

(Translation)

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Notification of the Securities and Exchange Commission
No. KorThor. 4/2543
Re: Custody of Client Assets of a Securities Company

By virtue of Section 14 and Section 98(3) of the Securities and Exchange Act B.E. 2535 (1992), the Securities and Exchange Commission hereby issues the following regulations:

Clause 1. This Notification shall come into force as from 1 April 2000 except the provisions of Clause 5, Clause 6, Clause 7, Clause 15, and Clause 17 which shall come into force as from 1 July 2000.

Clause 2. The following notifications shall be repealed:

(1) Notification of the Securities and Exchange Commission No. KorThor. 35/2540 Re: Preparation of Securities Account dated 1 October 1997;

(2) Notification of the Securities and Exchange Commission No. KorThor. 48/2540 Re: Separation of Client's Financial Account dated 31 December 1997;

(3) Notification of the Securities and Exchange Commission No. KorThor. 17/2542 Re: Separation of Client's Financial Account (No.2) dated 2 September 1999.

Clause 3. In this notification,

"Assets" means

(1) cash;

(2) securities;

(3) other assets;

(4) any benefits accruing from the assets under (1) - (3), for example, right in dividend or interest or right to purchase newly issued shares and right to attend and to vote in a meeting of securities holders.

"Central securities depository" means any central securities depository under the law on securities and exchange;

"Margin account" means an account of client's loan for securities purchasing or securities lending for sale;

"Cash account" means an account recording transactions relating to purchasing or selling of securities excluding from margin account;

"Office" means the Office of the Securities and Exchange Commission.

CHAPTER I
General Provisions

Clause 4. A securities company, which custody client's assets notwithstanding for the benefit of keeping, purchase, sale, borrowing, lending of securities or for the guarantee of purchase, sale, borrowing or lending of securities or for any other benefit, shall comply with the rules prescribed in this notification.

The provisions of the first paragraph shall not apply to the assets or persons as follows:

(1) client's assets which is a mutual fund, private fund or other similar funds managed by a securities company, acting as securities business operator in the category of mutual fund or private fund management or as trustee or custodian;

(2) a financial institution established under other laws and later licensed to undertake securities business;

(3)¹ a payment for subscription of securities which a securities company receives from underwriting.

Clause 5. A securities company must establish a unit responsible for the custody of client's asset, which is independent from the securities trading unit or securities advisory unit, and must organize a good internal control system for the custody of client's assets. Such system must at least separate a staff who prepares client's assets account from staff who keeps the client's assets, and specify that the transfer of the client's assets each time must be approved by an authorized person of the company. Such authorized person must not be either a staff who prepares client's assets account or a staff who keeps the client's assets.

Clause 6. A securities company must issue rules or guidelines for the custody of the client's assets in accordance with the provisions of this notification. Such rules and guidelines must be made in writing, elaborating procedural steps of authorized person for the custody of client's assets. In this matter, the securities company must strictly supervise the implementation of such guidelines.

The rules or guidelines under the first paragraph must include the following matters:

(1) Receipt or delivery of client's assets;

(2) Record of the particulars of client's assets;

(3) Management of client's assets information.

Clause 7. For the custody of client's assets, the securities company shall act as follows:

(1) inform its clients and request them to sign upon acknowledgement of the client's practice in depositing or withdrawing assets with or from the securities company, and the methods of the custody of the client's assets as well as the fee charged for custody of the client's assets (if any).

If the information under the first paragraph changes significantly, the securities company shall inform its clients of certain change without delay;

(2) inform its clients that when a securities company encounters financial problems, the client's money which has been kept in custody of a securities company shall not be protected under the measures of protection of the Financial Institutions Development Fund;

¹As added by the notification of the Securities and Exchange Commission No. KorThor.29/2545 Re: Custody of Client Assets of a Securities Company (No. 2), dated 28 March 2002.

