



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 1086

Series of 2020

Subject: Amendments to the Regulations on the Foreign Currency Deposit System

The Monetary Board, in its Resolution No. 539 dated 16 April 2020, approved the following revised rules and regulations governing the Foreign Currency Deposit System.

The revised regulation aims to align the Manual of Regulations on Foreign Exchange Transactions (FX Manual) with the licensing and enforcement frameworks under the Manual of Regulations for Banks (MORB) and to provide flexibility in managing liquidity risk with simplified compliance with the asset cover requirements of banks.

Section 1. The FCDU/EFCDU operations shall be classified as a Type A License under Section 111 of the MORB and shall be added as follows:


“111. Licensing

x x x

Prudential criteria. x x x

Type of license of permissible activities. The type of license attached to permissible activities of the Bangko Sentral supervised financial institutions (BSFIs) shall be as follows:

Type of License	Permissible Activity	Related Sections/ Subsections of the MORB
A	x x x	x x x
	Trust and Other Fiduciary Business	x x x
	Operate an FCDU/EFCDU	Part IV, Chapter III of the FX Manual
x x x	x x x	x x x


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05/06/2020
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x x x”

Section 2. Part IV, Chapter III of the Manual of Regulations on Foreign Exchange Transactions (FX Manual) is hereby revised to align the licensing and enforcement framework of the MORB and FX Manual, and shall read as follows:

“Section 71. Qualification Requirements.

1. UBs/KBs, TBs, and RBs/Coop Banks may be authorized to operate an FCDU or EFCDU: *Provided*, That they meet the prudential criteria for a Type A license under Section 111 of the MORB.

2. A UB/KB, TB, or RB/Coop Bank seeking to operate an FCDU or EFCDU shall submit the following documents to the appropriate supervising department of the BSP:

- a. Application letter signed by the president, or officer of equivalent rank, with justification on how the license is aligned with the bank’s business model and strategic direction;
- b. Corporate secretary’s certificate on the approval of the board of directors (or equivalent management committee in the case of foreign bank branches) to operate an FCDU or EFCDU; and
- c. Certification signed by the president, or the officer of equivalent rank, and the chief compliance officer certifying that the bank has complied with all the prudential criteria for the grant of authority to operate an FCDU or EFCDU.”

“Section 72. Authorized Transactions

1. x x x

g. x x x

11) The foreign currency denominated debt securities lent or used as collateral by the borrowing bank in securities lending and borrowing transactions shall be considered as eligible asset cover for the 100% cover requirement.

h. x x x

5) The borrowings shall be booked under “Bills Payable” and included in the computation of the total FCDU/EFCDU liabilities subject to the mandatory 100 percent asset cover;



6) The foreign currency-denominated debt securities sold or used as additional collateral in repurchase agreement shall be considered as eligible asset cover for the 100% cover requirement;

7) Banks shall comply with the 100% FCDU/EFCDU asset cover;
and

x x x

k. Except RBs/Coop Banks, engage in USD-denominated repurchase agreements (R/P) with the BSP as provided under Section 601 of the MORB.

The Monetary Board may at its discretion impose the sanctions for violations of the provisions on the terms and conditions of the USD-denominated R/P agreement with the BSP under Section 601 of the MORB to a bank and/or its director/s, officer/s, or employees found to be responsible for violation of Item "k" of this Subsection.

2. x x x

l. Invest in foreign currency denominated structured products issued by banks and special purpose vehicles (SPVs) of high credit quality subject to the provisions in Section 626-A of the MORB;

x x x

o. Engage in USD-denominated repurchase agreements (R/P) with the BSP as provided under Section 601 of the MORB.

The Monetary Board may at its discretion impose any or all of the sanctions for violations of the provisions on the terms and conditions of the USD-denominated R/P agreement with the BSP under Section 601 of the MORB to a bank and/or its director/s , officer/s, or employees found to be responsible for violation of Item "o" of this Subsection.

