AMENDMENTS TO THE RULES ON DELIVERY OF SECURITIES

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Adopted: 25 March 2015
Date Filed: 08 April 2015
The Monetary Board, in its Resolution No. 414 dated 12 March 2015, approved the following amendments to the rules on delivery of securities.

Section 1. The provisions of Subsection X235.5 of the Manual of Regulations for Banks (MORB) and Subsection 42352.5 of the Manual of Regulations for Non Bank Financial Institutions (MORNBFI) on delivery of deposit substitute instruments are hereby amended to read as follows:

> "Subsec. X235.5/4235Q.5 Delivery of Securities
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> - Securities, warehouse receipts, quedans and other documents of title which are the subject of quasi-banking functions, such as repurchase agreements, shall be delivered to a BSP accredited securities custodian or an SEC authorized central securities depository in accordance with the guidelines set forth in Appendix 68/Q-38. The securities custodian shall hold the securities in the name of the borrower/seller, but shall keep said securities segregated from the proprietarysecurities account of the borrower/seller if the borrower/seller has an existing securities account with the custodian: Provided, That a bank/QB/non-bank financial institution (NBFI) authorized by the BSP to perform custodianship function may not be allowed to be custodian of securities issued or owned by said bank/QB/NBFI, its subsidiaries or affiliates, or of securities in bearer form.
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> - The guidelines to implement the delivery by the seller of securities to the buyer or to his designated securities custodian or central securities depository are shown in Appendix 68/Q-38.
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> The guidelines on the delivery of government securities to the investor's principal securities account with the Registry of Scripless Securities (RoSS) are in Appendix 68a/Q-38a.
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Section 2. The provisions of Subsection X235.12 of the MORB and Subsection 4235Q.12 of the MORNBFI on repurchase agreements are hereby amended to read as follows:

> "Subsec. X235.12/4235Q.12 Repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments. The following regulations shall govern repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments of banks/QBs as well as sale on a without recourse basis of said securities by banks/QBs.
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> - Proper recording and documentation of repurchase agreements
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> - Responsibilities of the chief executive officer (CEO) or officer of equivalent rank
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(c)

Informed the client that pursuant to Subsecs. X235.5/4235Q.5 and X238.1/4101Q.4:

(i)

Securities sold under repurchase agreements shall be delivered in accordance with the guidelines set forth in Appendix 68/Q-38.

(ii)

Securities sold on a without recourse basis are required to be delivered in accordance with the guidelines set forth in Appendix 68/Q-38.

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Section 3. The provisions of Subsections X238.1 of the MORB and Subsections 4101Q.4 and 4103N.3 of the MORNBFI on without recourse transactions are hereby amended to read as follows:

"Subsec. X238.1/4101Q.4/4103N.3 Delivery of securities

- Securities sold on a without recourse basis allowed under Sec. X238/Subsec. 4101Q.3(b) shall be delivered directly to the purchaser or to the purchaser's designated BSP accredited securities custodian or SEC authorized central securities depository in accordance with the guidelines set forth in Appendix 68/Q-38. The securities custodian shall hold the securities in the name of the buyer: Provided, That a bank/QB/non-bank financial institution (NBFl)/other entity authorized by the BSP to perform custodianship function or an SEC-authorized central securities depository may not be allowed to be custodian/depository of securities issued or sold by said custodian or central securities depository, by entities belonging to the same financial conglomerate or banking group as that of the custodian or depository, or of securities in bearer form.

The delivery shall be effected upon payment and shall be evidenced by a securities delivery receipt duly signed by the authorized officer of the custodian/central securities depository and delivered to the purchaser.

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- The guidelines to implement the delivery by the seller of securities to the buyer or to his designated securities custodian or central securities depository are shown in Appendix 68/Q-38.

The guidelines on the delivery of government securities to the investor's principal securities account with the Registry of Scripless Securities (RoSS) are in Appendix 68a/Q-38a.

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Section 4. The provisions of Subsec. X238.3 of the MORB and 4101Q.5 and 4103N.4 of the MORNBFI on Securities custodianship operations are hereby deleted.

Section 5. The provisions of Section X441 of the MORB and Sections 4441 and 4144N of the MORNBFI are hereby amended to read as follows:

"Sec. X441/4441Q/4144N Securities Custodianship and Securities Registry Operations. The following rules and regulations shall govern securities custodianship and securities registry operations of banks/QBs/ NBFIs under BSP regulations.

The guidelines to implement the delivery of securities are provided in Appendix 68/Q-38.

