

This is a free translation offered only as a convenience for English language readers and is not legally binding. Any questions arising from the text should be clarified by consulting the original and official version in Portuguese.

CVM Instruction N° 542, of December 20th, 2013

Establish provisions for securities custody services.

The **PRESIDENT OF THE SECURITIES COMMISSION – CVM** makes public that the Collegiate, in session held on December 4^h, 2013, based on Articles 1 (item VI), 8 (item I) and 24 of Law n. 6,385, of December 7th, 1976; and on Articles 41 and 293 of Law n. 6,404, of December 15, 1976, **APPROVED** the following Instruction:

CHAPTER I – DEFINITIONS AND SCOPE

Article 1 – The securities custody services should be provided by legal persons authorized by the Securities Commission (CVM) in the terms established in this Instruction.

§ 1 – The custody services can be provided:

I – to investors, when the custodian is hired to safekeep the securities entitled to the investors, as established in item I of § 2; and

II – to the issuers of securities issued in certificate format, as established in II of § 2.

§ 2 – The provision of custody services comprises:

I – in the case of services provided to investors:

a) the safeguarding, the control and the reconciliation of securities positions in custody accounts kept in the name of the investor;

b) the processing of the instructions for the securities movement received from the investors or persons duly authorized by contract or mandate; and

c) the processing of events impacting the securities under custody; and

II – in the case of services provided to issuers:

a) the physical custody of the securities issued in certificate format; and

b) the execution of the necessary procedures and registries to the effectiveness and the application to the securities of the centralized deposit regime.

§ 3 – This Instruction:

I – do not apply to the positions held in the derivatives markets; and

II – apply to financial bills and to other instruments whereas, in case of public offering, are subject to the CVM jurisdiction.

§ 4 – For the purpose of item II of § 1, other institutions that, as holders or creditors of the securities, are responsible for their distribution to the market are considered equivalent to issuers.

Article 2 – The custodian that provides services to the investor can maintain a formal relationship with central depositories in order to keep the investors' securities in centralized deposit accounts, as established in the instruction for the provision of central securities depository services.

Sole paragraph – In the case of the **caput**, the positions held in custody accounts referred in item I, line "a", of § 2 of Article must correspond to those kept by the central depository, for the securities centrally deposited.

CHAPTER II – AUTHORIZATION FOR PROVIDING CUSTODY SERVICES

Section I – Registration Requirements

Article 3 – The following institutions may require authorization to provide central depository services: commercial banks, multiple or investment banks, saving banks, securities brokerage houses and dealers, and institutions authorized to provide clearing and settlement services and central depository services.

Article 4 – The institution interested in obtaining the authorization referred in Article 3 must:

I – Constitute and maintain operational and technological capabilities to the performance of its activities with the purpose of providing custody services in a satisfactory way, in particular to ensure the quality and information confidentiality.

II – Constitute and maintain processes and computerized systems that are safe and adequate to the performance of its activities in order to allow the registration, the processing and the control of the positions and the custody accounts.

§ 1 – The processes and systems referred in this Article must be compatible with the size, the characteristics and the volume of transactions under the applicant’s responsibility, as well as with the nature and the type of securities under custody.

§ 2 – The applicant must present proof of economic and financial capacity compatible with the activities to be performed.

§ 3 – In the case the applicant requests authorization to provide securities’ physical guard services, the applicant must maintain the structure for the physical guard with restrictive access as well as safety mechanisms that ensure the integrity of the securities.

Section II – Request for Authorization

Article 5 – The request for authorization to act as a custodian must be submitted together with the documents described in Annex 5.

Sole paragraph – The CVM can require the applicant to provide complementary elements and information.

Article 6 – The authorization is automatically granted if the request is not denied by the CVM within a 90 (ninety) days period counted from the day the request has been registered upon receipt protocol.

§ 1 - The period referred in the **caput** can be interrupted only once in the case the CVM requires the applicant to provide additional documents and information related to the request. A new period of 90 (ninety) days is initiated as of the fulfillment of the requirements.

§ 2 - A maximum period of 60 (sixty) days is granted for the fulfillment of the requirements referred in § 1.