3. FCDU/EFCDU funds of UBs/KBs may be lent to the regular banking unit (RBU) to fund the latter's on-balance sheet foreign exchange trade transactions, subject to the following conditions:

- a. Subject to the offsetting rules under Section 73, FCDU/EFCDU may lend funds to the RBU only after it has fully complied with the prescribed 100% asset cover on FCDU/EFCDU liabilities, subject to the guidelines under Appendix 15.b;
- b. FCDU/EFCDU lending to the RBU shall be -

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- 1) Capped at the lower of total outstanding balance on the RBU's on-balance sheet foreign currency trade assets or thirty percent (30%) of the level of FCDU/EFCDU deposit liabilities, computed at the average daily balance (using 2-month rolling data) as of end of the second week prior to the reference week. Total outstanding balance of FCDU/EFCDU lending to the RBU shall, at all times, be within the prescribed cap;
 - 2) x x x
- c. x x x
- d. The "Loans to RBU by FCDU/EFCDU" account balance (net of transactions outstanding for more than one (1) year) shall qualify as eligible asset cover for FCDU/EFCDU liabilities;
 - e. Banks shall establish and maintain systems to—
 - 1) monitor the foreign currency funds flow of RBU and the average daily balances of foreign currency trade assets, with minimum database covering a two (2)-month rolling period; and
 - 2) account for the utilization of borrowed funds from FCDU/EFCDU.

The adequacy of controls of the systems as well as propriety of periodic reports generated therefrom shall be subject to review by BSP while periodic reports shall be made available to the BSP upon request.

f. Banks shall adopt procedural guidelines to ensure compliance with the regulatory requirements on the lending from FCDU/EFCDU to the RBU.

g. Banks shall submit to the appropriate BSP supervising department, within five (5) banking days from end of reference month, a certification under oath (Appendix 14), signed by the Bank's President or Country Manager, in case of local branch/subsidiary of foreign banks, Compliance Officer and Head of Treasury, to the effect that, at any day of the reference month, the outstanding balance on funds borrowed from FCDU/EFCDU did not exceed the prescribed cap (i.e., lower of total outstanding balance on RBU's on-balance sheet foreign currency trade assets or thirty percent (30%) of the level of FCDU/EFCDU deposit liabilities) and were utilized by the RBU solely for foreign currency trade transactions."

"Section 73. Foreign Currency Cover Requirements. Depository banks under the foreign currency deposit and expanded foreign currency deposit systems shall maintain a 100% cover for their foreign currency liabilities, except for USD-denominated repurchase agreements (R/P) with the BSP. *Provided*, That violation of the terms and conditions of the USD-denominated R/P facility shall subject the

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borrowings of the bank under the R/P facility to the FCDU/EFCDU asset cover requirements. x x x

1. x x x

e. Derivatives with Positive Fair Value Held for Trading and/or Hedging (Derivatives with Negative Fair Value Held for Trading and/or Hedging shall require corresponding asset cover);

x x x

g. Foreign currency loans and receivables as allowed by the BSP, booked under the following:

- i. Loans to BSP
- ii. Interbank loans receivable
- iii. Loans and receivables – others

Provided, that all applicable banking rules and regulations are complied with, including the single borrower's limit as provided in the MORB;

h. Loans and receivables arising from repurchase agreements, certificates of assignment/participation with recourse, and securities lending and borrowing transactions;

x x x

j. Accounts receivable arising from sale of financial assets under the trade date accounting pending actual settlement/delivery of the underlying securities (Accounts payable arising from the purchase of financial assets under the trade date accounting pending actual settlement/receipt of the underlying securities shall require corresponding asset cover);

x x x

2. For banks authorized to operate an EFCDU – The foregoing accounts, regardless of maturity, and in the case of investment in foreign currency denominated debt instruments (including debt instruments booked under Unquoted Debt Securities Classified as Loans and investments in structured products), regardless of maturity and marketability, shall be considered as eligible asset cover.

In addition, the following shall also be considered as eligible asset cover:

a. Loans and Receivables granted by EFCDU pursuant to Section 24, i.e., those loans of non-residents from EFCDUs: *Provided*, That all applicable

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banking rules and regulations are complied with including single borrower's limit as provided in Section 362 of the MORB;

x x x

3. The 100% asset cover shall be unencumbered, except as otherwise provided in second paragraph of Item f of Section 73.1.