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Section 6. The provisions of Subsec. X441.9 of the MORB and Subsecs. 4441Q.9 and 4144N.9 of the MORNBFl are hereby amended to read as follows:

> "Subsec. X441.9/4441Q.9/4144N.9 Independence of the registry and securities custodian. A BSP-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 BSP-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 or seller of securities held under custody. A bank accredited by BSP as securities custodian, may, however, continue holding securities it sold under the following cases:
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Section 7. The provisions of Subsec. X441.10 of the MORB and Subsecs. 4441Q.10 and 4144N.10 of the MORNBFI are hereby amended to read as follows:

> "Subsec. X441.10/4441Q.10/4144N.10. Registry of Scripless Securities of the Bureau of Treasury. The Registry of Scripless Securities (RoSS) operated by the Bureau of 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 Subsec. X441.9/4441Q.9/4144N.9. Securities registered under the RoSS shall be delivered in accordance with the guidelines set forth in Appendices 68/Q-38 and 68a/Q-38a."

Section 8. Appendix 68 of the MORB and Appendix Q-38 of the MORNBFI are hereby revised to read as follows:

> "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. X441/4441Q/4144N and Subsecs. X235.5/4235Q.5 (2008- 4211Q.4), X235.12/4235Q.12 and X238.1/4101Q.4/4103N.3, and X441.10/4441Q.10/4144N.10)
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> "Section 1. Statement of Policy. Pursuant to the policy of the BSP 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/QBs and NBFls under BSP supervision in their dealings in securities whether they are acting as seller, buyer, agent, or custodian.
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> The guidelines on the delivery of government securities by the selling bank/QBs/NBFls to an investor's Principal Securities Account with the RoSS through the Client Interface System facility are in Appendix 68a/Q-38a.
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> "Section 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:
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> A securities custodian is a BSP-accredited financial institution under BSP 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.
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> It may also perform the value added service of securities lending as agent, subject to the conditions specified under Subsec. X441.6/441Q.6 and Subsec. 4441N.62.
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> 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 transfer 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 issues.[1]

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.

“Section 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 BSP accreditation and is exempted from the independence requirement under the existing BSP regulations.

“Section 4. Delivery of Securities. Pursuant to existing BSP 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.

“Section 5. Modes of Delivery.

- If the securities sold are certificated, delivery shall be effected physically to the purchaser, or to the purchaser’s 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.

- 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) the purchaser’s designated BSP 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.

“Section 6. Client Information. Selling or dealing banks shall inform their clients of the requirements under Sections 3 and 4 above, together with the complete list of all BSP accredited securities custodians or SEC authorized central securities depositories. The selling or dealing bank or NBFI 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 securities custodians or central securities depositories.

“Section 7. Custodianship/Securities Deposit Agreement. The securities owner/purchaser shall enter into a custodianship agreement with a BSP 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).

"Section 8. Compliance with the Anti-Money Laundering (AML) Act of 2001, as amended. Compliance with AML Act of 2001, as amended, by BSP- 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 BSP or the SEC.For purposes of complying with the customer identification requirement, a BSP-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's not precluded from conducting its own Know-Your- Customer (KYC) activities and maintaining direct holding of the KYC information/documents of its clients."

Section 9. Appendix 68a of the MORB and Appendix Q-38a of the MORBNFBI are hereby deleted. Appendix 68b and Appendix Q-38b are renumbered as Appendix 68a/Q-38a, respectively and amended to read as follows:

" The following are the guidelines on the delivery of government securities by the selling bank and/or NBFI under the supervision of the BSP to an investor's Principal Securities Account with the Registry of Scripless Securities (RoSS) through the Client Interface System (CIS) facility as compliance with the requirement of effective delivery under Sec. X441/4441Q/4144N and Subsecs. X235.5/4235Q.5, X235.12/4235Q.12, X238.1/4101Q.4/4103N.3 and X441.12:

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"(b) The dealing bank/NBFI/QB shall provide BTr with the following documents:

(1) Agency Document issued by investor/client if the dealing bank/NBFI/QB is designated as the agent; and
(2) Investor's Undertaking (attached as Annex B)

(c) No new Investors Principal Securities Account shall be created unless the foregoing documents are submitted to the BTr. Otherwise, the dealing bank/QB/NBFI will be subject to the appropriate penalties prescribed under Secs. X441, 4441Q and 4144N, and Subsecs. X235.5/4235Q.5 and X238. 1/4101Q.4/4103N.3."

Section 10. The provisions of Annex A (Memorandum of Agreement) and B (Investor's Undertaking) of Appendix 68b/Q-38b[2] is hereby amended as follows:

"Annex A

MEMORANDUM OF AGREEMENT
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Section 1. Obligations of BTr.

