

**IMPLEMENTATION OF THE DELIVERY BY THE SELLER OF SECURITIES
DIRECTLY TO THE BUYER OR TO HIS DESIGNATED SECURITIES
CUSTODIAN/CENTRAL SECURITIES DEPOSITORY**

***Appendix to Secs. 431, 242 on Delivery of Securities and Repurchase Agreements
Covering Government Securities, Commercial Papers and Other Negotiable and
Non-Negotiable Securities or Instruments,
245 on Delivery of Securities, and 431 on Registry of Scripless Securities of the Bureau of
the Treasury***

Sec. 1. Statement of Policy. Pursuant to the policy of the Bangko Sentral to promote the protection of investors in order to gain their confidence in the securities market, the following rules/guidelines shall be observed by banks and NBFIs under Bangko Sentral supervision in their dealings in securities whether they are acting as seller, buyer, agent or custodian.

The guidelines on the delivery of government securities by the selling banks to an investor's Principal Securities Account with the RoSS through the Client Interface System facility are in *Appendix 67*.

Sec. 2. Distinction between a Securities Custodian, Registry and Central Securities Depository. For purposes of these Rules, a securities custodian, registry and central securities depository are defined as follows:

A securities custodian is a Bangko Sentral -accredited financial institution under Bangko Sentral supervision that is authorized to engage in investment management (for banks/investment houses with quasi-banking authority only) or trust business and is designated by the investor to perform the functions of safekeeping, holding title to the securities in a nominee capacity, reports rendition, mark-to-market valuation, collection and payment of dividends, interest earnings or proceeds from the sale/redemption/maturity of securities held under custodianship and representation of clients in corporate actions.

It may also perform the value added service of securities lending as agent, subject to the conditions specified under Sec. 431 (*Functions and responsibilities of a securities custodian*).

A securities registry is a duly authorized financial institution 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 transfers of ownership and issues registry confirmation to the buyers/holders. The 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 central securities depository is an SEC-authorized entity that provides securities accounts, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues¹.

The securities custodian and the central securities depository must at all times maintain their independence and should not belong to the same financial conglomerate or banking group as that of the issuer or seller of securities held under custody or deposit.

It shall be the responsibility of the securities custodian and central securities depository to ensure that appropriate systems capacity, procedures or measures such as proper recording, accounting, reporting, preserving, and segregation of securities are in place in order to protect the interest of the client.

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

Sec. 4. Delivery of Securities. Pursuant to existing Bangko Sentral regulations, securities which are the subject of quasi-banking activities, repurchase agreements and securities sold on a without recourse basis shall be delivered by the seller directly to the purchaser or to the purchaser's designated BSP-accredited securities custodian or SEC authorized central securities depository.

Sec. 5. Mode of Delivery

- a. If the securities sold are certificated, delivery shall be effected physically to the purchaser, or to the purchaser's designated Bangko Sentral -accredited custodian. The certificate must be transferred to and registered under the name of the purchaser and properly recorded in the registry book.
- b. Delivery of immobilized or dematerialized securities shall be effected by means of book entry transfer to the appropriate securities account of the following: (1) purchaser in a registry of said securities; (2) purchaser in an SEC authorized central securities depository; or (3) purchaser's designated Bangko Sentral accredited securities custodian. Book-entry transfer to a sub-account for clients under the primary account of the dealer will not be deemed compliant with this requirement.

Sec. 6 Client Information. Selling or dealing banks shall inform their clients of the requirements under Secs. 3 and 4 above, together with the complete list of all Bangko Sentral -accredited custodians or SEC authorized central securities depositories. The selling or dealing bank or NBFIs must inform their

clients that the choice of securities custodian or central securities depository is the sole prerogative of the securities purchaser. The seller or dealer may, however, indicate to their clients their preferred custodian or central securities depositories.

Sec. 7. Custodianship/Securities Deposit Agreement. The securities owner/purchaser shall enter into a custodianship agreement with a Bangko Sentral -accredited securities custodian or a securities deposit agreement with an SEC authorized central securities depository of his choice. The Agreement shall contain the following minimum stipulations: a) Rights and obligations of the parties; b) Fees for the services offered by the custodian/depository; and c) Scope and term/period of the Agreement.

The securities purchasers/owners may, designate/appoint a representative or agent for the purpose of opening of the custodianship/securities deposit account and the execution of trade transactions (i.e., buying and selling instructions including relaying of instructions to the custodian/central securities depository to receive or deliver securities in order to consummate the buy/sell transactions).

Sec. 8. Compliance with the Anti-Money Laundering (AML) Act of 2001, as amended. Compliance with AML Act of 2001, as amended, by Bangko Sentral -accredited securities custodians/registries or SEC authorized central securities depositories shall be governed by AML rules and regulations issued by their supervising authorities, such as the Bangko Sentral or the SEC. For purposes of complying with the customer identification requirement, a Bangko Sentral -accredited securities custodian/ registry or SEC authorized central securities depository may rely on the customer identification process undertaken by a third party pursuant to existing AML rules and regulations.

Notwithstanding the above, the custodian, registry or central securities depository is not precluded from conducting its own know-Your-Customer (KYC) activities and maintaining direct holding of the KYC information/documents of its clients.

Annex A

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 Bangko Sentral -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):
 - (1) 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
 - (2) The security must be delivered by book-entry transfer to the appropriate securities account of the Bangko Sentral-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 Bangko Sentral -accredited third party custodian, who shall in turn issue to the securities owner a delivery receipt acknowledging receipt of the securities.

Circular No. 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 Bangko Sentral . 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 Bangko Sentral accredited third party custodian of your choice

who in turn will credit your securities account with them.

The registry is a Bangko Sentral -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 Bangko Sentral -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 Bangko Sentral 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 Bangko Sentral to ensure that they comply with Bangko Sentral rules and regulations and will be subject to penalties and administrative sanctions for any violation thereof.

As of date, Bangko Sentral 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 Bangko Sentral

Please note that the abovementioned arrangements may change once the Bangko Sentral issues more detailed implementing rules and guidelines to the abovementioned 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,

Footnotes

1. BIS-IOSCO, "Principles for Financial Market Infrastructure", p.8 (April 2012)