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GUIDELINES FOR THE ISSUANCE OF UNSECURED SUBORDINATED DEBT (USD) ELIGIBLE AS TIER 2 (SUPPLEMENTARY CAPITAL)

BSP MEMORANDUM, February 17, 2003

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Pursuant to Monetary Board Resolution No. 150 dated 30 January 2003, the guidelines for the issuance of unsecured subordinated debt (USD) eligible as Tier 2 (supplementary) capital under items b.b.1 (8) and b.b.2(1), Subsection X 116.1 of the Manual of Regulations for Banks (MOR) are hereby issued, as follows:

A. Minimum Features of USD

a. Form - A USD that will be publicly distributed may either be scripless in form or evidence by certificates such as: promissory note, debenture or other appropriate certificate of indebtedness. A USD in scripless form shall comply with the provisions of R.A. No. 8792, otherwise known as the “Electronic Commerce Act”, particularly on the existence of an assurance on the integrity, reliability and authenticity of the USD in electronic form. An independent third party USD Registry shall maintain unissued USD Certificates and the USD Registry Book, which must be Electronic if the USD is scripless in form. A USD that will be issued privately or on a negotiated basis shall be evidenced by certificates.

All USD shall be registered in the name of individuals or entities and pre-numbered serially.

b. Denomination - The USD must be issued in minimum denominations of Five Hundred Thousand Pesos (P500,000.00) or its equivalent if denominated in a foreign currency.

c. Mandatory Provisions - If the USD is not scripless in form, the following provisions must appear in bolder prints on the face of every note, debenture or other certificate evidencing the same:

> i. This obligation is not a deposit and is not insured by the Philippine Deposit Insurance Corporation (PDIC); and
>
> ii. This obligation is subordinated to the claims of depositors and ordinary creditors, unsecured, not covered by the guaranty of (name of Bank) or its subsidiaries and affiliates, and ineligible as collateral for a loan granted by (name of Bank), its subsidiaries and affiliates.

If the USD is scripless in form, the foregoing provisions/information shall be furnished every buyer/investor in a separate written instrument receipt of which must be duly acknowledged by him.

d. Term - The minimum maturity of a USD shall be ten (10) years for Upper Tier 2 capital and five (5) years for Lower Tier 2 capital.

B. PRIOR BANGKO SENTRAL NG PILIPINAS (BSP) APPROVAL

> No USD shall be issued without the prior approval of the BSP.

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C. PRE-QUALIFICATION REQUIREMENTS OF ISSUING BANK

A bank applying for authority to issue a USD shall comply with the following requirements:

1. It has complied with the minimum amount of capital required under Subsection X 106.1 of the MOR or its paid-in capital is at least equal to the amount required therein.

2. It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system.

3. It is a locally incorporated bank: Provided, That it must have quasi-banking authority if it is not a universal bank or commercial bank and it is applying for authority to issue USD to more than nineteen (19) investors.

D. PUBLIC ISSUANCE OF UNSECURED SUBORDINATED DEBT

Public issuance of USD is an issuance offered to the general public, which may or may not be qualified investors/buyers as hereinafter defined. The Issuing Bank must be rated by an independent credit rating agency recognized by the BSP and a Public Trustee shall be appointed for investor protection.

1. Application for Authority

a. The application shall be signed by the President or officer of equivalent rank of the applicant Bank;

b. The application for authority on each USD issue/issue program shall be filed with the appropriate supervising and examining department of the BSP: Provided, That the period of an issue program of two (2) or more tranches shall not exceed one (1) year from date of approval; and

c. The application shall be accompanied by:

