

**RULE NUMBER VI.A.3 : SECURITIES ACCOUNTS AT CUSTODIANS**

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Attachment :

Decision of the Chairman of Bapepam

Number : Kep-48/PM/1997

Date : December 26, 1997

1. Definitions

- a. Beneficial Ownership of Securities is the right of a Securities account holder to the benefits related to the Securities that are recorded in Collective Custody in a Securities account with a Securities Company, Bank Custodian, or a Central Custodian, in accordance with a contract between the account holder and the Custodian, and Law Number 8 of 1995 on the Capital Market, and rules and regulations thereunder.
- b. Registered Ownership of Securities is the right of a Securities holder with respect to the Issuer regarding the Securities that are registered in the holder's name on the Issuer's books.
- c. Collective Custody is a custodial service with respect to Securities owned jointly by more than one Person where interests are represented by the Custodian.
- d. A Custodian is a Person that performs safekeeping services for Securities and other assets related to Securities and other services, including the collection of dividends, interest, and other rights, the settlement of Securities transactions, and represents the interest of account holders.
- e. Persons that may operate as Custodians are the Central Securities Depository, Securities Companies, and commercial banks that have been approved by Bapepam.
- f. A Safekeeping Account is a type of Securities account in a Custodian that is intended for the deposit of Securities not in collective custody that may be withdrawn in the original form on instruction of the account holder.

2. Proof of Beneficial Ownership of Securities

- a. Proof of Beneficial Ownership of Securities must be provided by Custodians to holders of Securities accounts in the form of written confirmations.
- b. Transfers of the Beneficial Ownership of Securities must be recorded by debits and credits in the Custodian's books and confirmed to account holders as proof by means of:
  - 1) confirmations of purchases or sales of Securities;
  - 2) receipts for the deposit of Securities in a Securities account;
  - 3) confirmations of the receipt or delivery of Securities;
  - 4) monthly statements of debits and credits to Securities accounts; or

- 5) other documents that are issued by Custodians regarding debits and credits to Securities accounts including confirmation by electronic means.
- c. Beneficial Ownership of Securities in a Securities account may be proved from publications by Issuers regarding the distribution of rights to Registered Owners of Securities, when such Securities are registered in a Securities account on a certain date, such as:
    - 1) stock bonuses or stock dividends;
    - 2) stock consolidations or splits;
    - 3) distribution of Preemptive Rights;
    - 4) redemption of bonds or conversion of Securities; or
    - 5) other distributions.
  - d. in the event of a dispute between an account holder and a Custodian with respect to the number of Securities in a Securities account, such dispute should be settled on the basis of available evidence, including but not limited to:
    - 1) Securities account statements and confirmations sent by the Custodian to the account holder;
    - 2) books and records of the Custodian, provided that:
      - a) the Custodian's books and records of are in the form stipulated in Bapepam rules; and
      - b) the books and records are supported by systems of internal controls as stipulated in Bapepam rules;
    - 3) books and records of the account holder;
    - 4) recorded conversations between representatives of the Custodian and the account holder;
    - 5) notices and official statements of Issuers;
    - 6) records and documents of other Custodians, Central Securities Depositories, Clearing Guarantee Institutions and Securities Exchanges; and
    - 7) Testimony of certain Persons.
3. Fungibility of Securities
    - a. Securities that are recorded in a Securities account with a Custodian are deemed to be in Collective Custody.
    - b. Securities in Collective Custody are deemed to be fungible.
    - c. In the event benefits or costs are attached to specific Securities in Collective Custody but not to all Securities of that same type, such benefits and or costs must be shared proportionately by all Beneficial Owners of that type of Security held by such Custodian.
    - d. The account holder may specify that certain Securities are not fungible provided that:

