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**The Securities and Exchange Commission**

Notification of the Securities and Exchange Commission

No. KorNor. 20/2547

Re: Rules for Derivatives Fund Management

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To assure investors that the derivatives fund manager will appropriately manage the investments for investors to protect and maintain the best interest of investors under acceptable risk exposure, it is necessary that the scope of rules and regulations which would serve as standards for derivatives fund management must be set out for the supervision of the derivatives business in the category of derivatives fund management to make the management that are entrusted for the management of investments work on the basis of integrity and prudence with knowledge and expertise of the professional to ensure the full protection of investors' interest as well as provide proper and sufficient information disclosure to investors.

By virtue of Section 9, Section 18, Section 31 and Section 41 of the Derivatives Act B.E. 2546 (2003), the Securities and Exchange Commission hereby issues the following regulations:

**Clause 1.** In this notification:

“Derivatives fund manager” means any person licensed or registers to undertake derivatives business in the category of derivatives fund manager;

“Customer” means any person who authorizes the derivatives fund manager to provide the services of derivatives fund management for them;

“Investment manager” means any person who is authorized by the derivatives fund manager to make an investment decision to acquire benefits from derivatives for others;

“Association” means any derivatives fund management regulatory association approved by the Securities and Exchange Commission;

“Mutual fund” means any mutual fund established under the laws governing securities and exchange;

“Marketing agent of fund manager” means any person who is designated by the derivatives fund manager to be an agent to solicit investors, together with proposed investment plans, to enter into a contract with the derivatives fund manager for management of investments in derivatives;

“Office” means The Office of the Securities and Exchange Commission.

**Clause 2.** To ensure that each derivatives fund manager shall conduct its business as a professional to conform to investors’ trust, the derivatives fund manager shall:

(1) Arrange to have a work system ensuring allocation of duties and responsibilities to respective work units; supervision of its operation; risk management; selection and monitoring of its personnel assuring that they have and maintain such qualifications that correspond to the nature of their duties and internal control measures to audit and counterbalance the operation and to prevent any transactions which may give rise to a conflict of interest, including keeping documents and evidence relating to the operation to facilitate the operational audit;

(2) Arrange to have personnel perform duty as investment manager or to solicit investors, with prepared investment plans, to enter into a contract with derivatives fund manager. Any person arranged by the derivatives fund manager must possess knowledge, ability and business understanding and is subject to the approval of the Office in accordance with rules as prescribed in the notification of the Office.

(3) Supervise and monitor to ensure that its personnel perform in compliance with the laws on derivatives and rules issued under such laws, including rules as specified by the association with the approval of the Office;

(4) Be a member of the association and shall refrain from violating relevant professional code of conduct and standards as specified by the association, in any aspects material to maintain its professional status, or in any aspects which would affect the overall creditworthiness as professional.

**Clause 3.** In soliciting investors to enter into a derivatives fund management contract, the derivatives fund manager shall:

(1) Propose investment plans which are suitable for investors;

(2) Sufficiently and timely disclose or arrange to have disclosure of information that is necessary for investors to make the decision to enter into a contract for derivatives fund management;

In case the investor is a mutual fund and the statements relating to investment policy, investment restrictions and other relevant matters have been already clearly specified in details of the scheme, the derivatives fund manager shall be exempted from compliance with the first paragraph if the mutual fund has consented.

**Clause 4.** The advertisement relating to provision of services of derivatives fund management shall not use words or statements, that are exaggerating, false or misleading.

**Clause 5.** A derivatives fund management contract shall have the characteristics in compliance with the following rules:

- (1) Having a clear scope of investments or restrictions of investments;
- (2) The agreement shall not be in the manner which may cause conflict of interest between the customer and the derivatives fund manager as well as related persons as specified in the notification of the Office unless the customer has consented;
- (3) Clearly determining the customer's rights particularly the right to receive information with respect to derivatives fund management;
- (4) Having necessary information and warnings which the customer shall be aware of and familiar with in respect to derivatives fund management.

**Clause 6.** The derivatives fund manager as the person entrusted to manage the customer's funds shall invest in derivatives by using its ability to fully protect and maintain the best interest of the customer on the basis of integrity, prudence and due care.

**Clause 7.** In case the derivatives fund manager will invest in derivatives issued by any issuer or traded in any derivatives exchange which is not under the supervision of the Office, the Office shall have power to specify types of derivatives contracts in which each type of customers may invest or possess.

**Clause 8.** In case the customer wishes to put his or her property into the custody of the derivatives fund manager, the derivatives fund manager shall be in compliance with Division 3 Treatment of Customer Property and Division 4 Protection of Customer Property of Chapter 2 of the Derivatives Act.

**Clause 9.** In case the derivatives fund manager is the person who keeps custody of customer property, the derivatives fund manager shall also maintain a financial condition supporting the custody of customer property in accordance with the notification of the SEC governing the maintenance of derivatives fund manager's financial condition.

**Clause 10.** The derivatives fund manager shall:

(1) Calculate the value of derivatives contracts in accordance with the rules as specified in the notification of the association approved by the Office. In case any derivatives contract of which the calculation on method has not been determined by the association, the valuation of such derivatives contract shall comply with the method agreed upon by the customer;

(2) Measure performance of investments in, or holding of, derivatives contracts in accordance with the rules as specified in the notification of the association approved by the Office.

The derivatives fund manager shall disclose to the customer investment information, results of operation, rules and procedures for valuation of derivatives contracts, and any other information which has impact on management.

The granting of approval under the first paragraph shall take into consideration the sources of origin, universality and completeness of the rules specified by the association.

**Clause 11.** In case the derivatives fund manager will delegate the investment management of derivatives contracts to another person, such delegation shall be in compliance with the following rules:

(1) The person delegated to proceed such management shall be a person who is licensed to provide the services of derivatives fund manager; and

(2) Such delegation must obtain consent from the customer.

Any person to be appointed as a marketing agent of the derivatives fund manager shall be approved by the Office in accordance with the rules as specified in the notification of the Office.

In the delegation of management under the first paragraph, the appointment of a marketing agent under the second paragraph and the operation of the back office, the derivatives fund manager shall carefully select a person with appropriate qualifications to proceed as designated and shall supervise such person to perform as designated in accordance with the laws on derivatives.

**Clause 12.** In addition to that particularly specified, the Office shall have power to prescribe rules in detail relating to matters specified in this notification to make clarification in practice and for the Office to inspect such practical operation.

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**Clause 13.** This notification shall come into force from 1 May 2004.

Notified on this 16<sup>th</sup> day of April 2004.

-Signature-

(Mr. Somkid Jatusripitak)

Minister of Finance

Chairman of the Securities and Exchange Commission