



SECURITIES (REPURCHASE AGREEMENTS) RULES (NO. 1 of 2020)

FEBRUARY 2020

THE SECURITIES ACT, 2001
SECURITIES (REPURCHASE AGREEMENT) RULES 2020
No. 1 OF 2020

IN EXERCISE of the powers conferred under section 161(b) of the Securities Act 2001 the Commission makes the following procedural Rules to govern the issue of Repurchase Agreements in the ECSM.

PART I – PRELIMINARY

1.0 Citation and Commencement

(1) These Rules may be cited as the Securities (Repurchase Agreement) Rules No. 1 of 2020 and shall come into force on the date prescribed by the Commission.

2.0 Interpretation

(1) In these Rules:

“Business Day” means any day other than a Saturday or Sunday and such day has not been declared a public holiday in any member territory in the ECCU;

“Collateral Securities” means the securities, financial instruments or deposits assigned, pledged or delivered by the Repo Seller to the Repo Buyer;

“Commission” means the Eastern Caribbean Securities Regulatory Commission (ECSRC), established under *Article 3* of the ECSRC Agreement 2000;

“Currency Union” refers collectively to the member territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines;

“Dematerialized” means that the ownership and transfer of securities is evidenced without a certificate;

<i>“ECCB”</i>	means the Eastern Caribbean Central Bank;
<i>“ECCSD”</i>	means the Eastern Caribbean Central Securities Depository;
<i>“ECSM”</i>	means the Eastern Caribbean Securities Market;
<i>“ECSE”</i>	means the Eastern Caribbean Securities Exchange;
<i>“foreign security”</i>	means a security issued by a company or government outside of the Currency Union;
<i>“foreign regulatory authority”</i>	means an authority in a jurisdiction outside of the Currency Union that exercises regulatory or supervisory functions over entities carrying on banking, insurance, securities or other financial services;
<i>“Initial Margin”</i>	means an agreed percentage discount applied to the Market Value of collateral securities to fix the Purchase Price at the start of a Repo. An initial margin is expressed as the percentage difference between Market Value and the Purchase Price;
<i>“Institutional Investor”</i>	means: <ul style="list-style-type: none"> (a) a body corporate, limited partnership, unit trust or other business entity, which is incorporated, registered or otherwise established under the laws of a member territory; (b) any bank, credit or other financial institution licensed under the Banking Act; (c) any non-bank entity, organization or an incorporated body of persons that is formed under the laws of a member territory of the ECCU; (d) a government entity; or (e) any foreign person, body corporate, organisation or financial institution which is incorporated or otherwise established under the laws of a country other than a member territory.

<i>“Investment Grade”</i>	refers to a rating of a security which has been issued and classified as such by a recognised credit rating organisation;
<i>“Maintenance of Margin”</i>	see Re-Pricing
<i>“Margin”</i>	means the amount by which the market value of the Collateral Securities exceeds the repurchase price of the Repo transaction as at the valuation date of the Collateral Securities.
<i>“Margin Call”</i>	means a request by one counterpart for the initial margin to be reinstated or to restore the original cash/securities ratio to parity;
<i>“Mark-to-Market”</i>	means the act or process whereby a value is assigned to a financial instrument based on the current market price of that instrument. This is normally done to ensure that the margin requirements for a particular security are being observed;
<i>“member territory”</i>	means a territory of a Participating Government of the Currency Union;
<i>“Non-Institutional Investors”</i>	means Repo Buyers other than Institutional Investors as defined above.
<i>“Participating Government”</i>	means a Government that is a party to the ECSRC Agreement;
<i>“Purchase Price”</i>	means the sum of money paid by the Repo Buyer to the Repo Seller at the start of a Repo to buy or gain a beneficial interest in the collateral. It is equal to the market value of the collateral less any initial margin;
<i>“recognised credit rating organisation”</i>	means a company that assigns credit ratings, which rate a debtor's ability to pay back debt and the likelihood of default and has been recognised by Order of the Commission;
<i>“recognised foreign</i>	is as defined in the Securities Act and has been