> 1. A certified true copy of the resolution of the Issuing Bank's board of directors authorizing the issuance of the USD indicating, among others, the issue size, terms and conditions, offering period, purpose or intended use of proceeds thereof, the names of the Underwriter/Arranger, USD Registry, Selling Agent(s) and Market Maker(s), and Public Trustee;
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> 2. A certification by the Corporate Secretary that the issuance of the USD has been approved by the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock of the Issuing Bank if the USD has convertibility feature;
>
> 3. A written confirmation from the President or officer of equivalent rank of the Issuing Bank stating that all the conditions for USD under item b.b.1 (8) or item b.b.2(1), Subsection X116.1 of the MOR are complied with and that such conditions shall be contained in the USD Certificates if the USD is not in scripless form, in the Information Disclosure and Purchase Advice;
>
> 4. A written undertaking from the President or officer of equivalent rank of the Issuing Bank not to support, directly or indirectly, by extending loans, issuing payment guarantees or otherwise, the buyer/holder of the USD of the Issuing Bank;
>
> 5. A written confirmation from the President or officer of equivalent rank of the Issuing Bank stating that the designated Underwriter/Arranger, USD Registry, Selling Agent(s) and Market Maker(s) were provided with a complete list of subsidiaries and affiliates of the Issuing Bank including their subsidiaries and affiliates;
>
> 6. A written undertaking from the President or officer of equivalent rank of the Issuing Bank to update the above-mentioned list within three (3) banking days from the date of change in composition thereof; and

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7. Specimen of the USD.

2. Additional Requirements for the Issuance of USD

After a bank's application to issue a USD has been approved, the applicant shall submit the following additional requirements to the appropriate supervising and examining department of the BSP:

a. At least fifteen (15) days before the date of offering:

1. A written confirmation from the President or officer of equivalent rank of the Issuing Bank stating that the bank has been rated by an independent credit rating agency duly recognized by the BSP;

2. Information disclosure of the USD issuance prepared by the Underwriter/Arranger;

3. Promotional materials;

4. Specimen of the proposed Purchase Advice and Registry Confirmation; and

5. Copy of the agreements between the Issuing Bank and the Underwriter/Arranger/USD Registry/Selling Agent(s)/Market Maker(s), and Public Trustee.

The BSP reserves the right to suspend the date of offering, within the fifteen (15) banking day period from submission of the above-mentioned requirements.

b. Within ten (10) banking days after issuance of the initial and subsequent tranches:

1. A written notice of the actual date of issuance/offering of each initial and subsequent tranches.

3. Requirements for Other Parties Involved

a. Underwriter/Arranger

1. It is either a universal bank or an investment house: Provided, That if an offering is on a best effort basis, the Arranger may also be a commercial bank: Provided, further, That if an offering is denominated in foreign currency, the Underwriter/Arranger may also be any reputable international investment bank.

2. It must be an independent third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine the objective conduct of due diligence.

3. If Underwriter, it must have adequate risk management and must be well capitalized, which for a local Underwriter, shall be evidenced by compliance with the risk based capital adequacy ratio prescribed under Sec. X116 of the MOR for the past sixty (60) days immediately preceding the date of application where applicable.

b. USD Registry

1. It may be a universal bank, a commercial bank, or such other specialized entity that may be qualified by the Monetary Board.

2. It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

3. It must not be an Underwriter, a Selling Agent or a Market Maker of the USD.

4. It must have adequate facilities and the organization to do the following:

i. maintain Certificates of unissued USD and the Registry Book which must be electronic if the USD is in scripless form;

ii deliver transactions within the agreed trading period; and

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iii. issue Registry Confirmations and USD Certificates if they are not in scripless form to buyers/holders of USD.

5. It must have a CAMELS Composite Rating of at least 3 in the last regular examination, where applicable.

c. Selling Agent

1. It may be any financial institution with dealership or brokering license and is under the supervision of the BSP.

2. It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

d. Market Maker

1. It must be a financial institution with a dealership or brokering license and is under the supervision of the BSP.

2. It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

3. It must have adequate risk management and must be well capitalized as evidenced by compliance with the risk based capital adequacy ratio prescribed under Sec. X116 of the MOR for the past sixty (60) days immediately preceding the date of application where applicable.

There is no need for a Market Maker if the USD is to be held on to maturity: Provided, That this condition is properly disclosed in the Purchase Advice, Registry Confirmation and Prospectus/Information Disclosure.

e. Public Trustee

1. It must be a financial institution authorized by the BSP to engage in trust and other fiduciary business.

2. It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

3. It must have adequate risk management and must be well capitalized as evidenced by compliance with the risk-based capital adequacy ratio prescribed under Sec. X 116 of the MOR for the past sixty (60) days immediately preceding the date of application where applicable.