- Receive instruction from the Dealer as authorized by the investor, through the RoSS-CIS for the creation/opening of the Principal Securities Account;

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- Ensure that all government securities bought by investors from the Dealer are accurately recorded under the investor's Principal Securities Account, or to the Securities Custody Account of the investor's designated third-party custodian, or to the Securities Deposit Account of the investor's designated depository.

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Section 2. Obligations of the Dealer

The Dealer shall:

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- Ensure that all the necessary documents executed by the client investor are complete and submitted to BTr upon request;

- Ensure that all government securities sold to investors are delivered to their appropriate Principal Securities Account with the RoSS, or to the account of the investor's designated custodian or securities depository;

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- Acquaint/apprise investors x x x

- Whenever designated as authorized agent and/or settlement bank, ensure confidentiality x x x

- Ensure that all instructions transmitted to BTr concerning the securities account of clients-investors are legal, valid and duly authorized pursuant to an agreement or any written authority executed by the client-investor in favor or the dealer."

" Annex B

NOTE: TO BE SUBMITTED TO THE

BUREAU OF TREASURY

INVESTOR'S UNDERTAKING

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- Hereby agree to execute, the necessary written authority in favor of either the dealing Government Securities Eligible Dealer[3] (GSED) or Securities Dealer[4] for the creation of a Principal Securities Account with the RoSS or for the execution of trade transactions (i.e. buying and selling instructions, including relaying of instructions to "the CUSTODIAN" or "Central Securities Depository" to receive or deliver securities in order to consummate the buy/sell transactions) and to be bound by the provisions of a written authority or any relevant agreement I/we have entered into concerning my/our government security holdings, thereby confirming my/our authority for BTr-RoSS to carry out and execute the acts or instructions referred to in the aforesaid documents;

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And further undertake as follows:

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13. To submit to the BTr the relevant authorizations issued to my/our agent, upon demand of BTr.

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Section 11. Appendix N-7 of the MORNBFI N-Regulations is hereby deleted. The provisions of Item 2 of Appendix 65 of the MORB and Appendix Q-36 of the MORNBFI are hereby amended to read as follows:

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2. Informed the client that pursuant to Subsections X235.5/4235Q.5 and X238.1/4101Q.4:

- Securities sold under repurchase agreements shall be delivered in accordance with the guidelines set forth in

Appendix 68/Q-38;and

- Securities sold on a without recourse basis are required to be delivered in accordance with the guidelines set forth in Appendix 68/Q-38.

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Section 12. Transitory Provision. Within ten (10) calendar days from the effectivity of this Circular, all concerned Banks/NBFIs/QBs shall submit to the BSP a declaration on the status of compliance with the requirements on the delivery of securities sold to clients/investors. Banks/NBFIs/QBs which intend to convert to another mode of delivery shall submit to the appropriate SES department within ten (10) calendar days from the effectivity of this Circular, a Letter of Undertaking (LOU), and plan of actions for an orderly transfer of securities on or before 31 March 2015 including measures undertaken/to be undertaken to ensure that the interests of the investors are adequately protected. The LOU and plan of actions shall be signed by the President or equivalent officer.

Violations of this Section shall subject the Banks/NBFIs/QBs and/or the concerned directors/officers to the penalties provided under Subsection X235.5(b) of the MORB and Subsections 4235Q.5 (b) and 4144N.29 of the MORNBFI.

Section 13. Repealing Clause. This Circular repeals Subsection X238.3, Appendix 68a, Annex A of Appendix 68 of the MORB, 4101Q.5, 4103N.4, Appendix Q-38a and Annex A of Appendix Q-38 and Annex N-7 of the MORNBFI and amends/modifies the provisions of Section X441 and Subsections X235.5, X235.12, X238.1, X441.9, X441.10, Appendices 68, 68b and 65 of the MORB and Sections 4441Q and 4144N and Subsections 4235Q.5, 4235Q.12, 4101Q.4, 4441Q.9, 4441Q.10, 4103N.3, 4144N.9, 4144N.10, Appendices Q-38, Q-38b and Q-36 of the MORNBFI Q and N regulations.

Section 14. Effectivity. This Circular shall take effect immediately after its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:

(SGD) DIWA C. GUINIGUNDO
Officer-in-Charge

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

[2] Renumbered as Appendix 68a/Q-38a under Section 9 of this Circular.

[3] Accredited by the Bureau of Treasury

[4] Licensed by the Securities and Exchange Commission

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