

628 ASSET-BACKED SECURITIES

The following regulations shall govern the origination, issuance, sale, servicing and administration of asset-backed securities (ABS) by any bank including its subsidiaries and affiliates engaged in allied activities, which are domiciled in the Philippines.

Definition of terms.

- a. *Assets* shall mean loans or receivables existing in the books of the originator prior to securitization. Such assets are generated in the ordinary course of business of the originator and may include mortgage loans, consumption loans, trade receivables, lease receivables, credit card receivables and other similar financial assets.
- b. *Asset-backed securities* shall refer to the certificates issued by a Special Purpose Trust (SPT) representing undivided ownership interest in the asset pool.
- c. *Asset pool* shall mean a group of identified, self-amortizing assets that is conveyed the SPT issuing the ABS and such other assets acquired as a consequence of the securitization.
- d. *Clean-up call* shall refer to an option granted to the seller to purchase the remaining assets in the asset pool.
- e. *Credit enhancement* shall refer to any legally enforceable scheme that is intended to enhance the marketability of the ABS and increase the probability that investors receive payment of amounts due them.
- f. *Guarantor* shall refer to an entity that guarantees the repayment of principal and interest on loans or receivables included in the asset pool in the event of default by the borrower.
- g. *Investible funds* shall refer to the proceeds of collection of loans or receivables included in the asset pool which are not yet due for distribution to investors.
- h. *Issuer* shall refer to the SPT that issues the ABS.
- i. *Originator* shall refer to a bank and/or its subsidiary or affiliate engaged in allied activities that grants or purchases loans or receivables and assembles them into a pool for securitization.
- j. *Residual certificates* shall refer to certificates issued representing claims on the remaining value of the asset pool after all ABS holders are paid.

- k. *Seller* shall refer to the entity which conveys to the SPT the assets that constitute the asset pool.
- l. *Servicer* shall refer to the entity designated by the Issuer primarily to collect and record payment received on the Assets, to remit such collections to the Issuer and perform such other services as may be specifically required by the issuer excluding asset management or administration.
- m. *Special purpose trust* shall refer to a trust administered by a trustee and created solely for the purpose of issuing and administering an ABS.
- n. *Trustee* shall refer to the entity designated to administer the SPT.
- o. *Underwriter* shall refer to the entity engaged in the act or process of distributing and selling of the ABS either on guaranteed or best effort basis.

Prior Bangko Sentral approval. Any bank including its subsidiaries and affiliates engaged in allied activities, may securitize its assets upon prior approval of the Bangko Sentral.

Board approval requirement. The originator/seller shall have the securitization program approved by its board of directors. The originator/seller shall integrate such securitization program into its corporate strategic plan. The board of directors shall ensure that the securitization of assets is consistent with such program.

Minimum documents required. The application to securitize must be accompanied by the following documents as a minimum requirement:

- a. *Trust indenture* evidencing the conveyance of the assets from the seller to the Issuer or SPT, the features of which shall include the following:
 - (1) Title or nature of the contract in noticeable print;
 - (2) The parties involved, indicating in noticeable print, their respective legal capacities, responsibilities and functions;
 - (3) Features and amount of ABS;
 - (4) Purposes and objectives;
 - (5) Description and amount of assets comprising the asset pool;
 - (6) Representations and warranties;
 - (7) Credit enhancements;
 - (8) Distribution of funds;
 - (9) Authorized investment of investible funds;
 - (10) Rights of the investor;
 - (11) Reports to investors; and

(12) Termination and final settlement.

The trust indenture shall include as annexes the servicing agreement between the trustee and the servicer and the underwriting agreement between the seller and the underwriter.

b. *Prospectus*. As a minimum requirement, it shall contain the following:

- (1) Summary of the contents of the prospectus;
- (2) Description of each class of certificate, including such matters as probable yields, payment dates and priority of payments;
- (3) Description of the assets comprising the Asset Pool as well as the representations and warranties set forth by the originator and/or seller;
- (4) Assumptions underlying the cash flow projections for each class of certificate;
- (5) Description of any credit enhancements;
- (6) Identity of the servicer; and
- (7) Disclosure statements as required under this Section on Disclosure requirements.

c. Specimen of application to purchase ABS. It shall include the terms and conditions of the purchase and the disclosures required under this Section on Disclosure requirements.

d. Specimen of certificate. It shall indicate the features of the ABS and the disclosures required under this Section on Disclosure requirements.

Minimum features of asset-backed securities. The ABS shall be pre-numbered and printed on security paper. The ABS shall be signed and authenticated by the trustee. They are transferable by endorsement of the certificate. The transfer shall be recorded in the books of the trustee, indicating the names of the parties to the transaction, the date of the transfer and the number of the certificate transferred.

The minimum denomination of any ABS shall be P10,000.

Disclosure requirements. The following disclosures must be provided in a conspicuous manner in any document inviting investment, application to purchase ABS and the certificate itself:

- a. The ABS do not represent deposits or liabilities of the originator, servicer or trustee and that they are not insured with PDIC;
- b. The investor has an investment risk;
- c. The trustee does not guarantee the capital value of the ABS or the collectibility of the asset pool; and

d. The right of an investor.

