

EBRD Project #74675 – Jordan

**Review of ASE and SDC Business Processes and
Institutional Capacity**

**Section 3.1 - ASE's and SDC's Compliance with
International Standards**

Annex 4 - US SEC Rule 17f-7

October 2019

Rule 17f-7, by reference to Rule 17f-4, requires that, for a depository to be eligible to hold securities of U.S. registered investment companies (such depositories hereinafter referred to as “Eligible Securities Depositories”), the **depository must be a “system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.”**

Are all securities of a particular class or series of any issuer that are deposited in your institution treated as fungible, and can they be transferred or pledged by bookkeeping entry without physical delivery of the securities?

Book entry for transfer or pledge:

The Securities Law of 2017 states in Article 79 (C):

“Registration and transfer of ownership of securities traded on the Financial Market and the price settlements of such securities between Brokers shall be via book- entries in the Center’s records.”

Central Handling of securities:

Article 75 of the Securities Law states:

A. The Center shall perform the following functions:

1. Registration, safekeeping, and transferring of ownership of securities.
2. Depositing securities.
3. Clearing and settlement of securities.

B. The Center shall be the sole entity in the Kingdom authorized to perform the functions stipulated in Paragraph (A) of this Article.

Fungibility and No physical delivery requirement

As per our interviews and SDC’s replies to the questionnaires sent all securities of a particular class or series of any issuer that are deposited at SDC are treated as fungible, and they can be transferred or pledged by bookkeeping entry without physical delivery of the securities. The Tomas Murray Report on SDC’s risk also confirms that there are no physical certificates at SDC and all shares are dematerialized.

2. Rule 17f-7 also requires that an Eligible Securities Depository “**acts as or operates a system for the central handling of securities or equivalent book-entries in the country where it is incorporated,**” or “acts as or operates a transnational system for the central handling of securities or equivalent book-entries.”

SDC operates a system for the central handling of securities or equivalent book-entries in Jordan, as instructed by the aforementioned Article 75 of the Securities Law.

Rule 17f-7 requires that an Eligible Securities **Depository “is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act”**, with section 2(a)(50) establishing that “‘foreign financial regulatory authority’ means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded

on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.”

As per the Securities Law, the Jordan Securities Commission (JSC), which is, as per Rule 17f-7, a governmental body or regulatory organization empowered to administer or enforce laws related to securities matter, has regulatory powers over the SDC, in line with rule 17f-7.

Article 8 (B) point 7 states that the JSC’s obligations include “Regulating and monitoring the Center”. Article 12 (Q) also has the responsibility of “Reviewing the decisions relevant to dealing in securities issued by the Financial Market and the Center and repealing the implementation of any of such decisions.”

The law also discloses in Article 15 the entities under JSC’s supervision, including the latter’s audit powers, as well as stating in Article 76 (B) that SDC’s CEO shall be approved by JSC’s Board. Article 81 also states that SDC’s by-laws must be approved by JSC’s Board, while Article 87 enables JSC’s Board to suspend SDC’s activities. Thus evidencing JSC’s full regulatory powers over SDC and its markets.

Rule 17f-7 requires that an Eligible Securities Depository **“is subject to periodic examination by regulatory authorities or independent accountants.”**

Article 15 of the Securities Law grants the JSC regulatory powers over the SDC, making it “subject to inspection and to the auditing of its documents, records and registers by the competent entity within the Commission legally authorized to do so”.

Article 77 states that “The Board of Directors of the Center shall appoint a certified auditor to audit the Center’s accounts.” Thus, SDC complied with both provisions.

Rule 17f-7 requires that an Eligible Securities Depository **“holds assets for the custodian that participates in the system on behalf of the Fund under safekeeping conditions no less favorable than the conditions that apply to other participants.”**

The Instructions of the Registration, Deposit and Settlement of Securities for the year 2017 indicate in Article 28:

The investor shall be identified through the Broker or Custodian in accordance with the following measures:

A- The investor shall submit a written application to be identified on the Center’s electronic systems attached with the documents and data referred to in Article (27) of these Instructions.

B- The Broker or Custodian shall identify the investor on the Center’s Database through the Center’s electronic system

With the Securities Law stating in Article 54 (C) “The basis for naming the accounts and the requirements for the segregation and custody of clients’ moneys and assets shall be specified in accordance with instructions or decisions issued by the Board.”