4. It may also be the USD Registry.

5. A Public Trustee is mandatory if USD shall be offered to the general public and optional if offering will be limited to qualified investors/buyers.

4. Functions/Responsibilities of Other Parties Involved

The respective parties shall have among others, the following functions/responsibilities:

a. Underwriter/Arranger

1. Conducts due diligence on the Issuing Bank and determines the valuation/pricing of the primary issue;

2. Prepares the prospectus/information disclosure, including updates for multi-tranches USD issues;

3. Formulates the distribution/allocation plan for the initial offering and ensures proper and orderly distribution of the primary offering of the USD;

4. Disseminates information to prospective investors of USD on the terms and conditions of the issue (including information of non pre-termination at the initiative of the holder and the liquidity mechanism in

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secondary trading) and the rights and obligations of the holder, issuer, Underwriter/Arranger, USD Registry, Selling Agent, Market Maker and Public Trustee; and

5. When selling to its clients, it must perform the functions/responsibilities of the Selling Agent under item c hereof.

b. USD Registry

1. Keeps unissued USD certificates and maintains USD Registry book, which must be electronic if USD is scripless in form;

2. Records initial issuance of the USD and subsequent transfer of ownership;

3. Issues USD Certificates for primary offerings if USD is not scripless in form;

4. Issues Registry Confirmation to buyers/holders;

5. Functions as paying agent for periodic interest and principal payments;

6. Monitors compliance with the prohibitions on holdings of USD, as prescribed under item H hereof; and

7. Submits within ten (10) banking days from end of reference month, an exception report on item H hereof (Prohibitions on Holdings of USD) to the appropriate supervising and examining department of the BSP. This report shall be classified as a “Category B” report.

c. Selling Agent

1. Verifies identity of each investor to ascertain that item H hereof (Prohibitions on Holdings of USD) is not violated and applies appropriate standards to combat money laundering as required under existing BSP regulations;

2. Determines the suitability of the investor and ensures that he fully understands the features of the USD and the risk involved therein; and

3. Issues the Purchase Advice for the primary offering of the USD to the buyer and sends a copy thereof to the USD Registry.

The sale or distribution of USD may also be performed by the issuer through its head office and branches subject to the following conditions:

i. The in-house distribution shall not exceed fifty percent (50%) of the total issue;

ii. The sale/distribution must be done under the supervision of an officer of the Issuing Bank who is capable of determining the suitability of the investor and ensuring that he fully understands the risk in USD;

iii. All personnel assigned to distribute/sell USD must be capable of determining the suitability of the investor and ensuring that he fully understands the risk in USD; and

iv. It must also perform the functions/responsibilities of the Selling Agent.

d. Market Maker

1. Sets an independent pricing for the secondary trading of USD;

2. Posts daily the bid and offer prices for the USD on the screen of at least one of the information providers until the operation of a fixed income exchange for USD;

3. Verifies identity of each investor to ascertain that item H hereof (Prohibitions on Holdings of USD) is not

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violated and applies appropriate standards to combat money laundering as required under existing BSP regulations;

4. Determines the suitability of the buyer and ensures that he fully understands the risk involved in a USD;

5. Issues the Purchase Advice for the secondary trading of the USD to the buyer and sends a copy thereof to the USD Registry; and

6. Ensures secondary market transfers and registration in coordination with the USD Registry.

e. Public Trustee

1. Monitors compliance of the Issuing Bank with the terms and conditions of the USD;

2. Monitors compliance of the other parties with their functions and responsibilities prescribed under this Memorandum;

3. Reports regularly to USD holders non-compliance of the Issuing Bank with the terms and conditions of the USD and such other developments that adversely affect their interest and advise them of the course of action they should take to protect their interest; and

4. Act on behalf of the USD holders in case of bankruptcy of the Issuing Bank.

5. Change of Underwriter/Arranger, USD Registry, Selling Agent(s), Market Maker(s)

After an application for authority to issue a USD has been approved by the BSP, the Issuing Bank cannot change its Underwriter/Arranger, USD Registry, Selling Agent(s), Market Maker(s) and Public Trustee without prior BSP approval.

