

CLARIFICATORY REGULATIONS GOVERNING SECURITIES CUSTODIANSHIP OPERATIONS OF BANKS AND NON-BANK FINANCIAL INSTITUTIONS

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Pursuant to Monetary Board Resolution No. 1415 dated 30 September 2004, the following clarificatory regulations governing securities custodianship operations of banks and non-bank financial institutions under the supervision of the Bangko Sentral ng Pilipinas (BSP), are hereby issued as follows:

SECTION 1. Pursuant to the provisions of Subsecs. X 238.2 of the Manual of Regulations for Banks, as amended by Circular No. 392 dated 23 July 2003, and Subsecs. 4101Q.4 and 4101N.3 of the Manual of Regulations for Non-Bank Financial Institutions, as amended by Circular No. 450 dated 6 September 2004, securities sold on a without recourse basis shall be delivered to the purchaser, or to his designated custodian duly accredited by the BSP: Provided, That a bank/other entity authorized by the BSP to perform custodianship function may not be allowed to be custodian of securities issued or sold on a without recourse basis by said bank/entity, its subsidiaries or affiliates, or of securities in bearer form. Existing securities being held under custodianship by banks/ other entities under BSP supervision, which are not in accordance with said regulation, must therefore, be delivered to a BSP accredited third party custodian. However, banks and other financial institutions under BSP supervision may maintain custody of existing securities of their clients who are unable or unwilling to take delivery pursuant to the provisions of Circular No. 392 but who declined to deliver their existing securities to a BSP accredited third party custodian subject to the following conditions:

- a. the custody arrangements with clients have been in existence prior to the effectivity date of this Circular;
- b. the dealing bank/NBFI under BSP supervision had been informed in writing by the client that he is not willing to have his existing securities delivered to a third party custodian;
- c. any BSP regulated institution shall not enter into securities transactions with a client who has outstanding securities not delivered to a BSP accredited third party custodian; and
- d. it shall be the responsibility of any BSP regulated institution to satisfy itself that the person purchasing securities from it has no outstanding securities holdings which were not delivered to a BSP accredited third party custodian.

SECTION 2. The provisions of Section 12 of Circular No. 428 dated 27 April 2004 are hereby amended, as follows:

For purposes of compliance with the requirements of R.A. No. 9160, otherwise known as the "Anti-Money Laundering Act of 2001", as amended, particularly the provisions regarding customer identification, record keeping and reporting of suspicious transactions, a BSP-accredited custodian may rely on referral by the seller/issuer of securities: Provided, THAT IT MAINTAINS A RECORD OF SUCH REFERRAL TOGETHER WITH THE MINIMUM IDENTIFICATION, INFORMATION/DOCUMENTS REQUIRED UNDER THE LAW AND ITS IMPLEMENTING RULES AND REGULATIONS.

SECTION 3. A BSP accredited custodian must maintain accounts only in the true and full name of the owners of the security. However, said securities owners may be identified by number or code in reports and correspondences

to keep his identity confidential.

SECTION 4. Securities subject of pledge and/or deed of assignment as of date of this Circular, may be held by a lending bank up to the original maturity of the loan or full payment thereof, whichever comes earlier.

SECTION 5. Sanctions - Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively of R.A. No. 7653 (The New Central Bank Act), violation of any provision of this Circular shall be subject to the following sanctions/penalties.

First Offense -

- a. Fine of P10,000.00 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- b. Reprimand for the directors/officers responsible for the violation.

Second Offense -

- a. Fine of P20,000.00 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- b. Suspension for ninety (90) days without pay of directors/officers responsible for the violation.

Subsequent Offenses -

- a. Fine of P30,000.00 a day for the institution for each violation from the date the violation was committed up to the date it was corrected.
- b. Suspension or revocation of the authority to act as securities custodian and/or registry; and
- c. Suspension for one hundred twenty (120) days without pay of the directors/officers responsible for the violation.

SECTION 6. Effectivity

This Circular shall take effect fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation.

Adopted: 14 Oct. 2004

(SGD.) RAFAEL B. BUENAVENTURA
Governor

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