

[BSP MEMORANDUM, February 17, 2003]

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

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 evidenced 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.

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;
 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

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

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