Banks are expected to regularly monitor compliance with the asset cover requirement, subject to the guidelines under Appendix 15.b. In determining compliance with FCDU/EFCDU cover requirements, a bank shall be allowed to offset any deficiency in asset cover occurring in one (1) or more days of the week by the excess cover that it may hold on the same week and in the immediately succeeding week. A simple moving average for every two (2)-week reference period shall be used in the measurement of the asset cover. For purposes of monitoring FCDU/EFCDU asset cover, the week refers to business days from Monday to Friday.

The report on compliance with FCDU/EFCDU asset cover requirements shall be made available during on-site examination or when required by the BSP for submission for off-site verification. The bank shall continue to submit to the Department of Supervisory Analytics a certification under oath and signed by the bank's President or Country Manager, in the case of local branch of foreign banks, Compliance Officer and Head of Treasury, to the effect that the bank has fully complied with the FCDU/EFCDU asset cover requirements on all the moving two-week periods of the reference quarter.

The applicable template on certification of compliance with the FCDU/EFCDU cover requirements shall be Appendix 15a for UBs/KBs, TBs, RBs/Coop Banks.

4. x x x"

"Section 76. Secrecy of Deposits. x x x

x x x

1. Directors, officers, stockholders, and related interests who contract a loan or any form of financial accommodation from their bank or related bank, and are required to execute a written waiver of secrecy of deposits of whatever nature in all banks in the Philippines, in accordance with Section 26 of Republic Act No. 7653 (New Central Bank Act), as amended;

x x x

7. The Philippine Deposit Insurance Corporation and the BSP are authorized to inquire into or examine foreign currency deposits and all information related thereto

in case there is a finding of unsafe or unsound banking, in accordance with Section 9(8) of Republic Act No. 3591 (Philippine Deposit Insurance Charter), as amended;

x x x”

“**Section 82. Taxes.** Pursuant to the National Internal Revenue Code of 1997, as amended and its Implementing Rules and Regulations, any income of non-residents (whether individuals or corporations) from transactions with depository banks covered under this Chapter shall be exempt from income tax. Interest income derived by residents (whether individuals or corporations) from depository banks covered under this Chapter shall be subject to a final income tax rate pursuant to the provisions of the National Internal Revenue Code x x x.”

“**Section 87. Supervisory Enforcement Actions**

x x x

3. Consistent with Section 002 of the MORB, the BSP reserves the right to deploy its range of supervisory tools to ensure compliance with the requirements set forth in these guidelines. Non-compliance with the prescribed 100% FCDU/EFCDU asset cover requirement, and issuance by a bank of false/erroneous certification on its compliance with the FCDU/EFCDU asset cover requirement, and any other violations in these guidelines shall constitute reasonable grounds for the BSP to deploy its enforcement tools, including but not limited to, citing a bank for conducting business in an unsafe or unsound manner should its activities result in abnormal risk to the institution. A bank may likewise be directed to refrain from engaging in specific activities with serious supervisory issues. Lastly, sanctions may be imposed on the bank and responsible persons, i.e., directors, officers, and employees, which may include restrictions or suspension from certain authorities/activities; monetary sanctions against the bank and/or directors, officers, and employees, under Section 1102 of the MORB; and reprimand, suspension, disqualification and removal of concerned directors, officers, and employees.”

Section 3. Appendix 15a (Sworn Certification of Compliance with the FCDU/EFCDU Cover Requirement) of the FX Manual is hereby amended and attached as Annex 1.

All references, including footnotes, in Appendix 16 (Guidelines on the Transfer of Net Realized/Unrealized Losses Recognized in Profit Or Loss and in Equity and Undivided Profits/(Losses) from FCDU/EFCDU Books to the RBU Books) and Appendix 16.1 (Illustrative Accounting Entries on the Transfer of FCDU/EFCDU Profits/(Losses)) containing “asset and liquid asset cover requirements” shall be changed to “asset cover requirement”.

Section 4. The Standard Pre-Qualification Requirements for the Grant of Banking Authorities as contained in the Appendix 5 of the MORB shall no longer include the authority to operate an EFCDU/FCDU. Hence, Item A.(g) and the reference to EFCDU/FCDU in Item B of Appendix 5 are hereby deleted.

Section 5. All references in the FX Manual pertaining to the BSP Supervision and Examination Sector (BSP-SES) and Supervisory Data Center (SDC) shall be changed to the BSP Financial Supervision Sector (BSP-FSS) and Department of Supervisory Analytics (DSA), respectively.