Current regulations and rules do not distinguish between assets (shares) held for Custodians and those held for other SDC participants. The Bylaws of the Settlement Guarantee Fund for the year 2017 also states in Article 6 “Members of the Center of Brokers and Custodians shall be inevitably deemed members of the Fund”, making no distinction between custodians and other members.

Article 34 of said Bylaws also details the types accounts that can be opened at the Center:

Investors Accounts that may be opened on the Center’s Database shall be of any of the following types:

A- Independent Account: an Account that is opened for one person only (natural or judicial).

B- Margin Account: an Account opened by a Broker licensed by the Commission to provide margin financing for its clients.

C- Joint Account: an Account that can be opened for two persons or more where the ownership of securities shall be registered in the joint name. This Account shall be opened in accordance with the following conditions:

1. Identification of each investor of the investors that constitute the components of the Joint Account independently and in advance. The Type of Account for each investor shall be (Independent) in accordance with these Instructions.
2. Specification of the name of the Joint Account, identification of the type of client (Joint) and identification of the type of Account (Joint) and identification of the Account on the Center’s electronic systems in accordance with these Instructions.
3. If the Broker is one of the components of the joint name, then the Broker shall use the Center Number assigned to it and its Account Number at the Center for the purpose of opening Joint Accounts with its clients.
4. It shall not be permitted to open Joint Accounts except for the purposes of selling securities registered in the name of two persons or more, or for the purpose of allocating the securities to the joint account owners.

D- Custody account: an account opened by the Broker and linked to an independent custody account opened with the Custodian.

E- Allocation account: A principal account under which sub-accounts are linked, such account is used to allocate buying and selling transactions between the principal account and the sub-accounts, processes and measures for opening this type of account on the Center’s database shall be governed by specific procedures issued by the Board of Directors as of the date determined by the Board of Directors thereto.

The Custodian System at SDC enables the custodians to identify and establish accounts for his clients, safe-keep their securities, transfer deposited securities between accounts, enquire about the movements and balances of his clients’ deposited securities and release securities to the selling broker and receive securities from the buying broker on behalf of his clients. This system also allows the custodians to settle the trades of their clients directly with the SDC on a delivery-versus-payment (DvP) basis.

Rule 17f-7 requires that an Eligible Securities Depository “provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account.”

Article 32 of SDC’s Instructions of the Registration, Deposit and Settlement of Securities for the year 2017 states:

The Broker or Custodian is authorized to access a specified part of the Center’s electronic systems for the following purposes:

- A- Identify and establish Accounts for its clients in accordance with these Instructions.
- B- Enter information and data related to transfer of deposited securities between Accounts.
- C- Inquire on the movements and balances of its clients deposited securities.
- D- Any other information related to the Broker or Custodian or to their clients.

The participants are able to view updated safekeeping reports on daily basis through (SCORPIO)'s electronic systems provided to each participant, as stated by Article 47:

The Issuer shall have the right to electronically access the Ownership Registers of securities issued by the Issuer and deposited at the Center for viewing purposes only. An Issuer shall not be permitted to make any changes or amendments to the Ownership Registers except in accordance with these Instructions.

Article 77 also clarifies which reports are sent daily by the Center to participants:

On each trading day, the Center shall, transmit an electronic notice to each Broker and each Custodian, the notice shall include the following data and information:

- A- The net amount due to be received or paid by the Broker or Custodian for the Settlement Purpose
- B- The amount to be paid by the Broker as Liquidity Reserve in the Settlement Account
- C- The amount due to be paid by the Broker or Custodian in the Settlement Account on the Settlement day.

Rule 17f-7 requires that an Eligible Securities Depository “maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants.”

The Securities Law of 2017 states in Article 79 (C):

Registration and transfer of ownership of securities traded on the Financial Market and the price settlements of such securities between Brokers shall be via book- entries in the Center’s records.

Point H of said article also commands the center to maintain ownership and transaction records:

The Center shall document the ownership of the sold securities and shall enter the transfer of their ownership in the Center's records, according to instructions issued thereby

Article 22 of the Instructions of the Registration, Deposit and Settlement of Securities for the year 2017 states:

The investor shall be identified and securities Accounts shall be established for him/her on the Center's Database through the Center's electronic systems

Segregation of assets is also clarified in the Bylaws of the Settlement Guarantee Fund for the year 2017, which in Article 20, point A states:

The Center shall maintain the accounts and registers of the Fund which shall be completely segregated from the accounts and registers of the Center.

And Article 21 point B expands:

The Fund's assets shall be segregated from the Center's assets. The assets of the Center shall not in any case be used to fulfill the settlement obligations on behalf of any Member.