<i><i>jurisdiction</i></i>	recognised by Order of the Commission;
<i><i>recognised foreign securities Custodian</i></i>	means: <ul style="list-style-type: none"> (a) a person that is licensed as a securities custodian under the laws of a recognized foreign jurisdiction (as listed in Appendix I of these Rules and may be modified from time to time); or (b) an entity otherwise approved by the Commission;
<i><i>Repo Buyer</i></i>	means the party who purchases securities for the term of the transaction and commits to sell back the equivalent or same securities at maturity and earns a repo rate on the transaction. Thus the Repo Buyer is the investor buying securities under the first leg of the transaction;
<i><i>Repo Seller</i></i>	means a licensed intermediary or a company registered with the Commission pursuant to section 97 of the Securities Act, who sells securities for cash, for the term of a Repo transaction and commits to buy back the equivalent or same securities at maturity at a cost, usually a predetermined Repo rate. Thus the Repo Seller is the party selling securities under the first leg of the Repo transaction.
<i><i>Re-Pricing</i></i>	occurs when the market value of a security in a repo changes and the parties to the transaction adjust the amount of securities or collateral in the transaction to the correct margin level;
<i><i>Repurchase Agreement"/Repo</i></i>	means a financial agreement in which a Repo Seller transfers ownership of securities to another person, or creates a beneficial interest (whether whole or fractional) in securities in favour of another person, with or without provisions allowing for – <ul style="list-style-type: none"> (a) substitution of the underlying securities by the Repo Seller; and/or (b) the entitlement of the Repo Seller to the coupon rate on the underlying securities;

in which the parties agree that at an agreed future date the securities will be repurchased or the beneficial interest vacated by the Repo Seller on the terms and conditions specified in the Repo agreement;

“Securities Act”

means the Securities Act 2001 and its accompanying Regulations, and shall be deemed to include any amendment, replacement or re-enactment from time to time. The applicable Securities Acts and Regulations enforced throughout the ECCU are:

- i) *Securities Act Chapter S13 of Anguilla;*
- ii) *Securities Act No. 14 of 2001 of Antigua and Barbuda;*
- iii) *Securities Act No. 21 of 2001 of the Commonwealth of Dominica;*
- iv) *Securities Act No. 23 of 2001 of Grenada;*
- v) *Securities Act Chapter 11.01 ofMontserrat;*
- vi) *Securities Act Chapter 21.16 of St Kitts and Nevis;*
- vii) *Securities Act Chapter 12.18 of Saint Lucia; and*
- viii) *Securities Act Chapter 261 of Saint Vincent and The Grenadines;*

“Sophisticated Investors”

means any investor who falls within the following categories, or who the issuer/Repo Seller reasonably believes falls within any of the following categories at the time of the sale of Repo securities to that person:

- i) Financial institutions
- ii) Insurance companies
- iii) Broker-dealers
- iv) Principals and representatives on the ECSM
- v) Investment advisors
- vi) Investment company/pension funds
- vii) Business development companies
- viii) Directors, executive officers or general partner of

the issuer

- ix) Companies/partnerships/organisations with capital in excess of EC\$5.0 million
- x) Any natural person who:
 - a. has net worth of EC\$500,000 and above; and
 - b. had individual income in excess of EC\$200,000 or joint income with a spouse in excess of EC\$300,000 in each of the two most recent years and has a reasonable expectation of earning the same income level in the current year; and
 - c. has such knowledge and experience in financial and business matters that he is capable of evaluating, alone or together with his representatives/agents/ advisors, the merits and risks of the prospective investment.

3.0 Scope and Application

- (1) These Rules shall apply to all issues of Repos offered for sale in the ECSM where there is no legal transfer of ownership and title of Collateral Securities from the Repo Seller to the Repo Buyer.
- (2) These Rules shall not apply to issues of Repos that are issued between financial institutions licensed under the Banking Act and the ECCB or between financial institutions licensed under the Banking Act, within the framework of the inter-bank liquidity market.

PART II – GENERAL REQUIREMENTS

- (1) A person engaged in the conduct of business as a Repo Seller must be licensed by the Commission as a broker-dealer or limited service broker under Part IV of the Securities Act and/or must be registered with the Commission as a reporting issuer, pursuant to section 97 of the Act.