- 1) such Securities are kept in a Safekeeping Account that is separate from the Securities account on instructions of the account holder; and
  - 2) Securities that are not intended to be fungible have been so designated in the Custodian's confirmation to the account holder at the time the Securities are posted to the Safekeeping Account.
- e. This Rule applies only to Securities in Collective Custody.
4. Securities that are recorded in a Securities account in a Custodian in Collective Custody may be in any of the following forms:
- a. certificates in the name of any Person as long as the Custodian has power of attorney to sell or transfer and register such Securities in the name of another Person;
  - b. certificates in the name of the Custodian;
  - c. bearer certificates;
  - d. Securities receivable out of the Custodian's Securities account with another Custodian;
  - e. Securities receivable from an Issuer or Securities Administration Agency;
  - f. Securities receivable from a Clearing Guarantee Institution;
  - g. Securities receivable from another Securities Company;
  - h. Securities that have been loaned by the Custodian at the request or with the agreement of the Securities account holder;
  - i. Securities receivable from another Securities account holder at the same Custodian;
  - j. Securities receivable by the Custodian from any other Person; and
  - k. Securities that must be replaced by the Custodian, Securities that are lost, or Securities that represent a difference between the account balance and the physical count.
5. Rights of Beneficial Owners when a Custodian is bankrupt or when there are claims by third Persons on the Securities accounts.
- a. Securities that are posted in a Securities account are not part of the Custodian's assets, and such Securities may not be seized or taken by the Custodian's creditors.
  - b. If a Custodian is liquidated because of bankruptcy or dissolution, the liquidator must return Securities that are posted in Securities accounts to the account holders, as follows:
    - 1) Securities that are in the name of a Person other than the account holder must be transferred into the name of the account holder;
    - 2) Securities that are receivable from another Person must be collected and transferred to the name of the account holder;
    - 3) Securities that can not be retrieved from a Person who is obliged to deliver such Securities or Securities that are lost, counterfeit, damaged or that for some other reason are not obtainable, must be replaced by purchasing Securities of the same

type at the expense of the Custodian from proceeds that come from:

- a) funds that are deposited in a special account that must be maintained in accordance with Bapepam rules, in the name of the Custodian for the interests of account holders, in the event the Custodian is a Securities Company;
  - b) payments received from insurance policies with respect to such risks, of which account holders are beneficiaries; or
  - c) the sale of other assets of the Custodian;
- 4) if the holder of a Securities account has a debit balance in the Securities account or a short position, the liquidator must use any Securities or other assets in the account to settle the Custodian's claim before returning Securities in the account to the account holder.
- c. If the assets of a Custodian are not sufficient to ensure that all Securities in Securities accounts may be returned to Account holders, the liquidator must distribute Securities in Collective Custody to account holders in proportion to the value of each account, after Securities that are not fungible have been returned.

#### 6. Rights of Securities Account Holders regarding Credit Balances

- a. Funds recorded in a Securities account are the property of the account holder and may be withdrawn at any time by the account holder, unless such funds are blocked, pledged or otherwise restricted.
- b. Funds that are recorded in a Securities account in a Securities Company and that are not blocked, pledged or otherwise restricted must be kept in a special bank account in the name of the Securities Company on behalf of the account holder, and the balance of such special account must be adjusted daily.
- c. Funds in the special account referred to in number 6 letter b of this rule, are only intended for account holders of the Securities Company, and may not be seized by a creditor of the Securities Company.

#### 7. Obligation to Insure Securities Accounts

- a. Securities Companies and Custodian Banks must insure Securities accounts against the risk of financial loss to account holders in the event such company becomes bankrupt.
- b. Directors and commissioners of Securities Companies and Custodian Banks must issue a statement at the end of each year that the Securities Company has the insurance policy referred to above for the benefit of account holders and must disclose all material matters regarding such insurance.
- c. A copy of the statement mentioned above must be displayed in a prominent place in the sales office of the Securities Company or Custodian Bank and must be sent to all Securities account holders at the end of each year.
- d. Beginning on January 1, 2000, every Securities account at a Securities Company that is a Member of a Securities Exchange must be insured for an amount stipulated by the Securities Exchange.

## 8. Liability for Securities That Are Delivered

- a. Persons that deposit and deliver Securities into a Securities account are responsible to the Custodian for the validity of such Securities.
- b. Custodians are responsible for the validity of Securities delivered to other Persons either physically or through book entry.
- c. Issuers that register Securities in the name of a Custodian as the representative of Securities account holders or that issue a certificate confirming the validity of specific Securities are responsible for the validity of such Securities.
- d. Registration of Securities or confirmation of the validity of Securities by an Issuer shall be done in accordance with the following provisions:
  - 1) The Issuer may appoint a Securities Administration Agency to register or confirm the validity of Securities Certificates and to perform other activities as an agent of the Issuer, but the Issuer remains responsible for all such activities.
  - 2) Applications for registration of Securities in the name of a Custodian or in the name of another Person, or applications for confirmation of validity of a Securities certificate must be processed by the Issuer within 5 (five) working days after the application is received by the Issuer.
  - 3) Confirmation of the validity of a Securities certificate must be made in the form of an embossed stamp or in the form of a document that is attached permanently to the Securities Certificate within a highly secure system.
  - 4) Issuers must reject applications for registrations of Securities or confirmations of validity of Securities Certificates when the Issuer finds that such Securities are pledged, blocked, counterfeit or reported lost or stolen, or when for any legal reason the registration or confirmation of validity cannot be done, and such rejection must be sent to the applicant in writing along with the attached Securities certificate within 5 (five) working days after the application is received by the Issuer with the reasons for such rejection.
  - 5) The letter refusing registration of the Securities or confirmation of the validity of a Securities Certificate referred to in item 8 letter d item 4) of this rule must be signed by the Issuer or the Securities Administration Agency that is appointed by the Issuer.
  - 6) If the reason for refusal involves or is related to a criminal act such as embezzlement, theft or forgery, a copy of the refusal letter must be sent to Bapepam.
  - 7) If, due to negligence or insufficient internal controls or safe procedures for issuing or keeping Securities, Securities are lost or there is a mistake in the issuance of Securities including the issuance of Securities in excess of the amount that should have been issued, the Issuer must take action to resolve the problem, including purchasing and cancelling the improperly issued Securities or by replacing such Securities with Securities of the same type that are purchased and delivered to the Securities holders involved.