The investors shall be required to sign an acknowledgment indicating that they have read and understood the disclosures.

Conveyance of assets.

- a. The conveyance of the assets comprising the asset pool shall be done within the context of a true sale and, for this purpose, the seller may not retain in its books the ABS, except the residual certificate, if any.
- b. The seller shall have no obligation to repurchase or substitute an asset or any part of the asset pool at any time, except in cases of a breach of representation or warranty, or under a revolving structure, to replace performing assets which have been paid out in part or full.
- c. The seller shall be under no obligation to provide additional assets to the SPT to maintain a “coverage ratio” of collateral to outstanding ABS. A breach of this requirement will be considered a credit enhancement and should be charged against capital. However, this will not apply to an asset pool conveyed under a revolving structure such as the securitization of credit card receivables.
- d. Securitized assets shall be considered the subject to a true sale between the seller and the SPT. Sold assets shall be taken off the books of the seller and shall be transferred to the books of the SPT.

For accounting purposes, the transfer shall only be considered a true sale if the following three (3) conditions have been satisfied:

- (1) the transferred assets have been isolated and put beyond the reach of the seller and its creditor;
 - (2) the SPT has the right to pledge or exchange its interest in the assets; and
 - (3) the seller does not effectively maintain control over the transferred assets by any concurrent agreement.
- e. All expenses incidental to underwriting, conveyance of the asset pool including expenses for credit enhancement may be paid by the originator/seller: *Provided*, That no further expenses shall be borne by the originator/seller after the asset pool has been conveyed to the SPT.

Representations and warranties.

- a. *Standard representations and warranties* refer to an existing state of facts that the originator, seller or servicer can either control or verify with reasonable due diligence at the time the assets are sold. Any breach of representation or warranty may give rise to legal recourse.
- b. The representations or warranties shall be clear and explicit and, in particular, shall not relate to the future creditworthiness of the assets in the asset pool or the performance of the SPT or the securities issued.
- c. Any agreement to pay damages as a result of breach of warranties and representations shall hold only where:
 - (1) there is a well-documented negotiation of the agreement in good faith;
 - (2) the burden of proof for a breach of representation or warranty rests with the other party;
 - (3) damages are limited to the loss incurred as a result of the breach; and
 - (4) there is a written notice of claim specifying the basis for the claim.

The Bangko Sentral shall be notified of any instance where a bank or its subsidiaries/affiliates has agreed to pay damages arising out of any breach of representation or warranty.

Third party review. A due diligence review by an independent entity mutually agreed upon by the seller and the Issuer shall be done before the assets are sold.

Originator and seller.

- a. The seller may itself be the originator, and may likewise be designated as the servicer.
- b. The seller or originator shall deliver to the trustee all original documents or instruments with respect to each asset sold.

Trustee and issuer.

- a. The trustee shall be the trust department of a bank licensed to do business in the Philippines.
- b. The trustee shall have the right to manage or administer the asset pool. The trustee shall see to it that necessary measures are taken to protect the asset pool.
- c. The trustee shall undertake a performance review of the asset pool at least quarterly and shall prepare a report to investors indicating, among others, collections, fees and other expenses as well as defaults, which report shall be made available to the investors at anytime after thirty (30) days from end of the reference quarter.

- d. The trustee shall initiate all civil actions including foreclosure of mortgaged properties to effect collection of receivables in the asset pool. The servicer or any other party may be designated by the trustee to perform such function on a case-by-case basis.
- e. The trustee may invest the Investible funds only in obligations issued and/or fully guaranteed by the government of the Republic of the Philippines or by the Bangko Sentral and such other high-grade readily marketable debt securities as the Bangko Sentral may approve.
- f. The trustee shall designate a replacement of the servicer if the latter fails to satisfactorily perform its duties and responsibilities according to the terms and conditions of the servicing agreement.

Servicer.

- a. The servicer shall perform its duties according to the terms and conditions of the servicing agreement and such other written instructions as the trustee may issue on a case-by-case basis. Collections made by the servicer shall be remitted promptly to the trustee or as may be agreed upon by the parties in the servicing agreement, but in no case shall the remittance period be longer than one (1) month.
- b. The servicer shall prepare periodic reports as may be required by the trustee.
- c. The servicer shall report to the trustee within thirty (30) days, any borrower which fails to pay its debt at maturity date or any adverse development that may affect the collectibility of any loan account or receivable comprising the asset pool.
- d. The servicer shall have no authority to waive penalties and charges except with a written authority from the trustee.

Underwriter.

- a. A UB or IH shall have written policies and procedures on underwriting of ABS.
- b. The underwriter shall perform its functions according to the terms and conditions of the underwriting agreement.
- c. An underwriter may deal in ABS, except those administered by its trust department, the trust departments of its subsidiaries/affiliates, the trust department of its parent bank or the trust department of its parent bank's subsidiaries/affiliates.