- (2) A reporting issuer which is engaged in the sale of Repos shall conduct the settlement of all Repo transactions through a broker-dealer or limited service broker that is duly licensed by the Commission under Part IV of the Act.
- (3) A person proposing to offer Repos to the public in the ECSM, shall register with the Commission as a reporting issuer under Part VII (Registration of Corporate Issuers) of the Act and complete and file a registration statement pursuant to section 97(3) of the Act on the prescribed form contained in the Securities (Registration Statement) Rules 2015.
- (4) The Registration Statement shall be accompanied by:
 - (i) a Prospectus, which complies with the Act which must be submitted to the Commission for approval no less than thirty days prior to the proposed date of publication of the Prospectus, pursuant to section 93(2) of the Act;
 - (ii) the prescribed fee as set out in the Securities (Licences and Fees) Regulations; and
 - (iii) a copy of the Master Repurchase Agreement (MRA); and
 - (iv) any additional documents and information that the Commission may require.
- (5) A person authorized by the Commission in accordance with 4.0 (1) above, must:
 - (i) maintain all documentation relating to the types of Repo transactions that it undertakes.
 - (ii) establish and maintain policies, procedures and internal controls to ensure that Repo transactions are appropriately managed and authorised.
 - (iii) institute the necessary operational infrastructure to support the Repo business including systems for the safe custody, valuation and management of the Collateral Securities, risk management and record keeping.
 - (iv) conduct the Repo business under a valid prospectus approved by the Commission for this purpose. Pursuant to section 92(5) of the Act, a prospectus approved by the Commission is only valid for a period of up to twelve months from the date of such approval.

- (v) set the minimum value of EC\$5,000 for Repos denominated in Eastern Caribbean dollars and US\$10,000 for Repos denominated in United States dollars.
- (6) **Repo Cost:** Unless otherwise agreed by the parties, calculation of repo cost is on the basis of actual/365 days per year.
- (7) **Business Day Convention:** Where the maturity date of a Repo falls on a date which is not a business day, the maturity date shall be on the following business day.
- (8) **Repurchase Price:** Unless otherwise agreed between the Repo Buyer and the Repo Seller, the repurchase price shall be based on the principal amount invested by the Repo Buyer, the Repo rate and the term of the Repo.
- (9) **Currency:** The currencies permitted for Repos shall be East Caribbean Dollars (XCD) and United States Dollars (USD).
- (10) The requirements set out in these Rules apply in addition to any other requirements contained in the Act, Regulations or any other Guidelines issued by the Commission.

PART III – COLLATERAL SECURITIES

- (1) **Registration:** Repo Sellers must adopt policies and procedures to ensure that all Collateral Securities that are the subject of Repos are either approved for sale on the ECSM, the Regional Government Securities Market in the ECCU or registered in accordance with the securities laws of a recognised foreign jurisdiction.
- (2) **Collateral Securities for Repos Sold to Non-Institutional Investors:** Collateral Securities for Repo Buyers other than Institutional Investors and Sophisticated Investors should be restricted to items (a), (b) and (c) and only investment grade securities in categories (d) and (e), listed below:
 - a) securities which are issued by the ECCB;
 - b) Treasury Bills, Treasury Notes, Bonds and other fixed income securities that are issued or guaranteed by a Participating Government.

- c) corporate Bonds issued on the ECSM;
- d) corporate Bonds issued by foreign companies and are listed on an exchange in a recognised foreign jurisdiction;
- e) Treasury Bills, Treasury Notes, Bonds and other fixed income securities that are issued by a recognized foreign Government and are listed on an exchange in a recognised foreign jurisdiction¹; and
- f) any other securities as may be prescribed by the Commission, from time to time.

(3) Other Restrictions on Collateral Securities:

- (i) **Credit Rating:** The use of unrated or non-investment grade Collateral Securities must be subject to specific agreement between the Repo Seller and the Repo Buyer and additional risk disclosures by the Repo Seller.
- (ii) **Short Selling:** Collateral Securities must not be used to cover short sales.
- (iii) **Margin Purchases:** Collateral Securities must not be subject to margin purchases where these are held by other brokers
- (iv) **Reassignment:** Collateral Securities must not be reused as any other form of collateral during the term of the Repo transaction.
- (4) **Segregation:** Collateral Securities must be segregated from other assets of the Repo Seller, unless otherwise required under an approved custody arrangement.
- (5) **Valuation of Collateral:** Collateral Securities held outside of the ECSM or CARICOM shall be marked-to-market at a minimum on a monthly basis. However, Collateral Securities held on the ECSM or other CARICOM securities market shall be marked-to-market at a minimum on a quarterly basis.