6. Agreements Between Issuing Bank and Other Parties Involved

The agreements between the Issuing Bank and the USD Registry/Selling Agent(s) and Market Maker(s), Public Trustee shall comply with the provisions of Sec. X169 of the MOR on bank service contracts. The Issuing Bank shall be liable to investors for any damages caused by actions of the USD Registry, Selling Agent(s) and Market Maker(s), which are contrary to the agreements entered into.

7. Purchase Advice and Registry Confirmation

The Purchase Advice and Registry Confirmation shall contain all the terms and conditions on the issuance of USD and shall conspicuously state the following caveat:

a. This USD is not a deposit and is not insured by the PDIC.

b. This USD is unsecured and not covered by a guarantee of the Issuer/Underwriter/Arranger or related party of the Issuer/Underwriter/Arranger.

c. In case of insolvency, this USD is subordinated in the right of payment of principal, and interest to all depositors and other creditors of the bank, except those creditors expressed to rank equally with, or behind holders of the USD.

d. This USD is not eligible as collateral for a loan made by the Issuing Bank, its subsidiaries or affiliates.

e. This USD cannot be terminated by the holder nor by the Issuing Bank before (maturity date). However, negotiations/transfers from one holder to another do not constitute pre-termination.

(Item D.7.e above shall apply if the Issuing bank commits no pre-termination of the USD. Otherwise it shall read

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as follows):

This USD cannot be terminated by the holder before (maturity date). However, it may be pre-terminated at the instance of the Issuing Bank upon:

a. prior approval of the BSP subject to the following conditions:

i. The bank's capital adequacy ratio is at least equal to the required minimum ratio; and

ii. The debt is simultaneously replaced with the issues of new capital which is neither smaller in size nor of lower quality than the original issue.

b. prior notice to holders on record.

Negotiations/transfers from one holder to another do not constitute pre-termination.

f. The holders/owners of this USD cannot set off any amount they owe to the Issuing Bank against this USD.

g. All negotiations/transfers of this USD prior to maturity must be coursed through a Market Maker until the operation of a fixed income exchange.

h. The payment of principal may be accelerated on this USD only in the event of insolvency of the Issuing Bank.

i. This USD may be converted into common or preferred shares or payment of principal and interest thereof may be deferred at the instance of the Issuer if the capital adequacy ratio of the Issuing Bank becomes less than the required minimum ratio.

j. The payment of interest on this USD shall be deferred in the event of elimination of dividends on all outstanding common or preferred stocks of the Issuing Bank.

k. The payment of principal and interest due on this USD shall not be made if the Issuing Bank is insolvent.

N.B. The last three items (i.e., i, j, and k) are applicable only to USD qualifying under Upper Tier 2 capital. The foregoing information shall also be shown in the Prospectus/Information Disclosure.

8. Pre-termination by the Issuer

a. The Issuing Bank may pre-terminate the USD subject to the following conditions:

1. The Information Disclosure, Purchase Advice and Registry Confirmation shall include the information that the Issuing Bank has the option to pre-terminate the USD;

2. Compliance with items b.b.1(8)vi or of b.b.2(1) vi, as may be applicable, of Subsection X116.1 of the MOR;

3. Prior notification of thirty (30) banking days or more to holders of record; and

4. Notwithstanding any agreement to the contrary, the Issuer shall shoulder the tax due, if any, on the interest income already earned by the holders.

b. Within ten (10) banking days after the completion of the pre-termination transaction, the Issuing Bank must submit a written notice to the appropriate BSP supervising and examining department of the following:

1. Actual pre-termination date; and

2. New capital composition.

9. Primary Offering/Secondary Trading

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a. The primary offering of a USD shall be executed through an Underwriter under a firm commitment or through an Arranger on a best effort basis. Initial sale/distribution of USD shall be made by a Selling Agent, the Underwriter/Arranger or, to a limited extent, the Issuing Bank itself. Subsequent negotiations in secondary trading must be executed through authorized Market Maker(s) until the operation of a fixed income exchange.