Section III – Denial of the Authorization Request

Article 7 - The authorization request for providing central depository services must be denied whenever:

I – it has not been submitted with the documents needed for its evaluation or if the additional documents and information demanded by the CVM are not submitted by the deadline established in § 2 of Article 6;

II – false information is identified in the documents presented;

III – inaccurate information is identified in the documents presented and, due to its extension and content, proves to be relevant for the evaluation of the request for authorization;

IV – the applicant do not present evidence of having the adequate financial capacity or technical and operational conditions to provide the services; or

V – the applicant do not comply with any other requirement or condition established in this Instruction.

Sole paragraph – The denial decision referred in this Article can be appealed according to the form and deadlines established in the regulation in force.

Section IV – Cancelation of Authorization

Article 8 – The authorization granted can be cancelled:

I – by request of the custodian;

II – by decision of the CVM, after administrative process where the right of contradiction and full defense are assured, in the following situations:

a) once it is detected that the authorization for providing custody services was obtained by means of false statements or other illicit methods; or

b) once it is evidenced that the custodian do not comply with the requirements established in this Instruction; and

III – in the case of declaration of bankruptcy, judicial and extra judicial liquidation and dissolution of the custodian.

§ 1 - In the situation aforementioned in item I of the **caput**, the custodian must provide the CVM evidence that retribute the investors all the securities kept under his custody or, through the direct command or as established in the respective agreement, transferred the securities to other custodian.

§ 2 – In the case of the cancellation of authorization referred in items II and III of the **caput**, the custodian must promptly transfer to the investor, or to the person indicated by the later, the securities, the data and the documents related to the services provided until the moment of the cancelation.

§ 3 – In any of the circumstances referred in items I and III of the **caput**, the custodian must, as appropriate, promptly inform the central depositories providing centralized services to the securities under custody the event of the cancelation of authorization.

CHAPTER III – PROVISION OF CUSTODY SERVICES

Article 9 – The provision of custody services must be subject to specific agreement celebrated between the investor or the issuer, as it may be the case, and the custodian. The custody agreement must comprise at least:

I – in the case of services provided to investors, the procedure for transmitting orders between the investor and the custodian for the sake of the authorizations and manifestations mentioned in this Instruction;

II – the procedure for the physical guard o the securities, when appropriate;

III – the possibility of hiring third parties; and

IV – the description of the risks inherent to the custody service.

Sole paragraph – The custody agreement celebrated with the investors can include the provision of asset controlling services and other services that involve the consolidation of investors' positions, including in other type of assets, and correlated services.

Article 10 – The obligations resulting from the provision of custody services lasts as long as the custody agreement is in force.

§ 1 – The custodian must effect the transfer of the securities, as well as the rights and encumbrances pending over them, to the custodian indicated by the investor, considering the nature of each security, its holding and transfer method and the procedures established by the central depository, should this be the case.

§ 2 – The transfer of securities to other custodian must follow reasonable procedures, considering the investors' needs and the safety of the process. The transfer must be completed in a maximum of 2 (two) business days counted from the day a valid request formulated by the investor has been received by the custodian.

CHAPTER IV – RULES OF CONDUCT

Article 11 – The securities entitled to the investors must be kept in individualized custody accounts in their names, segregated from other accounts and from positions entitled to the custodian.

Article 12 – The custodian must:

I – conduct its activities with good faith, diligence and loyalty with respect to the interests of the investors, been forbidden to privilege its own interests or the interests of any related person;

II – undertake the necessary measure to identify the entitlement of the securities in order to ensure their integrity and to be certain about the origin of the received instructions;

III – be diligent in relation to the safekeeping and the regular movement of securities kept under custody, according to the instructions received, as well as to the adequate processing of the proceeds impacting the securities, by means of implementing execution and electronic and documental control systems;

IV – register the encumbrances and rights over the securities under custody, taking all necessary measures for their adequate formalization;

V – permanently ensure the quality of their processes and computerized systems, measuring and keeping track of errors, incidents and disruptions;

VI – ensure the physical safety of its equipment and facilities through the issuance of data and information security rules that protect against access by unauthorized personnel;

VII – have sufficient and technically capable human resources to execute the processes and operate the systems involved in the custody services;

VIII – maintain updated the operational manuals, the general description of the systems used for providing the services, the routine flows, the computer programs documentation, the quality control tools, and the physical and logical security rules;

IX – implement and maintain an updated contingency plan to ensure business continuity and the provisions of the services.