¹Any debt instrument issued by a foreign government or foreign corporate must be entrusted to an approved Custodian. A Repo Seller shall, in selecting an overseas custodian or sub-custodian for the purpose of any repurchase agreement, comply with such criteria as outlined by the Commission and shall notify the Commission in writing, from time to time. Refer to Appendix III and IV for the Duties of a Custodian and Minimum Requirements for the Custodian Agreement.

PART IV - MARGINS

- (1) **Margin Requirements:** A haircut or margin shall be applied at the time of issuance of a Repo. The recommended initial margins are contained in Appendix II of these Rules and are subject to amendment by the Commission from time to time.
- (2) **Settlement of Margin Calls:** Unless the parties to the trade otherwise agree, margin calls in all Repo transactions shall be settled with transfers of collateral or cash, or a re-pricing of the existing transaction.
 - (i) For cash, settlement shall be no later than T+1 and in the case of collateral no later than T+3.
 - (ii) **Re-pricing:** In the case of re-pricing, the entire process, including the allocation of collateral securities, must be completed prior to the close of business on the day of official notification. In the event that the Repo Seller chooses to meet its margin calls with cash, such cash should not be used to change the substance of the trade, but it will bear interest at a rate to be determined between the Repo Buyer and Repo Seller. In the event that the party whose securities are being marked-to-market chooses to meet its margin call with collateral, this call would be met with transfers of collateral with characteristics similar to or better than the collateral currently being used in the Repo transaction and these securities are reasonably acceptable to the buyer.

PART V – COUPON PAYMENTS

- (1) **Entitlement to Coupon Payments:** A Repo Seller is entitled to receive all interest and other income on Collateral Securities to the same extent that the Repo Seller would have been entitled to receive such income had it not entered into Repo transactions using these Collateral Securities.

PART VI - SUBSTITUTION

- (1) Substitution of Collateral Securities should be allowed only where this has been specified in an agreement between the Repo Buyer and the Repo seller, and the agreement shall include the securities that may be substituted, records to be kept and requirements for disclosure to the investor.
- (2) Collateral Securities shall not be sold without first assigning another suitable asset in its place. The process must be in place with the required controls to effect the assignment.
- (3) Substitution of assets may only be permitted by the Repo Buyer where the collateral to be substituted is of equal or greater value than the original asset. Where Collateral Securities are sold, the assigned replacement Collateral Securities must be of equal or greater value than the security that was sold.

PART VII - CUSTODY ARRANGEMENTS

- (1) All Collateral Securities must be held with a Custodian.
- (2) Repo Sellers must also ensure that appropriate arrangements are made and procedures implemented to ensure that Collateral Securities in its records and that of the Custodian are segregated from the assets of the Repo Seller to avoid the risk of reuse of these Collateral Securities. Such arrangements and procedures shall also be subject to independent audit and risk assessments by the firm's internal and external auditors.
- (3) Collateral Securities for Repos shall be held in the custody of the ECCSD or other recognised foreign securities Custodian.
- (4) A Repo Buyer's interest in Collateral Securities shall be evidenced by an assignment in the Repo Seller's records and on the books of the Custodian.
- (5) The Repo Seller shall ensure that interest of the Repo Buyer in Collateral Securities is legally perfected and documented in its books, in accordance with the rules and procedures of the Custodian.

