangko Sentral 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.

Applicability of this regulation. This regulation shall govern securities custodianship and securities registry operations of banks and NBFIs under Bangko Sentral 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 SEC, that are sold, borrowed, purchased, traded, held under custody or otherwise transacted in the Philippines where at least one (1) of the parties is a bank or an NBFI under Bangko Sentral 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.

Prior Bangko Sentral approval. Banks may act as securities custodian and/or registry only upon prior Monetary Board approval.

Application for authority. A bank desiring to act as securities custodian and/or registry shall file an application with the appropriate supervising and examining department of the Bangko Sentral. The application shall be signed by the highest ranking officer of the bank and shall be accompanied by a certified true copy of the resolution of the bank's board of directors authorizing the bank to engage in securities custodianship and/or registry and, in the case of a branch of a foreign bank, approval by its highest ranking regional officer with proof of delegated authority from the bank's board of directors.

Pre-qualification requirements for a securities custodian/registry.

- a. The securities custodian must be a bank that is authorized to engage in investment management or trust business. The securities registry must be a bank.

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- b. It must have complied with the minimum capital accounts required under existing regulations, as follows:
- (1) *Domestic banks.* The minimum capital required under Sec. 121 or the minimum capital required for TBs operating in Metro Manila, whichever is higher.
 - (2) *Branches of foreign banks.* The minimum capital required under Sec. 103
- c. Its risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application;
- 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 therefrom;
- 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 (8) weeks 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 or unsound manner 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 Bangko Sentral 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 (3) years;
- m. It shall be conducted in a separate unit headed by a qualified person with at least two (2) years experience in custody/ registry operations;
- 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; and
- o. A securities custodian which provides the value-added service of securities lending involving securities that are sold, offered for sale or distributed within the Philippines must be a duly-licensed lending agent registered with the SEC.

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;

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- 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;
- i. Acts as a collecting and paying agent in respect of dividends, interest earnings or proceeds from the sale/redemption/maturity of securities held under custodianship: *Provided*, That the custodian shall immediately make known to the securities owner all collections received and payments made with respect to the securities under custody; and
- j. In addition to the above basic functions, it may perform the value-added service of securities lending as agent: *Provided*, That it complies with Item "o" of the pre-qualification requirements under Sec. 431: *Provided, further*, That the securities lending service shall be covered by a Securities Lending Authorization Agreement (SLAA) which shall be attached to the custody contract.

A securities custodian which renders the value-added service of securities lending involving securities that are sold, offered and distributed within the Philippines shall comply with all other pertinent rules and regulations of the SEC on securities lending and borrowing operations.

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.

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. *Administration of securities custodianship accounts of banks.* Securities custodianship accounts shall be administered in the Trust Unit of a bank.

As an exception, however, a custodian bank may be allowed to administer custodianship accounts in the Bank Proper: *Provided*, That this is limited to custodianship accounts wherein the securities custodian performs the basic functions and responsibilities provided under Sec. 431: *Provided, further*, That the custodian bank secures prior MB approval on this arrangement: *Provided, finally*, That a custodian bank that is seeking exemption from the general requirement should be able to demonstrate that it has instituted adequate risk management systems and prudential controls in the Bank Proper to ensure the protection of client assets, maintain proper segregation of functions and prevent conflict of interest situations that may arise in the administration of securities custodianship accounts.

- b. *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.

Securities held under custodianship shall be recorded in the books of the custodian at the face value of said securities in the off-balance sheet account "*Securities Held Under Custodianship by Bank Proper*", if booked in the Bank Proper, or the other fiduciary sub-account "*Custodianship*", if booked in the Trust Department.

Securities held under custodianship where the custodian performs the value-added service of securities lending as agent shall be booked in the Trust Department.

- c. *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.

- d. *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.

e. *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.

Independence of the registry and securities custodian. A Bangko Sentral- accredited securities registry must be a third party that does not belong to the same financial conglomerate or banking group as that of the issuer of securities. A Bangko Sentral-accredited securities custodian must be a third party that does not belong to the same financial conglomerate or banking group as that of the issuer and seller of securities held under custody. A bank accredited by Bangko Sentral 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;
- b. where the purchaser is a non-resident with existing global custody agreement governed by foreign laws and conventions wherein the bank is designated as custodian or sub-custodian; and
- c. upon approval by the Bangko Sentral, where the purchaser is an insurance company whose custody arrangement is either governed by a global custody agreement where the bank is designated as custodian or sub-custodian or by a direct custody agreement with features at par with the standards set under this Section drawn or prepared by the parent company owning more than fifty percent (50%) of the capital stock of the purchaser and executed by the purchaser itself and its custodian.

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

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 Section and is likewise exempted from the independence requirement under this Section (*Independence of the registry and custodian*). Securities registered under the RoSS shall be delivered in accordance with the guidelines set forth in *Appendices 66 and 67*.

Confidentiality. A Bangko Sentral-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.

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 Bangko Sentral- accredited custodian may rely on referral by the seller issuer of securities: *Provided*, That it maintains a record of such referral together with the minimum identification, information/documents required under the law and its implementing rules and regulations.

A Bangko Sentral-accredited custodian must maintain accounts only in the true and full name of the owners of the security. However, said securities owners may be identified by number or code in reports and correspondences to keep his identity confidential.

Basic security deposit. Securities held under custodianship whether booked in the Trust Department or carried in the regular books of the bank shall be subject to a security deposit for faithful performance of duties at the rate of 1/25 of one percent (1%) of the total face value of securities held under custodianship or P500,000 whichever is higher.

However, securities held under custodianship where the custodian also performs securities lending as agent shall be subject to a higher basic security deposit of one percent (1%) of the total face value of securities held under custodianship.

Compliance shall be in the form of eligible government securities deposited with the Bangko Sentral, pursuant to existing regulations governing security for the faithful performance of trust and other fiduciary business under Sec. 417 (*Eligible securities to Compliance period; sanctions*).

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

Sanctions. Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively, of the R.A. No. 7653, violation of any provision of this Section shall be subject to the following sanctions/penalties:

a. *First offense* -

- (1) Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- (2) Reprimand for the directors/officers responsible for the violation.

b. *Second offense* -

- (1) Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- (2) Suspension for ninety (90) days without pay of directors/officer responsible for the violation.

c. *Subsequent offenses* -

- (1) Fine of up to P30,000 a day for the institution for each violation from the date the violation was committed up to the date it was corrected;
- (2) Suspension or revocation of the authority to act as securities custodian and/or registry; and
- (3) Suspension for one hundred twenty (120) days without pay of the directors/officers responsible for the violation.

(Circular Nos. 998 dated 01 March 2018, and 873 dated 25 March 2015)