

CANCELLATION OR NON-DELIVERY OF FORWARD SALES CONTRACTS

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Pursuant to M.B. Res. No. 1302 dated October 8, 1997, all commercial banks shall report to the Foreign Exchange Department of the Bangko Sentral ng Pilipinas all cancellations or non-delivery of outstanding forward sales contracts not later than 2 banking days after the cancellation/non-delivery in the attached format.

Commercial banks with expanded derivatives licenses which transact non-deliverable forwards at the onset are exempt from such requirements but shall continue to be governed by Circulars 102, 135, and BSP Circular Letter dated July 22, 1997 unless otherwise amended.

The following are the guidelines to be adopted by the Foreign Exchange Department in determining validity of cancellations/roll-overs:

- a. Eligibility Test — deliverable forward sales of foreign exchange must be contracted, as evidenced by documents, in accordance with the provisions of BSP Circular 1389 (i.e., trade transactions, \$25,000 sale of foreign exchange, etc.)
- b. Frequency Test — the reasonableness of the roll-overs/cancellations shall be based on the results of the evaluation of the justification/explanation submitted by banks as evidenced by appropriate documents.
- c. Counterparty Test — the cancellation of forward sales contract must be duly acknowledged by the counterparty to the contract as shown in documents submitted by banks, e.g., there should be conforme of counterparty as evidenced by the counterparty signature on pertinent documents.
- d. Mark-to-Market Test — the booking or recording in the books of accounts of the profit or loss on contracted forward sales transactions and cash flows/settlement to counterparties must be fully supported by appropriate documents such as authenticated copy of debit/credit tickets, schedules showing among others, mark to market valuation computation, etc.

Administrative Sanctions

Failure to comply with the above requirements shall result in the exclusion of the forward sales contracts in the computation of the consolidated daily foreign exchange position of banks starting Day 1, i.e., when the individual contracts were entered into.

The following administrative sanctions provided under Circular Letter dated July 10, 1992, as amended by M.B. Resolution No. 868 dated July 16, 1997, shall be imposed if the prescribed limits in the overbought/oversold positions are exceeded as a result of the recomputation:

- a. First Offense — The bank shall be imposed a monetary penalty of P5,000 per day starting the next banking day after the violation was committed until it is corrected.

The bank's opening of new Import Letter of Credit shall be suspended for a period of 15 calendar days. The officer(s) responsible for such violation shall be suspended for a period of 30 calendar days.

b. Second Offense — A bank that has committed a first violation commits a second violation when it is again in a net overbought or net oversold position in excess of the prescribed limit and fails to settle its excess overbought/oversold FX position the next banking day. The bank's opening of new Import Letters of Credit shall be suspended for a period of thirty (30) calendar days and it shall be imposed a monetary penalty of P5,000.00 per day computed in the same manner as provided in (a) above. If the officer(s) responsible for the second violation, is/are the same officers responsible for the first violation, he or she (they) shall be suspended for a period of ninety (90) calendar days.

c. Subsequent offenses — The bank's opening of new Import Letters of Credit shall be suspended for a period of ninety (90) calendar days and it shall be imposed a monetary penalty of P5,000.00 per day until the net overbought or net oversold FX position in excess of prescribed limit is corrected, computed in the same manner as provided in (a) above.

The officer(s) responsible for subsequent offenses, if also responsible for the first and second offenses, shall be suspended for 180 calendar days.

d. Banks shall be duly advised by the Foreign Exchange Department of their violations and the corresponding penalties imposed for such violations.

e. The monetary penalty shall be paid to the BSP Cash Department within three (3) banking days from receipt of said advice, upon issuance of the payment order by FED.

f. For purpose of Item (a), (b), and (c) above, all banks are instructed to submit immediately to FED the name/s of officer/s responsible for the compliance by banks with Circular 1327, as amended.

Commercial banks engaging in deliverable forward sales contract without authority as provided under BSP Circular 102 dated December 29, 1995, as amended, shall be imposed a monetary penalty of P30,000.00 per day from the date the contract was entered into until the violation is corrected.

This Circular shall take effect immediately.

Adopted: 24 Oct. 1997

(SGD.) GABRIEL C. SINGSON
Governor

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