## 9. Securities Registration in the Name of a Custodian

- a. Securities Registration in the name of a Custodian as the representative of Account Holders may include information regarding the citizenship and tax status of the account holders.
- b. Shares that are registered in the name of a Custodian, as representative of founding shareholders must be treated by the Issuer as shares that are owned by the founding shareholders.
- c. The determination by Issuers and Securities Administration Agencies of citizenship, tax status, the identity, and other information regarding account holders represented by a Custodian, shall be based on the written statement of the Custodian.

#### 10. Rights and obligations of Securities Account Holders

- a. Rights and obligations of account holders are stipulated in the written account opening agreement between the Account Holder and the Custodian when the account is opened.
- b. The Beneficial Ownership of Securities shall include the right to claim from the Custodian, such things as :
  - 1) delivery of Securities certificates registered in the name of the account holder within 7 (seven) work days after the request is received by the Custodian, unless:
    - a) the Securities are only issued in bearer form;
    - b) the Issuer has suspended services of transferring and issuing Securities;
    - c) the account holder has an unsettled obligation to the Custodian greater than a certain value stipulated in the Securities account contract and or in Bapepam rules; or
    - d) the Securities have been blocked or are collateral for a debt to another Person.
  - 2) Transfer of Securities from one Securities account to other account at the same Custodian on the same day, except for:
    - a) Securities deposited in certificate form in the Securities account within the last 7 work days; or
    - b) Securities blocked or held as collateral in any form.
  - 3) Recording in the Securities account of rights related to Securities, including cash dividends, bonus shares, preemptive rights, stock dividends, provided that:
    - a) the Securities were recorded in the Securities account on the date that the Issuer set as the date for determining Persons that have the right to such entitlements (the record date).
    - b) The amount posted to the Securities account is the gross entitlement less tax that would be deducted for that account holder if the account holder were the registered owner of the Securities.
    - c) the date such the rights are posted is the same as the first date of payment to

Persons that are registered owners of such Securities or to Persons that hold such Securities in bearer form.

- 4) Recording the net proceeds from the sale of Securities in a Securities Account with a Securities Company on the date specified for the settlement of such sales transaction by the Securities Company.
- 5) Recording the purchase of Securities in the Securities Account in a Securities Company on the date specified for settlement of such purchase transactions by the Securities Company.
- 6) Recording of Securities that result from the exercise of preemptive rights to subscribe to Securities or warrants, on the date such rights are exercised in accordance with instructions of the account holder and provided that the credit balance in the Securities account is sufficient to exercise such rights.
- 7) Recording of Securities that result from the exercise of conversion rights, at the time such rights are exercised on instruction of the account holder.
- 8) Delivery of annual reports and other documents that are distributed by the Issuer to Securities holders not later than 2 (two) days after such documents are received by the Custodian.
- 9) Delivery of written notice regarding various rights and meetings of Securities holders not later than one day after such information is made public by the Issuer.
- 10) Delivery of documents produced by the Issuer that confirm the right of account holders to attend and vote at the general meeting of Securities Holders not later than 3 (three) working days before the meeting, provided that instructions to register such documents have been sent by the account holder to the Custodian not later than 2 (two) days before the date set by the Issuer for determining account holders that may attend the meeting.
- 11) Delivery of a monthly statement that shows all the entries to the Securities account and the balance of Securities and funds at the end of the month, not later than the tenth day of the following month.
- 12) Delivery of a statement showing the current position of Securities and funds in the Securities account, and or a copy of a prior monthly statement at any time, upon request.

#### 11. Rights of Account Holders to Maintain Secrecy of Securities Accounts

Provided there are no instructions from the account holder to the contrary, a Custodian must keep secret the identity of account holders, except for informing Issuers of the tax status and citizenship of account holders or as otherwise provided in the law or implementing rules.

