

[**BSP Circular No. 873, March 25, 2015**]

AMENDMENTS TO THE RULES ON DELIVERY OF SECURITIES

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

- a. 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 **proprietary** securities 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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- b. 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 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.

a. Proper recording and documentation of repurchase agreements

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b. 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

a. 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 (NBFi)/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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- b. 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 MORNBFi 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 MORNBFBI 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 MORNBFBI 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)**

“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 NBFIs under BSP supervision in their dealings in securities whether they are acting as seller, buyer, agent, or custodian.

The guidelines on the delivery of government securities by the selling bank/QBs/NBFIs to an investor's Principal Securities Account with the RoSS through the Client Interface System facility are in Appendix 68a/Q-38a.

“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:

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.

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.

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.