The primary offering as well as the secondary trading of a USD must be supported by Purchase Advice to be issued by the Selling Agent or the Market Maker, as the case may be, with the original given to the buyer and a second copy to the USD Registry. Upon presentation by the buyer of the original copy of Purchase Advice, the USD Registry shall:

i. record the primary issuance in the Registry Book and issue a Registry Confirmation and the corresponding USD certificate to the buyer if it is not scripless in form; and

ii. register the transfer of ownership in the USD Registry Book and issue a Registry Confirmation to the buyer, in the case of secondary trading.

E. PRIVATE OR NEGOTIATED ISSUANCE OF UNSECURED SUBORDINATED DEBT

Private or negotiated issuance of USD includes:

- Private or negotiated issuance of USD is the negotiated or private issuance to not more than nineteen (19) qualified investors/buyers, whether individuals or institutions: Provided, That no resale or negotiation of the USD shall be allowed; and

- Qualified issuance of USD is the issuance by universal banks, commercial banks and institutions with quasi-banking authority to qualified institutional investors/buyers. There is no limit on the number of qualified institutional investors/buyers and on the sale or negotiation of the USD: Provided, That such sale or negotiation shall only be made to another qualified institutional investor/buyer.

1. Application for Authority of the Issuing Bank

a. The application shall be signed by the President or officer of equivalent rank of the Issuing Bank.

b. The application for authority on each negotiated USD issue shall be filed with the appropriate supervising and examining department of the BSP.

c. The application shall be accompanied by:

1. A certified true copy of the resolution of the Issuing Bank's board of directors authorizing the private/negotiated issuance of USD indicating, among others, the amount, duration/maturity, interest rate, purpose or intended use of proceeds of the USD;

2. A certification by the Corporate Secretary that the issuance of the USD has been approved by the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock of the Issuing Bank if the USD has convertibility feature;

3. A written confirmation from the President or officer of equivalent rank of the Issuing Bank stating that all the conditions for USD under item b.b.1 (8) excluding item (xi) or item b.b.2(1) excluding item (viii) of Subsection X 116.1 of the MOR are complied with and that such conditions shall be contained in the USD Certificates, Prospectus/Information Disclosure and Debt Agreement/Contract;

4. An undertaking from the President or officer of equivalent rank of the issuing Bank that the USD shall be issued only to qualified investors/buyers;

5. A certification from the President or officer of equivalent rank of the Issuing Bank that the investor/buyer

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shall not be among those prohibited to hold USD under item H hereof and that the Issuing Bank has applied appropriate standards to combat money laundering as required under existing BSP regulations;

6. A written undertaking from the President or officer of equivalent rank of the Issuing Bank not to support, directly nor indirectly, by extending loans, issuing payment guarantees or otherwise, the buyer/holder of the USD of the Issuing Bank; and

7. Specimen of the proposed Debt Agreement/Contract containing the terms and conditions of the USD Issuance.

2. Additional Requirements for the Private Issuance of Unsecured Subordinated Debt

Within ten (10) banking days after issuance of the USD, the Issuing Bank shall submit the following additional requirements to the appropriate supervising and examining department of the BSP;

a. A written notice of the actual date of full receipt of proceeds, accompanied by a certification from the President or officer of equivalent rank of the Issuing Bank stating that the pre-qualification requirements under item C hereof have been complied with up to the time of full receipt of proceeds;

b. A copy each of the duly signed Debt Agreements/Contracts between the Issuing Bank and the investor/buyer as specified in the application for authority to issue negotiated USD; and

c. A copy of the income tax return of the investor/buyer in case of natural person.

3. Debt Agreement/Contract

The Debt Agreement/Contract shall contain all the terms and conditions on the issuance of USD and shall conspicuously state the following caveat:

a. This USD is not a deposit and is not insured by the PDIC.

b. This USD is unsecured and not covered by a guarantee of the Issuer or related party of the issuer.

c. In case of insolvency, this USD is subordinated in the right of payment of principal and interest to all depositors and other creditors of the bank, except those creditors expressed to rank equally with, or behind holders of the USD.

d. This USD is not eligible as collateral for a loan made by the Issuing Bank, its subsidiaries or affiliates.

e. This USD cannot be terminated by the holder nor by the Issuing Bank before (maturity date).