#### 12. Custodians have the right to recover losses that occur because of account holder actions and or to cancel the recording of Securities to the Securities account, as follows:

- a. In the event of a mistake in the recording of Securities or funds to a Securities account, the Custodian must correct the error and advise the account holder.

- b. When Securities that have been recorded in the Securities account are false, lost, stolen or have been obtained by illegal means, the Custodian may cancel the posting of such Securities, and if such Securities had been deposited in the Securities account by the account holder and subsequently taken out of the account, the Custodian may sue the account holder to recover losses (if any).

### 13. Irrevocable Delivery vs. Payment (DVP) Orders

Account holders are authorized to order the Custodian to issue and execute an Irrevocable DVP Order except when otherwise specified in the account holder agreement, with the following conditions:

- a. Such Orders must be issued by the Custodian to a Securities Company that is a member of an Exchange;
- b. Such Orders are instructions from the account holder to the Custodian to deliver or receive Securities against payment, in connection with transactions that have been made by the Securities Company within a specified price limit;
- c. Such Orders may be used only by the Securities Company that is designated by the account holder within a period of not less than 7 (seven) days, with the following provisions:
  - 1) the instruction from the Securities Company to the Custodian to execute such Order must be made in writing or through electronic means and must be time stamped when received;
  - 2) the transfer of Securities and or funds from one Securities account to another Securities account by the same Custodian is deemed to occur at the time the instruction is received from the Securities Company referred to in number 13 letter c item 1) of this rule, unless the Securities and or funds are not sufficient or for what ever reason such Securities or funds may not be transferred freely.
- d. Custodians are liable for losses to account holders that occur as a result of improper refusal by the Custodian to issue or an improper delay in the issuance of such Orders;
- e. Based on instructions received from a Securities account holder, a Custodian may affirm to the Securities Company and the account holder that:
  - 1) the account holder has Securities or funds in the Securities account sufficient to execute the Order and such Order may be executed by the Securities Company any time within the period specified;
  - 2) the Kustodian is responsible to execute such Order that may not be changed or cancelled within the specified period;
  - 3) the amount that must be received or paid in the execution of such Order is based on an Exchange Transaction at the price specified in such Order or a better price;
  - 4) the confirmation of the Exchange Transaction that is issued by the Securities Company is proof of the amount of money that must be received or paid;
  - 5) The Securities Company may add or subtract commissions or other expenses from the amount that must be paid or received in connection with the Exchange Transaction;
  - 6) in the process of executing such Order, the Custodian must transfer Securities or



- funds to the Securities account or another Securities Account in accordance with instructions from the Securities Company;
- 7) the Custodian may not charge a fee to the Securities Company for services connected with the Order;
  - 8) a Custodian must confirm in writing whether it will or will not fulfill the instructions from the account holder to issue such Order under the following conditions:
    - a) if the instruction is received before 2:00 pm Jakarta time, the written confirmation must be sent not later than two hours after the instruction is received;
    - b) if the instruction is received after 2:00 pm Jakarta time, the written confirmation must be sent not later than 9:30 am Jakarta time the next work day;
  - 9) A Custodian may refuse to issue the Order if:
    - a) at the time the Order is received the account holder does not have a long Securities position or sufficient funds in the Securities account;
    - b) the Securities in question were posted to the Securities account in certificate form within the last 7 work days;
    - c) the relevant Securities were blocked or pledged; or
    - d) there are written instructions from the Securities Exchange or Bapepam that prohibit trading such Securities or that prohibit such Securities Company from executing transactions.
  - f. The transfer of Securities from one Securities account to another Securities account by the same Custodian in connection with the exercise of such Order, is deemed to be full settlement of such Order;
  - g. The issuance of such Order does not require a Securities Company to execute a Securities Transaction;
  - h. The Custodian is responsible for losses that are incurred by the Securities Company that is named in such Order including losses related to alternative cash settlement of Exchange Transactions if the loss was caused by the Custodian:
    - 1) refusing without proper reason, in part or in full, or being negligent in executing the Order properly and at the right time; or
    - 2) delaying or improperly executing the instruction of the Securities Company to deliver Securities or funds in connection with the settlement of such Order to a specified Securities account at the Custodian by book entry.
  - i. Such Order must be in written form and accompanied by a test of validity made by the Custodian in the following manner:
    - 1) the confirmation of the Order must be sent electronically by the Custodian to the Securities Company and the account holder; and
    - 2) the method that may be used by the Securities Company to validate the confirmation from the Custodian must be clarified in writing by the Custodian to all Exchange members.
  - j. An order that is not exercised by a Securities Company within the specified time expires.