



APPENDIX I

SECURITIES AND EXCHANGE COMMISSION

Rule 27

CUSTODIAN OF SECURITIES

Registration Requirements:

- (1) An application for registration as a custodian of securities shall be filed in the designated form and shall be accompanied by:
 - (i) a set of duly completed designated forms to be filed by a minimum of 3 sponsored individuals;
 - (ii) copy of certificate of incorporation certified by the CAC;
 - (iii) copy of Memorandum and Articles of Association certified by the CAC which shall include, among others, power to act as custodian of securities;
 - (iv) copy of CAC form containing names and particulars of directors and certified by the CAC;
 - (v) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
 - (vi) profile of the Company, its promoters and management;
 - (vii) fidelity bond of a value not less than 25% of paid up capital;
 - (viii) sworn undertaking to keep proper records and render returns;
 - (ix) sworn undertaking to abide by the provisions of the Act and these Rules in the discharge of its functions as custodian of securities;

- (x) specimen custodian agreement to be signed with its client;
- (xi) an operational manual, specifying the systems and procedures to be followed for the effective and efficient discharge of its functions, management and mitigation of custody risks, and the independence of its operations from its other businesses, if any;
- (xii) any other document that may be required by the Commission from time to time.

Additional requirements for registration

- (2) An Applicant for registration as Custodian of Securities shall meet the following additional requirements:
 - (a) necessary infrastructure, including vaults for safe custody of securities and information technology capability required to effectively discharge its functions;
 - (b) have in its employment persons with the required qualifications as specified under Rule 16.
 - (c) be an entity duly licenced to carry out banking functions
 - (d) any other requirement as may be specified by the Commission from time to time.
- (3) A person who is carrying on business as custodian of securities before the coming into effect of these Rules shall make an application to the Commission for registration within a period of three months.
- (4) (a) A person referred to in sub-Rule (3) who fails to make an application for registration within the period specified shall cease to carry on any activity as custodian of securities;

- (b) Such a person shall be subject to the directives of the Commission with regard to the transfer of records, documents or securities relating to its activities as custodian of securities in addition to any penalty that may be imposed.

Exemption

- (5) The obligation in this rule to register as a custodian of securities and observe various other safeguards for the benefit of independent capital market investors do not apply to a person who performs custodial service only in the course, or as a necessary part of a profession or business not otherwise constituting investment business or in the course of holding securities as collateral or taking a legal charge over securities as a means of taking security for a loan.

Denial/withdrawal of registration

- (6) Where an applicant for registration as a custodian of securities has been denied registration by the Commission or where a custodian of securities withdraws from the function, it shall:
 - (a) cease to carry on any activity as custodian of securities;
 - (b) be subject to the directives of the Commission with regard to the transfer of records, documents or securities that may be in its custody or control relating to its activity as custodian of securities;
 - (c) comply with withdrawal requirements prescribed in Rule 20A of these Rules;
 - (d) Rule 29(3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of custodian of securities.

Rule 207 A
Regulation of Custodian of Securities

(1) **Definitions:**

"**Client**" means any person who has entered into an agreement with a custodian of securities for custodial services.

"**Custody**" means the safekeeping and administration of securities and other financial instruments on behalf of clients.

"**Custody account**" means an account of a client maintained by a custodian of securities.

"**Custodian of securities**" means a person who has custody, as a bailee, of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities.

For the purpose of this Rule, Custodian of securities shall also include persons having custody of dematerialized and other securities on behalf of its clients.

"**Sub-custodian**" means a custodian that holds securities on behalf of another custodian.

"**Global custodian**" means a custodian that provides custodial services in respect of securities traded and settled not only in the country in which the custodian is located but also in other countries.

"**Custodial services**" in relation to securities means safekeeping of securities of a client and providing services incidental thereto.

"**Custody risk**" means the risk of loss on securities in the process of rendering custodial services.

“Delivery” means final transfer of a security or financial instrument.

“Delivery versus payment” means a link between securities transfers that ensure that delivery occurs if, and only if, payment occurs.

“Dematerialization” means the elimination of physical certificates or documents of title that represent ownership of securities so that securities exist only as book entry records.

“Failed transaction” means a securities transaction that does not settle on the contractual settlement date.

“Final settlement” means the discharge of an obligation by a transfer of funds and a transfer of securities that have become irrevocable and unconditional.

“Immobilization” means placement of securities in a central securities depository so that subsequent transfers can be made by book entry.

(2) **Functions**

Registered Custodian of Securities shall have the following functions, amongst others:

- i. maintaining accounts of securities of a client;
- ii. collecting the benefits, entitlements or rights accruing to the client in respect of securities;
- iii. keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client;
- iv. maintaining and reconciling records of the services referred to in sub-clauses (i) to (iii) above;
- v. Settlement of investment obligations;

- vi. ensuring compliance with fund-specific and other contractual obligations with its clients.

Code of conduct

- (3) A custodian of securities shall abide by the Code of Conduct as set out in Schedule IX to these Rules and Regulations.

Related functions

- (4) (i) Besides custody of securities, a custodian of securities shall not carry on any activity other than activities relating to rendering of financial services.
- (ii) Where a custodian of securities is carrying on any activity besides that of custody of securities and transactions incidental thereto, then,
 - (a) all activities relating to its business as custodian of securities shall be separate and segregated from all other activities;
 - (b) its officers and employees engaged in providing custodial services shall not be engaged in any other activity carried on by it.