(Item E.3.e above shall apply if the Issuing Bank commits no pre-termination of the USD. Otherwise it shall read as follows):

This USD cannot be terminated by the holder before (maturity date). However, it may be pre-terminated at the instance of the Issuing Bank upon:

1) prior approval of the BSP subject to the following conditions:

i. The bank’s capital adequacy ratio is at least equal to the required minimum capital ratio; and

ii) The debt is simultaneously replaced with the issues of new capital which is neither smaller in size nor or lower quality than the original issue.

2) prior notice to investors/buyers.

f. This USD cannot be sold or transferred and must be held on to maturity by the investor/buyer (in case of

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negotiated issuance of USD to nineteen (19) or less investors/buyers).

g. This USD may only be sold, transferred or negotiated to another qualified institutional investor/buyer (in case of qualified issuance to institutional buyers).

h. The holders/owners of this USD cannot set off any amount they owe to the Issuing Bank against this USD.

i. The payment of principal may be accelerated on this USD only in the event of insolvency of the Issuing Bank.

j. This USD may be converted into common or preferred shares or payment of principal and interest thereof may be deferred at the instance of Issuer if the capital ratio of the Issuing bank becomes less than the required minimum capital ratio.

k. The payment of interest on this USD shall be deferred in the event of elimination of dividends on all outstanding common or preferred stocks of the Issuing Bank.

l. The payment of principal and interest due on this USD shall not be made if the Issuing Bank is insolvent.

N.B. The last three (3) items (j, k, and l) are applicable only to USD qualifying under Upper Tier 2 capital.

4. Pre-termination by the Issuer

a. The Issuing Bank may pre-terminate the negotiated USD subject to the following conditions:

> 1. The Debt Agreement/Contract shall include the information that the Issuing Bank has the option to pre-terminate the USD;
>
> 2. Compliance with items b.b.1(8) vi or b.b.2(1) vi, as may be applicable, of Subsection X116.1 of the MOR;
>
> 3. Prior notification of thirty (30) banking days or more to lender/investor; and
>
> 4. Notwithstanding any agreement to the contrary, the Issuer shall shoulder the tax due, if any, on the interest income already earned by the holders.

b. Within ten (10) banking days after the completion of the pre-termination transaction, the Issuing Bank must submit a written notice to the appropriate BSP supervising and examining department of the following:

> 1. Actual pre-termination date; and
>
> 2. New capital composition.

5. Functions/Responsibilities of the Issuing Bank

a. Prepares the Prospectus/Information Disclosure on the USD issues;

b. Disseminates to prospective investors/buyers information on the terms and conditions of the USD (including information on no pre-termination at the initiative of the holder, and where applicable the liquidity mechanism in secondary trading) and the rights and obligations of the holder, and the issuer;

c. Keeps unissued USD certificates and maintains USD Register;

d. Records initial issuance of USD and subsequent transfer of ownership;

e. Issues USD Certificates and Registry Confirmation to original investors/buyers;

f. Issues Registry Confirmation to subsequent buyers/holders where applicable;

g. Ensures compliance with item H hereof (Prohibitions on Holdings of USD) and applies appropriate standards to

combat money laundering as required under existing BSP regulations; and

h. Determines suitability of the investors/buyers (original or subsequent) and assures that he fully understands the risk involved in a USD.

F. ISSUANCE OVERSEAS OF UNSECURED SUBORDINATED DEBT

The overseas issuance of USD shall also be subject to the provisions of this Memorandum. Therefore, no overseas issuance of USD by domestic banks shall be allowed if the laws, rules and regulations of the country where said USD will be issued are inconsistent with the provisions of this Memorandum.

G. QUALIFIED INVESTORS/BUYERS

Qualified buyers of, or suitable investors in, a USD can be any of the following:

1. Banks

2. Investment house

3. Insurance Company

4. Pension or retirement fund of other entities which have no subsidiary/affiliate or any other relationship with the Issuing Bank.

5. Investment Company

6. Funds managed by another bank or other entities duly authorized to engage in trust or other fiduciary business.

7. Domestic corporate or institutional investors with total assets of at least P100 million

8. Foreign multilateral organizations such as, the Asian Development Bank and International Finance Corporation.

9. High net worth individual investor/buyer who is sophisticated enough to understand and appreciate the significance of and the risk involved in USD as may be indicated by his/her educational background and/or employment/business experience.