- (6) Subject to the legal provisions in the MRA, Collateral Securities, may be assigned or substituted with equivalent Collateral Securities or other Collateral Securities as may be mutually agreed between both parties and subject to additional risk disclosures and the eligibility criteria of collateral specified in Part III, Rule (2) of these Rules.
- (7) The ECCSD or a recognised foreign securities Custodian shall maintain adequate and separate records in respect of Collateral Securities including:
 - (i) movements, sales and purchases, in the assigned pool of Collateral Securities;
 - (ii) physical custody or location; and
 - (iii) evidence that a hold has been placed on the Collateral Securities to avoid duplicate use during the term of the Repo.
- (8) The ECCSD or a recognised securities Custodian, in carrying out its duties in respect of the safekeeping of and dealing with the Collateral Securities, shall exercise due care and diligence that a reasonably prudent custodian would exercise in the circumstances.
- (9) A Repo Seller shall not be required to release the ECCSD or the recognised foreign securities Custodian from liability to a Repo Buyer for losses arising out of its failure to exercise the standard of care and diligence imposed under these Rules.
- (10) Information on the custodian and/or the terms and conditions set out in the custodian agreement including its consequential rights and obligations should be disclosed to the Repo Buyer.

PART VIII – LEGAL AGREEMENT

- (1) All Repos transactions shall be subject to an MRA between the Repo Buyer and Repo Seller.
- (2) The MRA shall be written in plain standard English and at a minimum, shall:
 - (i) include a description of the nature of the security and the risk;

- (ii) provide for and outline the procedures relating to the perfection of the Repo Buyers' interests in the Collateral Securities;
- (iii) specify the custody arrangements regarding the Collateral Securities;
- (iv) specify the rights and obligations of the Repo Buyer and the Repo Seller;
- (v) specify clearly the events of default and the consequential rights and obligations of the Repo Buyer and the Repo Seller;
- (vi) provide for Mark-to-Market of the collateral securities in accordance with Rule (5) in Part III of these Rules;
- (vii) provide for appropriate Margin and for Maintenance of Margin whenever Mark-to-Market reveals a material change in value;
- (viii) outline in detail, the procedures to be undertaken in the event of default in relation to the Repo Buyer and Repo Seller, the ECCSD or other recognised foreign securities Custodian in accordance with the operating rules of the ECCSD or recognised foreign securities Custodian.
- (ix) include provisions clarifying the rights of the parties regarding the substitution of collateral and the treatment of Coupon and interest payments including, for example, the timing of any payments;
- (x) include provisions for resolution of disputes, which may include but not be limited to, resolution of the dispute in the High Court and/or arbitration.

(3) The provisions in the MRA shall be consistent with the provisions in these Rules, the Act and Regulations.

PART IX – CONFIRMATION OF DEALS

(1) In accordance with section 73(1) of the Act, a Repo Seller shall, in respect of every Repo transaction entered into by it, not later than the end of the next trading day after the contract was entered into, make out a contract note confirming the transaction, which shall include, at a minimum, the following:

- (i) transaction agreement date, the date of the contract and Repo rate;
- (ii) value date, that is, the date on which securities are first transferred by the Repo Seller to the Custodian;
- (iii) description, quantity of the Collateral Securities including type, the name of the issuer, the maturity date, the coupon rate of security, the nominal amount and the market price of the Collateral Securities;
- (iv) name and address of the custodian of the Collateral Securities pertaining to the Repo contract;
- (v) purchase price - the price at which the Collateral Securities purchased by the Repo Buyer;
- (vi) repurchase date, repurchase price and the date on which the Repo Seller is to repurchase the purchased Collateral Securities from the Repo Buyer;
- (vii) particulars on whether there are rights of substitution;
- (viii) the rate or amount of commission payable in respect of the Repo contract; and
- (ix) all such other information pertaining to the transaction, as may be prescribed, from time to time.

(2) Each party to a Repo transaction shall ensure that any confirmations that are received are checked on the day of receipt and that any queries on the terms are immediately conveyed by the Repo Buyer to the Repo Seller.

PART X – SETTLEMENT AND DEFAULT

- (1) Unless mutually agreed between the Repo Buyer and Repo Seller, settlement shall be on the basis of payment against delivery.
- (2) All transactions shall be settled at no later than T+3.

- (3) Where either the Repo Seller or the Repo Buyer has caused any delay in settlement, the non-defaulting party shall have the right to claim from the defaulting party the loss of interest, if any, on the net amount of the transactions calculated in accordance with the terms of the MRA.
- (4) In the event of a default, the procedures contained in the MRA shall be followed.