Section 6. Appendix 15.b of the FX Manual is hereby amended and shall contain the Guidelines on Compliance with the E/FCDU Asset Cover Requirements attached as Annex 2.

Section 7. Effectivity

This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

FOR THE MONETARY BOARD:



BENJAMIN E. DIOKNO
Governor

6 May 2020

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05/06/2020
RYA ROSE D. NUNEZ
Manager, RMD
Administrative Services Department

**SWORN CERTIFICATION OF COMPLIANCE WITH
THE FCDU/EFCDU COVER REQUIREMENTS**

<Name of Bank>

CERTIFICATION

Pursuant to Section 73 of the Manual of Regulations on Foreign Exchange Transactions, as amended, we hereby certify that we have fully complied with the 100% Asset Cover Requirement for FCDU/EFCDU Liabilities on all the two (2)-week period of the quarter ended _____ <Year>.

We further certify to the best of our knowledge that above statement is true and correct.

_____ President or Country Head (for Foreign Banks) TIN: _____	_____ Compliance Officer TIN: _____	_____ Head of Treasury Department TIN: _____
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SUBSCRIBED AND SWORN TO before me this ____ day of _____ 20__, at _____, Philippines affiant/s exhibiting their government-issued identification cards as follows:

NAME	GOVERNMENT- ISSUED ID	DATE OF ISSUE	PLACE OF ISSUE

Witness my hand and notarial seal on the date and place above-written.

NOTARY PUBLIC

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 20 ____.

Guidelines on Compliance with the FCDU/EFCDU Asset Cover Requirement

The following are the guidelines on the compliance with the FCDU/EFCDU asset cover requirement:

1. Banks shall compute for the FCDU/EFCDU asset cover on a daily basis and must strive to achieve a 100% FCDU/EFCDU asset cover ratio. The 100% ratio will be the benchmark in determining the excesses and the deficiencies in the asset cover ratio.
2. For the purpose of compliance with the FCDU/EFCDU asset cover requirement, a bank shall follow a rolling two-week compliance period with the right to offset any deficiency in asset cover occurring in one or more days of the week by the excess cover that it may hold on the same week and in the immediately succeeding week. The week refers to business days from Monday to Friday.

For example, given a rolling two-week compliance period, a bank has the following daily FCDU/EFCDU asset cover:

Table 1	Monday	Tuesday	Wednesday	Thursday	Friday
Week 1	100%	90%	102%	101%	100%
Week 2	100%	103%	100%	100%	104%

On Tuesday of Week 1, the bank incurred a deficit of 10% in its asset cover. To be in compliance with the requirement, the bank must be able to offset this deficiency with the excess cover in the current (Week 1) and succeeding week (Week 2). In Week 1, the bank has 3% surplus (2% on Wednesday and 1% on Thursday). Meanwhile, in Week 2, the surplus is 7% (3% on Tuesday and 4% on Friday). Overall, the excess asset cover amounts to 10% which was able to offset the asset cover deficiency in Week 1.

The basis for the offsetting is the daily asset cover ratio and not any other measure, e.g., weighted average asset cover ratio using the FCDU/EFCDU liabilities as weights. This is to provide for a simple monitoring of compliance.

3. There may be instances where deficiencies will occur in multiple number of days in a given two-week period. In this case, the average of the daily asset cover ratio shall be computed to determine if the excesses are sufficient to offset any deficiencies such that the average daily asset cover ratio for the two-week period is at least 100% to be considered as compliant on the required asset cover during the two-week compliance period.

For example, given a rolling two-week compliance period, a bank has the following daily FCDU/EFCDU asset cover:

Table 2	Monday	Tuesday	Wednesday	Thursday	Friday
Week 1	97%	98%	100%	98%	101%
Week 2	102%	99%	103%	102%	100%

Computing for the average asset cover for the two-week period, Week 1 and Week 2:

$$100\% \geq \frac{97\% + 98\% + 100\% + 98\% + 101\% + 102\% + 99\% + 103\% + 102\% + 100\%}{10}$$

The average FCDU/EFCDU asset cover ratio for the two-week period, Week 1 and Week 2, is 100%. Thus, the bank has complied with the asset cover requirement.