10. Stockholder, director or officer with the rank of at least a Vice-President of the Issuing Bank

H. PROHIBITIONS ON HOLDINGS OF USD

The following persons and entities are prohibited from purchasing/holding USD of the Issuing Bank:

1. Subsidiaries and affiliates of the Issuing Bank including their subsidiaries and affiliates; and

2. Trust and other funds managed by the Trust Department of the Issuing Bank, its subsidiaries and affiliates or other related entities.

For purposes of this Memorandum, an affiliate refers to a related entity linked by means of ownership of at least twenty percent (20%) to not more than fifty percent (50%) of its outstanding voting stock.

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I. ACCOUNTING TREATMENT

Obligations arising from the issuance of USD shall be booked under a new General Ledger account title "Unsecured Subordinated Debt", which shall be presented separately in the financial statements between total liabilities and capital accounts. However, only the net proceeds actually received from debt issues shall be considered as Tier 2 capital. Moreover, if the debt is issued at a premium, the premium shall not be counted as part of Tier 2 capital.

Cost incurred related to the issuance of USD shall be charged to current operations or booked under "Deferred Charges" account to be amortized equally over a period not exceeding five (5) years.

A USD denominated in foreign currency may be recorded in the regular banking unit (RBU) or foreign currency deposit unit (FCDU/EFCDU) of the Issuing Bank: Provided, That if booked in the FCDU/EFCDU, the following conditions shall be strictly observed:

1. The Issuing Bank shall indicate in its application that the USD shall be booked in its FCDU/EFCDU;

2. The USD shall remain in the FCDU/EFCDU books until full settlement; and

3. The USD shall be issued only to non-residents and offshore banking units in accordance with Section 72.2.e of CB Circular No. 1389, as amended.

J. SANCTIONS

Without prejudice to the other sanctions prescribed under Section 37 of R.A. No. 7653 (The New Central Bank Act) and the provisions of Section 16 of R.A. No. 8791, otherwise known as the "The General Banking Law of 2000", sanctions shall be imposed on the Issuing Bank, USD Registry and other parties involved in the transaction for failure to perform their respective functions/responsibilities and the non-disclosure or misrepresentation of information, as follows:

1. On the Issuing Bank

   a. Suspension of its authority to issue remaining tranches, if any;

   b. Disqualification from future issuances of USD;

   c. Disqualification of all outstanding issues as eligible Tier 2 capital; and

   d. Monetary penalty of Thirty Thousand Pesos (P30,000.00) for each violation.

2. On the Underwriter/Arranger

   a. Disqualification from being Underwriter/Arranger for three (3) years; and

   b. Monetary penalty of Thirty Thousand Pesos (P30,000.00) for each violation.

3. On the USD Registry

   a. Disqualification from being appointed as USD Registry for three (3) years; and

   b. Monetary penalty of Thirty Thousand Pesos (P30,000.00) for each violation.

4. On the Selling Agent/Market Maker

   a. Disqualification from being appointed as Selling Agent or Market Maker for three (3) years; and

   b. Monetary penalty of Thirty Thousand Pesos (P30,000.00) for each violation.

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5. On the Public Trustee

a. Disqualification from being appointed as Public Trustee for three (3) years; and

b. Monetary penalty of Thirty Thousand Pesos (P30,000.00) for each violation.

6. On the Certifying Officer — A fine of Five Thousand Pesos (P5,000.00) per banking day from the time of required disclosure up to the time disclosure was made, or from the time misrepresentation was made up to the time the information was corrected, and a possible disqualification if warranted by the gravity of the offense committed.

7. On the Responsible Officer — A fine of Thirty Thousand Pesos (P30,000.00) for participating in or tolerating the non-disclosure or misrepresentation of information, and a possible disqualification by the gravity of the offense committed.

This Memorandum shall take effect after 15 days following the completion of its publication either in the Official Gazette or in a newspaper of general circulation.

Adopted: 17 Feb. 2003

(SGD.) RAFAEL B. BUENAVENTURA
Governor

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