PART XI - OPERATIONAL, SUPERVISORY, REPORTING AND DISCLOSURE REQUIREMENTS

- (1) **Operational and Supervisory Requirements**
 - (i) The Repo Seller shall implement documented policies and procedures for Repo operations and to ensure compliance with the relevant provisions in the Securities Act, Regulations and Rules.
 - (ii) Risk management policies and procedures should include but not be limited to the following:
 - a) **Counterparty Risk –**
 - (i) An exposure limit on all counterparties should be established based on the Repo Seller's credit assessment. The exposure limit shall be subject to review on a regular basis; and
 - (ii) Repo Sellers should apply suitable initial margins that reflect the assessments of the creditworthiness of the counterparty and monitor its net counterparty exposure on a monthly basis
 - b) **Credit and Market Risk of Collateral Securities –**
 - (i) Repo Sellers should negotiate and apply suitable margins that reflect its assessment of the credit and market risks of Collateral Securities.
 - (ii) Collateral Securities should be marked-to-market in accordance with the requirements outlined in Part III Rule (5) of these Rules. Where Collateral Securities are not admitted to dealing on a securities exchange, the Repo Seller must clearly disclose the procedure and methodology used to value the Collateral Securities.

- (iii) Whenever a mark-to-market valuation reveals a significant exposure to a counterparty, over and above any agreed margin threshold, the Repo Seller should initiate margin calls, either in the form of cash or securities, promptly to restore the initial position.
- (iii) A Repo Seller shall maintain records of Collateral Securities and the specific assignment of each Collateral Security for Repo transactions; substitutions of Collateral Securities and all agreements and communications with Repo Buyers.
- (iv) The Repo Seller shall ensure that it has the necessary operational systems for transactional valuation and financial reporting and adequate human, financial and operational resources to support its Repo business.
- (v) The Repo Seller must ensure that it has adequate capital to support its Repo business and that it can satisfy any additional financial resource requirements that may be prescribed from time to time, by the Commission.
- (vi) Where the Repo Seller is a broker-dealer licensed by the Commission, the firm must maintain the current statutory minimum capital requirement until the implementation of a risk-based capital adequacy framework by the Commission.

(2) Reporting and Disclosures

- (i) The Repo Seller shall submit the following to the Commission:
 - (a) policies and procedures for the Repo business, including risk management policies outlining risk limits for the Repo portfolio and valuation methodologies;
 - (b) a copy of the standard MRA;
 - (c) the form of all other transaction documents, e.g. confirmations; and
 - (d) advertising, marketing and promotional material for the Repo business.
- (ii) The advertising, marketing and promotional material shall be issued in accordance with the requirements prescribed under the Securities (Advertisement) Regulations, 2001;
- (iii) Where there are updates or revisions to the documents in item (i) above, the Commission should be notified no later than three (3) business days of the date of the update or revision.

- (iv) The Repo Seller shall revise and update the Prospectus for the offer of the Repo product every 12 months, and submit to the Commission for approval.
- (v) The Repo Seller shall submit to the Commission:
 - (a) annual audited financial statements which must be filed within 90 days of the end of the financial year as prescribed by section 82 of the Securities Act;
 - (b) annual reports which must be filed within 120 days after the end of the company's financial year pursuant to section 98 of the Securities Act;
 - (c) Ad hoc reports pursuant to section 98(3) of the Securities Act; and
 - (d) Any other information and reports requested by the Commission.
- (vi) **Access to account balances** – Repo Buyers should receive monthly and/or quarterly statements over the term of the Repo.

Made by the Eastern Caribbean Securities Regulatory Commission this 3rd day of September 2019.

.....

Sir Errol N Allen
CHAIRMAN
EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION

APPENDIX I

List of Recognised Foreign Jurisdictions

Australia

Canada

Finland

Iceland

Japan

New Zealand

Norway

Singapore

Sweden

Switzerland

United States of America

A member of the Caribbean Community (CARICOM)

A member to the European Union (EU) as at 1st July 2003

APPENDIX II

PART A

Margin Requirements for Non-Institutional Investors

Residual Maturity	Margins	
	Sovereign Issues (%)	Other Issues (%)
Up to 1 yr	1	2
Over 1yr to 3yrs	3	3
Over 3yrs to 7yrs	4	7
Over 7yrs to 11yrs	4.5	7.5
Over 11yrs	4.5 - 6.0	7.5 - 9.0

PART B

Minimum Margin Requirements for Institutional Investors

For all issues, both sovereign and corporate, Institutional Investors must adhere to a minimum Margin requirement of 2%.