4. For the succeeding weeks, the bank shall implement a moving average of the FCDU/EFCDU asset cover requirement on a weekly basis.

To continue the example above, suppose the bank has the following daily FCDU/EFCDU asset cover for Week 3:

Table 3	Monday	Tuesday	Wednesday	Thursday	Friday
Week 1	97%	98%	100%	98%	101%
Week 2	102%	99%	103%	102%	100%
Week 3	96%	97%	98%	103%	105%

Computing for the average asset cover for the rolling two-week compliance period covering Week 2 and Week 3:

$$100.5\% \geq \frac{102\% + 99\% + 103\% + 102\% + 100\% + 96\% + 97\% + 98\% + 103\% + 105\%}{10}$$

The average FCDU/EFCDU asset cover ratio for the two-week period, Week 2 and Week 3, is 100.5%. Thus, the bank has complied with the asset cover requirement.

5. The FCDU/EFCDU book may lend funds to the RBU book only after the bank has complied with the FCDU/EFCDU asset cover requirements. Thus, in the previous examples (Tables 2 and 3), the bank's FCDU/EFCDU book may lend funds to the RBU book on any day of Week 3 based on the computed asset cover ratio covering the two-week compliance period of Weeks 1 and 2. Similarly, the bank's FCDU/EFCDU book may lend funds to the RBU book on any day of Week 4 as the bank has complied with the average asset cover ratio based on Weeks 2 and 3.

The lending from the FCDU/EFCDU book to the RBU books is subject to the existing rules in Section 72 of the FX Manual.

6. Should the average FCDU/EFCDU asset cover ratio not meet the required 100% asset cover requirement for a specified compliance period, lending from the FCDU/EFCDU book in the immediately succeeding week will be prohibited. Furthermore, pursuant to Section 87 (Supervisory Enforcement Action) of the FX Manual, the BSP reserves the right to deploy its range of enforcement actions for the non-compliance with the prescribed 100% asset cover requirement.

For example, given a rolling two-week compliance period, a bank has the following daily FCDU/EFCDU asset cover:

Table 4	Monday	Tuesday	Wednesday	Thursday	Friday
Week 3	96%	97%	98%	103%	105%
Week 4	102%	99%	99%	98%	99%

$$99.6\% < \frac{96\% + 97\% + 98\% + 103\% + 105\% + 102\% + 99\% + 99\% + 98\% + 99\%}{10}$$

The average FCDU/EFCDU asset cover ratio for the two-week period, Week 3 and Week 4, is 99.6%. Thus, the bank has not complied with the asset cover requirement.

7. In any case of non-compliance with the asset cover, the prohibition of lending from the FCDU/EFCDU book shall continue until the bank has recorded compliance with the asset cover for the next two consecutive compliance periods. The outstanding lent amount prior to the non-compliance remains valid.

To continue with the previous example, suppose a bank has the following daily FCDU/EFCDU asset cover:

Table 5	Monday	Tuesday	Wednesday	Thursday	Friday
Week 3	96%	97%	98%	103%	105%
Week 4	102%	99%	99%	98%	99%
Week 5	99%	100%	102%	102%	101%
Week 6	100%	99%	101%	103%	100%

Having not complied with the asset cover requirement for the two-week compliance period Weeks 3 and 4, the asset cover for the next two two-week compliance periods must meet the 100% average to be eligible for the

FCDU/EFCDU lending. Thus, the computed average for Weeks 4 and 5 and Weeks 5 and 6 must be at least 100%.

Weeks 4 and 5:

$$100.1\% \geq \frac{102\% + 99\% + 99\% + 98\% + 99\% + 99\% + 100\% + 102\% + 102\% + 101\%}{10}$$

Weeks 5 and 6:

$$100.7\% \geq \frac{99\% + 100\% + 102\% + 102\% + 101\% + 100\% + 99\% + 101\% + 103\% + 100\%}{10}$$

With at least 100% asset cover requirement for the two compliance periods, the FCDU/EFCDU book is now eligible to lend to the RBU book on any day of Week 7.

8. Should there be public, special or legal holidays, non-banking days, unexpected non-banking days, declared half-day holiday and days when there is no clearing for any day of the week, the computed FCDU/EFCDU cover of the preceding day/s shall be used. The two-week compliance period shall always begin and end on Monday and Friday, respectively.