

## **[ BSP CIRCULAR LETTER, August 04, 2005 ]**

### **GUIDELINES THAT WILL IMPLEMENT THE DELIVERY BY THE SELLER OF SECURITIES TO THE BUYER OR TO HIS DESIGNATED THIRD PARTY CUSTODIAN**

Statement of Policy - Pursuant to the policy of the Bangko Sentral ng Pilipinas to promote the protection of investors in order to gain their confidence in the securities market as enunciated under Circular Nos. 392 and 428 dated 23 July 2003 and 27 April 2004, respectively, the following rules/guidelines shall be observed by banks and non-bank financial institutions (NBFI) under BSP supervision in their dealings in securities whether they are acting as seller, buyer, agent or custodian.

*Rule No. 1. Distinction Between a Custodian and a Registry* - A securities custodian is a BSP-accredited bank or NBFI designated by the investor to perform the functions of safekeeping, holding title to the securities either in a nominee or trustee capacity, reports rendition, mark-to-market valuation, administration of dividends or interest earnings and representation of clients in corporate actions. It may also perform value added services such as collecting and paying and securities borrowing and lending as agent. A BSP-accredited custodian is considered a third party if it has no subsidiary or affiliate relationship with the issuer or seller of securities.

On the other hand, a securities registry, other than the Bureau of Treasury, is a BSP-accredited bank or NBFI 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 transfer of ownership and issues registry confirmation to the buyers/holders. Except as otherwise provided in existing BSP regulations, a BSP-accredited securities registry is considered a third party if it has no subsidiary or affiliate relationship with the issuer of securities.

*Rule No. 2. Registry of Scripless Securities of the Bureau of Treasury* - The Bureau of Treasury, as operator of the Registry of Scripless Securities (RoSS), which serves as the official registry for government securities, is not subject to BSP accreditation and is exempted from the independence requirement under the Circular.

*Rule No. 3. Delivery of Securities* - Pursuant to existing BSP regulations, securities sold on a without recourse basis shall be delivered by the seller to the purchaser, or to his designated BSP-accredited custodian which must not be a subsidiary or affiliate of the issuer or seller.

*Rule No. 4. Mode of Delivery* - If the securities sold are certificated, delivery shall be effected physically to the purchaser, or to his designated BSP-accredited custodian. The certificate must be transferred to and registered under the name of the purchaser and properly recorded in the registry book. On the other hand, delivery of immobilized or dematerialized securities shall be effected by means of book entry transfer to the appropriate securities account of either (1) the purchaser in a registry of said securities; or (2) the purchaser's designated custodian in a registry

of said securities. Book-entry transfer to a sub-account for clients under the primary account of the seller will not be deemed compliant with this requirement. The delivery must be supported by a confirmation of book-entry transfer to be issued by the securities registry in case of name on registry or by a confirmation receipt to be issued by the custodian in case of delivery to the purchaser's designated custodian.

*Rule No. 5. Client Information* - Selling or dealing banks shall inform their clients of the requirements under Rule Nos. 3 and 4 above, together with the complete list of all BSP-accredited custodians. The selling or dealing bank or NBFIs must inform their clients that the choice of custodian is the sole prerogative of the securities purchaser. The seller or dealer may, however, indicate to their clients their preferred custodian. Attached as Annex A\* is a suggested template of the letter to the client.

*Rule No. 6 Custodianship Agreement* - The securities owner/purchaser shall enter into a custodianship agreement with a BSP-accredited third-party custodian of his choice. However, the securities purchasers/owners may designate/appoint through a special power of attorney (SPA) a representative or agent for the purpose of opening and maintaining an account with the BSP accredited third party custodian: Provided that if the securities seller or dealer is appointed as an agent, its authority shall be limited to the opening of the custodianship account and the execution of trade transactions (i.e. buying and selling instructions including relaying of instructions to the custodian to receive or deliver securities in order to consummate the buy/sell transactions). It shall be the responsibility of the custodian to protect the interest of the client by ensuring that the agent is acting within the scope of his authority.

*Rule No. 7 Authority of the Securities Owner/Purchaser to Revoke Special Power of Attorney (SPA)* - Whenever a securities owner/purchaser executes an SPA designating/appointing an agent to open and maintain a custodianship account with a BSP-accredited third party custodian pursuant to Rule No. 6 above, said SPA shall clearly stipulate that the appointment of the agent is revocable at the instance of the securities owner/purchaser or his agent. Any revocation by either party shall be made in writing and must be given to the other party and to the custodian. The custodian is hereby enjoined to acknowledge and respect said right of the client. It is, however, understood that the revocation of the SPA shall be without prejudice to any transaction executed by the agent or custodian prior to said party's knowledge of the revocation. Upon revocation of the SPA, the custodian shall deal directly with the securities owner or his newly appointed agent. However, the custodian has the right to impose additional reasonable conditions similar to those being imposed on separate custody accounts maintained directly by individual or corporate clients.

*Rule No. 8 Reports of the Custodian* - Periodic reports of the custodian on account balances shall be rendered at least quarterly and shall reflect the mark-to market valuation of the security in accordance with existing BSP regulations. It shall be delivered, mailed or electronically transmitted directly to the securities owner unless the securities owner gives a written request or instruction directly to the custodian to deliver said reports to a person/entity named therein. Said request/instruction of the securities owner shall indicate that he is appointing an agent/representative for the purpose, notwithstanding contrary advice of the BSP.

Aside from the periodic reports, the custodian shall also issue confirmation of transfers of ownership as they occur in either electronic or printed form delivered directly to the securities owner, unless the securities owner gives a written request