APPENDIX III

DUTIES OF THE SECURITIES CUSTODIAN

- (1) A securities custodian shall –
 - (a) exercise the same degree of care, diligence and skill that a prudent person would exercise in the circumstances; and
 - (b) act in the best interests of the clients.
- (2) A Repo Seller shall not be required to indemnify a Custodian for any loss which arises as a result of the failure of the Custodian to –
 - (a) exercise the standard described in paragraph (1)(a); or
 - (b) comply with the provision of any law with respect to the duties of the Custodian.
- (3) A Custodian shall indemnify the Repo Seller and its clients from any loss arising as a result of the failure of the Custodian to meet the standard described in paragraph (1), including (but not limited to) the failure of the Custodian to return the underlying assets to the Repo Seller on the repurchase date.
- (4) A Custodian shall ensure that it has in place systems and structures for –
 - (a) The segregation of assets;
 - (b) The preparation of reconciliations;
 - (c) Recordkeeping as required by the Act and these Rules;
 - (d) Effecting payments to clients, where applicable;
 - (e) Communicating with clients promptly as to the status and value of assets held on clients' behalf;
 - (f) Safeguarding the physical integrity of automated systems used by it for information processing;
 - (g) Liquidity management, if relevant;

- (h) Safeguarding against fraud, theft, money laundering and the financing of terrorism;
- (i) Furnishing returns as required by the Act and these Rules; and
- (j) Addressing contingencies and providing appropriate back-up support to the Repo Seller.

(5) A Custodian shall not –

- (a) derive any profits or other benefit from its position as Custodian, except for fees payable for its services; or
- (b) execute any retail Repo on behalf of a client.

(6) Before delegating any of its functions, a Custodian shall –

- (a) obtain the prior approval of the Commission; and
- (b) where such delegation is proposed to be made to an overseas entity with respect to the delegation, and obtain a statement of “no objection” thereto from the Commission.

APPENDIX IV

MINIMUM REQUIREMENTS FOR CUSTODIAN AGREEMENT

- (1) Every Custodian Agreement shall, at a minimum, include the following:
 - (a) State the objective(s) for which the Agreement is established;
 - (b) Require that the investor's interests in the Collateral Securities held by the Custodian for the Repo Seller are segregated from the other assets of the Repo Seller and ownership transferred or the Repo Buyer's interest assigned in accordance with the applicable Repo documentation;
 - (c) State the effective date of the Agreement;
 - (d) State the Custodian's responsibility for the general management of the Collateral Securities;
 - (e) State the name in which the Collateral Securities will be held and any Custodian arrangement that will apply to the Collateral Securities;
 - (f) Indicate if any functions are being or may be delegated to third party agents;
 - (g) Prohibit the Custodian from –
 - (i) accepting any benefit from the position of Custodian, other than fees paid for services as Custodian;
 - (ii) acting in a manner that is not impartial or that is not in the best interest of the clients;
 - (h) Empower the Custodian to seek advice on relevant issues as appropriate;
 - (i) Specify the circumstances in which, and the procedure by which the Custodian Agreement may be amended;
 - (j) Empower the Custodian to distribute the Collateral Securities, in a manner that is consistent with the default arrangements and procedures as stipulated in the Repo documentation or as approved by the Commission, in the event of default;
 - (k) Outline the Custodian's powers and duties and responsibilities to Repo Buyers and Repo Sellers;

- (l) Provide for the termination of the Custodian Agreement in accordance with these Rules; and
- (m) Contain such other provisions as may be specified by the Commission, from time to time.

(2) Any provision in a Trust Deed which is inconsistent with these minimum Rules shall be void to the extent of the inconsistency.

(3) Before appointing a Custodian in respect of any Repo, the Repo Seller shall submit the Custodian Agreement to the Commission for review.

(4) Where a Trust Deed is submitted under paragraph (3), if the Commission determines that the Custodian Agreement does not comply with these Guidelines or contains provisions that are likely to cause harm to clients, the Commission may direct that such amendments or clarifications be made to the proposed Custodian Agreement as the Commission thinks necessary.