§ 1 – Beyond the provisions of the **caput**, the custodian that provides services to investors must:

I – execute daily reconciliation between the positions held in the custody accounts and those provided by the central depository, ensuring that the securities kept under custody and the rights resulting from those securities are registered in the name of the investor in the central depository system, where applicable; and

II – keep secrecy with respect to the securities characteristics and quantities entitled to the investors.

§ 2 – Beyond the provisions of the **caput**, the custodian that provides services to issuers must:

I – verify the compliance of the formal requirements and those for the creation of securities;

II – verify the compliance with the specific transfer mechanisms for each security in order to create the centralized deposit, according to its nature and in the terms of the central depository regulation;

III – effect the acts for which are responsible for the deposit and withdrawal of securities in/from the central depository service, in the terms of the central depositories regulations;

IV – take responsibility for the physical guard of the instruments and documents that represent the security centrally deposited;

V – refrain from engaging in any act to dispose or to give validity to the disposition of securities centrally deposited outside the central depository environment, except upon instructions from the central depository itself;

VI – transfer to the central depository the information and the resources related to the proceeds impacting the securities centrally deposited for which the custodian is responsible for;

VII – identify the beneficial owner of the security at the moment it is submitting the security to centralized deposit and, thereafter, whenever it is necessary as from the information provided by the central depository;

VIII – adopt the reconciliation procedures established by the central depository; and

IX – maintain inventorial registries of the securities held under its physical guard. The registries must contain the following information:

- a) nature, type and class of the security;
- b) registry of the movements of deposit and withdrawal; and
- c) registry of the transfer of information, payments and receipts of financial resources related to the proceeds impacting the securities.

CHAPTER – INFORMATION DISCLOSURE

Article 13 – The custodian that provide services to investors must make available or send to the investors, as appropriate, the information that allows the identification and the verification of the events involving the securities. The information must contain, at least, the consolidated position in securities, their movements and the events impacting the investors' positions.

§ 1 – The information referred in the **caput** must be made available or sent, as appropriate until the 10th (tenth) business day of the month following the month-end when the movement occurred

§ 2 – The information referred in the **caput** can be made available or sent by the following means, according to the CVM's decision in the Instruction that establish rules for the provision of central securities depository services:

I – consultation to electronic system with restricted access in the worldwide web;

II – mailing to the investor's electronic address registered in the system referred in Article 12, with accredited safety standards; or

III – mailing to the investor's postal address registered in the system referred in Article 12.

§ 3 – Until the end of February each year, the information referred in the **caput** related to the previous year must be made available or sent to the investor.

§ 4 – In the case the custodian provides other related services, in the terms of the sole paragraph of Article 9, the information provided to the investors can include information about the positions held by the investors in other financial assets or in the derivatives markets.

Article 14 – The custodian must make and maintain the registration of investors with the minimum content established in the applicable regulation.

§ 1 – The registration of investors can be made and maintained in electronic systems.

§ 2 – The electronic system for the registration of investors referred in § 1 must:

I – enable the custodian’s immediate access to the registration data; and

II – use technologies able to fully comply with the provisions of this Instruction and in the specific regulations for clients’ registration.

§ 3 – The registration of investors maintained by the custodian must allow the identification of the date and the content of all changes and updates.

§ 4 – The custodian must maintain the registration of investors updated in the information centralized system of the central depository, when applicable, in the terms and standards established by the central depository.

CHAPTER VI – RULES, PROCEDURES AND INTERNAL CONTROLS

Section I – General Rules

Article 15 – The custodian must adopt and implement:

I – adequate and effective rules for the fulfillment of the provisions of this Instruction; and

II – procedures and internal controls with the objective of verifying the implementation, the application and the effectiveness of the rules mentioned in item I.

§ 1 – The rules, procedures and internal controls referred in this Article must:

I – be written;

II – be verifiable; and

III – be available for consultation by the CVM, the central depositories with which the custodian have a relationship in the terms of Article 2, the entities managing organized markets in which the custodian is authorized to operate and the respective self-regulatory departments, when applicable.