- d. A UB/IH may act as underwriter, on a firm basis, of ABS except those administered by its trust department, the trust departments of its subsidiaries/ affiliates, the trust department of its parent bank or the trust department of its parent bank's subsidiaries/affiliates.
- e. The underwriter may not extend credit for the purpose of purchasing the ABS which such UB/IH underwrites or that which is underwritten by its subsidiaries/ affiliates, its parent bank or its parent bank's subsidiaries/affiliates.

Guarantor.

- a. Only an entity the regular business of which includes the issuance of guarantees or similar undertaking may act as guarantor.
- b. The guarantor must have the financial capacity to perform its responsibilities in accordance with the terms and conditions of the guarantee agreement. It shall submit to the trustee at least once in every six (6) months such financial reports as the trustee may require.
- c. The originator or seller may not issue a counter-guarantee in favor of the guarantor.

Credit enhancement. Credit enhancement may be provided in any of the following manner:

- a. Standby letter of credit issued by a UB/KB other than the originator/seller or its subsidiary/affiliate, its parent bank or the parent bank's subsidiary/affiliate, and trustee or its subsidiary/affiliate;
- b. Surety bond issued by any insurance company other than the originator's/seller's subsidiary or affiliate, the subsidiary or affiliate of the originator's/ seller's parent bank and the trustee or its subsidiary/affiliate;
- c. Guarantee issued by any entity other than the originator/seller or its subsidiary/ affiliate, its parent bank or the parent bank's subsidiary/affiliate, and trustee or its subsidiary/affiliate;
- d. Overcollateralization provided by the originator/seller wherein the assets conveyed to the SPT exceed the amount of securities to be issued.

Losses arising from overcollateralization shall be recognized by the originator/seller upfront. Such losses shall be treated as capital charges.

- e. Spread account wherein the income from the underlying pool of receivables is made available to

cover any shortfall in the repayment of ABS. The spread account shall be handled by the trustee which shall account for it separately. If not needed, this “spread” generally reverts to the holder of the residual certificate.

- f. Subordinated securities that are lower ranking, or junior to other obligations and are paid after claims to holders of senior securities are satisfied.
- g. Other credit enhancements as may be approved by the Monetary Board.

To be consistent with the concept of true sale, subordinated securities shall be sold to third party investors other than originator’s/seller’s parent company or its subsidiary/affiliate and the trustee or its subsidiary/affiliate or, if held by the seller, capital charges should be booked upfront. Otherwise, the subordinated securities shall be treated as deposit substitute subject to legal reserves.

Clean-up call. A *clean-up call* may be exercised by the seller once the outstanding principal balance of the receivable component of the asset pool falls to ten percent (10%) or less of the original principal balance of the asset pool. Where the asset pool includes foreclosed and other assets, such assets shall be included in the clean-up call and the consideration thereof shall be at current market value. Such a *clean-up call* shall not be considered recourse or in violation of this Section on conveyance of assets.

Prohibited activities.

- a. The seller may not, under any circumstance, designate its trust department, the trust department of its subsidiaries/ affiliates, the trust department of its parent bank or the trust department of its parent bank’s subsidiaries/affiliates as trustee.
- b. Any director, officer or employee of the originator, seller or servicer may not serve as a member of the board of directors or trust committee of the trustee or vice versa for the duration of the securitization.
- c. The trust indenture shall not contain any stipulation whereby the seller, its subsidiaries/affiliates, its parent bank or the parent bank’s subsidiaries/affiliates shall commit to extend any credit facility to the issuer and/or trustee.
- d. The ABS shall not be eligible as collateral for a loan extended by a bank which originated/sold the underlying assets of such ABS.
- e. The trust department of a bank that has discretion in the management of any trust or investment management account may not purchase for said trust/investment management account ABS

administered by the trust department of the same bank, the trust department of such trustee's subsidiaries/affiliates, the trust department of such trustee's parent bank and the trust department of the parent bank's subsidiaries/affiliates.

- f. The trustee may not designate its subsidiary/affiliate, its parent or the parent's subsidiaries/affiliates as servicer or vice versa.

Amendment of trust indenture. Any amendment to the trust indenture shall require the prior approval of the Bangko Sentral.

Trustee or servicer in securitization. Without prior approval of the Bangko Sentral, a bank or any entity supervised by the Bangko Sentral may act as trustee or servicer in a securitization scheme originated by an entity not supervised by the Bangko Sentral: *Provided*, That the assets which are the subject of such securitization are existing in the books of the entity prior to securitization: *Provided, further*, That such entity acting as trustee or servicer is not a subsidiary/affiliate of the originator/seller, its parent bank or the parent bank's subsidiaries/affiliates or vice versa: *Provided, finally*, That such entity acting as trustee may not designate its subsidiaries/affiliates, its parent or the parent's subsidiaries/affiliates as servicer or vice versa.

Report to Bangko Sentral. The trustee bank shall submit a report of every securitization scheme in formats to be prescribed by the Bangko Sentral. The report shall be submitted to the appropriate supervising department of the Bangko Sentral, within fifteen (15) banking days after end of every reference quarter. Such report shall be considered a *Category A* report for purposes of implementing fines in the submission of required reports pursuant to existing regulations.