Internal Controls

- (5) (a) A custodian of securities shall have adequate internal control measures to prevent any manipulation of records and documents, including audits for securities and rights or entitlements arising from the securities held by it on behalf of its client.
- (b) A custodian of securities shall have appropriate safekeeping measures to ensure that such securities are protected from theft and other hazards.

Monitoring, review, evaluating and inspecting systems and controls

- (6) (a) A custodian of securities shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's internal controls.
- (b) The custodian of securities shall cause to be inspected annually the mechanism referred to in (a) above, by an expert, and forward the report to the Commission within three months from the date of inspection.
- (c) An **expert** for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

Prohibition of assignment

- (7) A custodian of securities shall not assign or delegate its functions as a custodian of securities to any other person unless such person is a registered custodian or depository of securities and has the written consent of the client to do so.

Separate custody account

- (8) A custodian of securities shall
 - (a) open a separate custody account in its record for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client or with the proprietary assets of the Custodian;
 - (b) separately identify in its records, investments held as collateral from the assets of the custodian and from other investments held in custody;
 - (c) provide its clients at agreed intervals, with a record of their individual entitlements to investments and separately identify any investments which have been lent or which are held as collateral and are not available to be delivered.

Agreement with the client

- (9) A custodian of securities shall enter into a written agreement with each client on whose behalf it is acting and every such agreement shall provide for the following matters, amongst others:
- (a) title
 - (b) acceptance or release of securities from the custody account;
 - (c) acceptance or release of monies from the custody account;
 - (d) receipt of rights or entitlements relating to securities of the client;
 - (e) the manner of registration of securities in respect of each client;
 - (f) details of the insurance (if any) to be provided for by the custodian of securities;
 - (g) arbitration clause;
 - (h) fees;
 - (i) reporting obligations of the custodian;
 - (j) manner in which securities under custody can be used as collateral;
 - (k) treatment of non market related losses in relation to custody assets;
 - (l) a statement that the terms and conditions of the agreement are in conformity with the provisions of the Investment and Securities Act, and the Commission's Rules and Regulations made thereunder;
 - (m) other matters relevant and/or material to the custody contract.

Maintenance of records and documents and furnishing of information

- (10) (i) A custodian of securities shall maintain details of the following records:
- (a) securities received and released on behalf of each client;
 - (b) monies received and released on behalf of each client;
 - (c) rights or entitlements of each client arising from the securities held on behalf of the client;
 - (d) registration of securities in respect of each client;
 - (e) ledger for each client;
 - (f) instructions received from clients and communication with clients;
 - (g) reports submitted to the Commission;
 - (h) securities used as collateral;
 - (i) such other documents and/or reports that the Commission may require from time to time.
- (ii) A custodian of securities shall notify the Commission of the place where the assets/records and documents referred to in (i) above are maintained.

Preservation of Records

- (11) Without prejudice to the provisions of any enactment and these Rules, a custodian of securities shall preserve the records and documents maintained under sub-rule (10) for a minimum period of seven years from the date of last entry.

Disclaimer of Liability

- (12) A Custodian of securities is prohibited from disclaiming responsibility for losses of investments due to fraud, willful default or negligence arising from its acts or omission or those of its agents appointed by it in the course of performing its custodial services.

Responsibility for Shortfall in Investment

- (13) A Custodian of securities shall be responsible for irreconcilable shortfalls in the quantity of investments identified on a reconciliation of customers' investments.

Use of Nominees

- (14) A Custodian who uses nominee(s) to hold its clients' investments shall disclose to the Commission in advance the names of the nominee(s) it intends to use and ensure that:
- (a) the nominee acts only in accordance with its clients' instructions;
 - (b) each nominee is dedicated to the holding and to activities relating to the holding of investments;
 - (c) it accepts responsibility in writing to its clients for any of the nominees used, to the same extent as for its own action; and
 - (d) any report on compliance by the Custodian with rules and regulations relating to clients' assets covers the nominee(s) as well.

Safe Keeping of Records

- (15) A Custodian or Sub-custodian of securities shall ensure that:
- (a) documents of or evidencing title are kept, or arrangement are made for them to be kept safe, until dispatched either to the client or in accordance with the clients' instructions;

- (b) it, or the appointed Sub-custodian acts only on instructions given in accordance with the agreed procedures;
- (c) where custodial records are kept electronically, take precautions necessary to ensure that continuity in record keeping is not lost or destroyed and that sufficient back up of records is available outside the principal place of business of the custodian.

CODE OF CONDUCT FOR CUSTODIAN OF SECURITIES

A custodian of securities shall:

1. maintain the highest standard of integrity, fairness and professionalism in the discharge of its duties;
2. be prompt in distributing dividends, interest, or any income received or collected by it on behalf of its clients on the securities held in custody;
3. be continuously accountable for the movement of securities in and out of custody account, deposit, and withdrawal of cash from the client's account and shall provide complete audit trail, whenever called for by the client or the Commission;
4. establish and maintain adequate infrastructural facilities to be able to discharge custodial services to the satisfaction of clients, and the operating procedures and systems of the custodian of securities shall be well documented and backed by operations manuals;
5. maintain client confidentiality in respect of the client's affairs;
6. create and maintain the records of securities held in custody in such manner that the tracing of securities or obtaining duplicate title documents is facilitated, in the event of loss of original;
7. extend to other custodial entities, depositories and clearing organisations, all such co-operation that is necessary for the

- conduct of business in the areas of inter custodial settlements, transfer of securities and transfer of funds;
8. ensure that an arms length relationship is maintained, both in terms of staff and systems, from its other businesses;
 9. exercise due care and diligence in safekeeping and administration of the assets of clients in its custody for which it is acting as custodian.
 10. not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non real-time.