§ 2 – The inexistence or insufficiency of rules, procedures and internal controls as well as their non-implementation or inadequate implementation are considered situations of non-compliance to items I and II of the **caput**.

§ 3 – Inadequate implementation of rules, procedures and internal controls are evidenced by:

I – the reiterate occurrence of failures; and

II – the absence of the registration of the methodology application, in a consistent and verifiable way.

Section II – Responsible Director

Article 16 – The custodian must appoint:

I – one statutory director responsible for meeting the requirements established by this Instruction;
and

II – one statutory director responsible for supervising the procedures and internal controls referred in item II of the **caput** of Article 15.

§ 1 – The nomination or the substitution of the statutory directors referred in items I and II must be informed to the CVM, the central depositories and the entities managing organized markets in which the custodian is authorized to operate, as the case may be, within 7 (seven) business days.

§ 2 – The functions referred in items I and II of the **caput** cannot be performed by the same statutory director and cannot be executed together with other functions that can somehow be considered conflicting. It is possible to appoint, for those purposes, the same directors indicated for the same finalities in compliance with the Instruction that established rules and procedures for transactions in the securities regulated markets.

§ 3 – The directors referred in items I and II must conduct their activities with probity, good faith and professional ethics acting with care and diligence expected from a professional in his/her position.

Article 17 – The director referred in item II of Article 16 must, until the last day of April:

I – submit to the custodian administrative body a report of the previous year containing:

a) the conclusions of the internal auditing reports;

b) his/her recommendations with respect to eventual deficiencies, including, when appropriate, a remediation timetable; and

c) his/her opinion with respect to the deficiencies identified in previous verifications and the measures planned, according to a specific timetable, or effectively undertaken in order to remediate them; and

II – submit to the custodian administrative body and to the CVM the report about the description, the project and the operational effectiveness of the controls (type 2) of the previous year, issued by an independent auditor registered with the CVM. The report must be elaborated in the terms of the NBC TO 3402 approved by the Federal Accounting Council.

Sole paragraph – The report mentioned in item I must be available for the CVM and to the central depository with which the custodian maintains a relationship, as the case may be, in the custodian's headquarters.

Section III – Hiring Third Parties

Article 18 – The custodian can hire third parties:

I – to perform the activities regulated by this Instruction

II – to perform tasks that are instrumental or ancillary to the activities regulated by this Instruction, such as the physical guard of securities.

§ 1 – Only custodians authorized by the CVM, in the terms of Article 5 of this Instruction, can be hired as established in the item I of the **caput**.

§ 2 – The hiring of third parties, as mentioned in the **caput**, do not change the responsibilities of the custodian who remains responsible for fulfilling its obligations towards third parties as well as the provisions of this Instruction and in the rules of the central depository, if any.

§ 3 – The contracts signed for the purpose of item I of the **caput** must contain clause stipulating the joint responsibility between the hiring custodian and the third parties hired for eventual damages caused to the securities holders due to conducts that infringe the law, the regulation and the normative acts issued by the CVM.

§ 4 – The custodian must adopt adequate rules, procedures and internal controls in order to ensure the safety and mitigate the conflict of interest in case of hiring third parties and, as appropriate, to allow their effective control over the movement of securities under physical guard..

Section IV – Auditing

Article 19 – The custodian must maintain a structure of internal auditing.

§ 1 – The reports produced by the internal auditing department must be kept updated and available to the CVM.

§ 2 – The CVM can determine the execution of extraordinary specific auditing if there are any signs that the processes and systems are not meeting or can fail to meet their purpose.

CHAPTER IX – INFRACTIONS AND PENALTIES

Article 20 – It is considered a serious offense, for the purpose of the § 3 of Article 11 of Law n. 6,385, of December 7, 1976, the performance of the activities regulated by this Instruction by unauthorized institution or institution authorized based on false statements or documents, as well as the violation of the provisions established in Articles 1, 2, 9 to 16 and 22 of this Instruction.

Art. 21. Os participantes de depositários centrais que, quando da entrada em vigor desta Instrução, prestem serviços de custódia, não estando registrados na CVM nos termos da Instrução CVM nº 89, de 8 de novembro de 1988, devem, até a data da entrada em vigor desta Instrução, obter o correspondente registro de custodiante.

