

[BSP CIRCULAR NO. 428, S. OF 2004, April 27, 2004]

RULES AND REGULATIONS THAT SHALL GOVERN SECURITIES CUSTODIANSHIP AND SECURITIES REGISTRY OPERATIONS OF BANKS AND NON-BANK FINANCIAL INSTITUTIONS (NBFIS) UNDER BANGKO SENTRAL NG PILIPINAS SUPERVISION

Pursuant to Monetary Board Resolution No. 515 dated 15 April 2004, the rules and regulations that shall govern securities custodianship and securities registry operations of banks and non-bank financial institutions (NBFIs) under Bangko Sentral ng Pilipinas (BSP) supervision, are hereby issued as follows:

SECTION 1. Statement of Policy - It is the policy of the BSP 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.

SECTION 2. Applicability of this Regulation - This regulation shall govern securities custodianship and securities registry operations of banks and NBFIs under BSP 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 Securities and Exchange Commission (SEC), that are sold, borrowed, purchased, traded, held under custody or otherwise transacted in the Philippines where at least one of the parties is a bank or an NBFI under BSP 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.

SECTION 3. Prior Bangko Sentral ng Pilipinas Approval - Banks and NBFIs under BSP supervision may act as securities custodian and/or registry only upon prior Monetary Board approval.

SECTION 4. Application for Authority - A BSP-supervised entity desiring to act as securities custodian and/or registry shall file an application with the appropriate supervising and examining department of the BSP. The application shall be signed by the highest ranking officer of the bank/NBFI and shall be accompanied by a certified true copy of the resolution of the bank's/NBFI's board of directors authorizing the bank/NBFI 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.

SECTION 5. Pre-qualification Requirements for a Securities Custodian/Registry:

- a. It must be a bank or a non-bank financial institution under BSP supervision;
- b. It must have complied with the minimum capital accounts required under existing regulations, as follows:

Domestic Banks -	Its adjusted capital accounts is at least equal to the amount required under Subsection X106.1 of the Manual of Regulations for Banks or the amount required for thrift banks operating in Metro Manila, whichever is higher.
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Branches of foreign banks -	The minimum capital required under Sub section X121.4 of the Manual of Regulations for Banks.
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NBFIs -	Adjusted capital of at least P 300 million or such amounts as may be required by the Monetary Board in the future.
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- c. Its risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application (for banks only);
- 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.

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 weeks (8) 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 and unsound practices 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 BSP 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 years;

m. It shall be conducted in a separate unit headed by a qualified person with at least two years experience in custody/registry operations; and

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.

SECTION 6. 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;
- 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; and

In addition to the above basic functions, it may perform the following value-added service to clients:

- i. Acts as a collecting and paying agent: Provided, That the management of funds that may be collected shall be clearly defined in