CHAPTER X – FINAL PROVISIONS

Article 21 – The participants of the central depository that provide custody services and are not registered by the CVM, in the terms established in CVM’s Instruction n. 89, of November 8, 1988, must obtain their corresponding custodian registration until the date this Instruction comes into effect.

§ 1 – The registration mentioned in the **caput** is obtained by the submission of the information and documents referred in items I and II of Article 1 of Annex 5, according to the procedures and deadline established by the Office of Market Surveillance – SMI (CVM).

§ 2 – The participants of the central depositories referred in the **caput** that do not obtain, until this Instruction comes into effect, their registration as custodians through the procedures mentioned § 1, must:

I – submit registration request as established in Article 5 of this Instruction; and

II – until obtaining the corresponding authorization, refrain from engage in any activities inherent to the custody of securities.

Article 22 – The custodian already registered, those whose request for registration had already been registered by the CVM or those who obtained the registration as established in § 1 of Article 21 must adapt to the provisions of this Instruction in up to 1 (one) year and 6 (six) months after this Instruction has come into effect.

§ 1 – It is incumbent to the SMI to establish rules and procedures for the custodians' adaptation to the provisions of this Instruction, thus defining the intermediary deadlines for the fulfillment of the obligations and the corresponding proofing elements.

§ 2 – The custodian that do not prove, in the manner and within the deadlines established in § 1, its adaptation to the provisions of this Instruction must have its authorization cancelled by the decision of the SMI.

Article 23 – In case of administrative proceedings, the custodian must keep, for at least 5 (five) years or for more time as per CVM's express command, all the documents and information required in this Instruction, as well as all mails, internal and external, and all reports and opinions related to its activities.

Sole paragraph – The documents and information referred in the **caput** can be stored in physical and electronic formats. Documents can be substituted by their digital images.

Article 24 – This Instruction comes into effect on July 1st, 2014.

Original signed by

LEONARDO P. GOMES PEREIRA

Chairman

ANNEX 5

Request for Authorization for Securities Custody Services

Article 1 – The request for authorization for providing custody services must be submitted together with the following documents and information:

I – company name, registration in the National Legal Person Registration (Cadastro Nacional de Pessoa Jurídica – CNPJ), headquarters complete address, telephone and fax numbers, e-mail address, worldwide web address and signing card with the signature of the legal representatives;

II – acts of incorporation and posterior changes, duly updated and legalized;

III – set of documents with the purpose of proving the applicant has adequate organizational, technical, operational and financial capabilities to provide securities custody services, fulfilling at least the following requirements:

a) description of the main characteristics of the processes and computerized systems used for providing the services with the specification of operational routines intrinsic and extrinsic to the systems, as well as the pertinent procedures and internal controls;

b) description of the custody account structure;

c) summary description of the safety rules for the facilities, equipment and data;

d) description of the human resources allocated to the activity, specifying the functions and titles necessary to its performance;

e) policies for the activities' segregation, physical access control and password use, and personnel training;

f) contingency plan in order to ensure the business continuity and the services provision as well as files and database recovery systems; and

g) in case the systems used were not developed by the applicant, copies of the contracts of systems' assignment or development celebrated between the applicant and the company owner of the system or responsible for its development.

IV – organizational chart of the custody department, specifying the functions and responsibilities of the persons that integer the department and the functions' segregation policy;

V – name and qualification of the applicant's legal representatives;

VI – copy of the minutes of the Board of Directors or of the Management meeting that appointed the directors responsible for the compliance with the rules established in this Instruction and for the supervision of the procedures and internal controls of the securities custody services;

VII – list of the companies in which the custodian has equity, including companies indirectly controlled or affiliated;

VIII – model of the agreement for providing custody services;

IX – designation of the independent auditing company registered in the CVM that executed the operational auditing of the custody services, as well as the declaration of its independency in relation to the auditing; and

X – report about the description, the project and the operational effectiveness of the controls (type 1), issued by an independent auditor registered with the CVM. The report must be elaborated in the terms of the NBC TO 3402 approved by the Federal Accounting Council.