(3) provide a contract or an agreement on the custody of client's assets in writing, elaborating the rights, duties, and responsibility of both counterparties. In this matter, such contract or agreement shall not have any statements denying the securities company's responsibility to the customers from any act or omission of any act, willfully or negligently, of securities company or its personnel, including other person authorized to custody client's assets.

Clause 8.² A securities company shall not appoint any person to be an agent for the custody of client's assets unless such appointment complies with the following rules:

(1) the person appointed by a securities company as its agent to custody client's assets must be:

- (a) commercial banks;
- (b) financial companies;
- (c) securities companies;
- (d) a central securities depository;
- (e) Other financial institutions established by the specific law.

(2) a written contract upon the appointment of an agent for the custody of client's assets shall be arranged. Such contract must contain a prohibition on appointment of sub-agent, terms and conditions on the responsibility of the agent, terms and conditions on the person responsible for the damage of the client's assets, and terms and conditions specifying that the agent must perform his or her duties in accordance with this notification.

The securities company shall inform its client about the appointment of an agent to the client's assets without delay. In the case where the securities company appoints a person that has relationship as a parent company, subsidiary or affiliate company, as an agent, the securities company shall inform its clients about such relationship as well.

The definition of the terms "parent company", "subsidiary company" and "affiliate company" in the second paragraph shall be complied with the definitions in the Notification of the Securities and Exchange Commission regarding filing or the exemption from filing the registration statement of prospectus shall apply *mutatis mutandis* to such terms.

The separation of the client's assets by the securities company under the method specified in Clause 18 (1) (a) or (2) (a) shall not be considered as the appointment of an agent for the custody of client's assets.

Clause 9. A securities company shall not engage in any act which result in creating, altering, transferring, reserving or terminating the right in assets of any client, without or not comply with instruction or consent from the client or client's authorized person.

Clause 10. A securities company shall not utilize the client's assets for the benefits of other clients, other persons or for itself unless it receives an order or consent of the client in writing in each case.

² As added by the notification of the Securities and Exchange Commission No. KorThor.29/2545 Re: Custody of Client Assets of a Securities Company (No. 2), dated 28 March 2002.

Clause 11. A securities company shall proceed as necessary for clients to obtain rights and benefits arising from securities or any instruments in the custody of securities company, or the issuer within appropriate time.

A securities company shall not claim the benefits of the client without an order or consent of the client in writing.

CHAPTER II

Record of Particulars of Client's Assets

Clause 12. A securities company shall provide an account of each client's assets under custody of the securities company. Such account shall be separated from other asset accounts of the securities company and shall be categorized into a margin account or a cash account, as the case may be.

The client's asset account under the first paragraph shall at least contain the following details:

- (1) date of receipt or payment of the assets;
- (2) amount and category of the assets;
- (3) the cause of receipt or payment of the assets.

In case where the assets under the client's account belong to the third person deposited as collateral for the benefits of the client. The securities company must record the name of the third person who is the owner of the assets under an asset account of the client.

Clause 13. A securities company shall keep accurate and up-to-date record of the client's asset account. In case of amendment of the record, the securities company shall complete the amendment within the same working day the cause of amendment found and must record the reason for each amendment.

Clause 14. A securities company shall provide an inspection of the client's assets under its custody at least once a month in order to verify the accuracy of the client's asset account.

For client's assets that are not under its custody, the securities company shall set up a system to access an up-to-date information in order to verify the client's assets information reports between the custodian and the securities company.

Clause 15.³ A securities company shall deliver a report of the client's assets at the end of each month to the client within the seventh day of the following month, except there is no transaction which affects the movement or change of the assets under custody of the securities company. In case the client does not have any transaction for more than six month, the securities company shall deliver a report of the client's assets to such client at least once every six months within the seventh day of the following month.

³ As added by the notification of the Securities and Exchange Commission No. KorThor.29/2545 Re: Custody of Client Assets of a Securities Company (No. 2), dated 28 March 2002.

Clause 16. A securities company shall keep the information and documents related to the custody of client's assets at least two years for the Office's verification and examination.

CHAPTER III **Custody of client's assets**

Clause 17. A securities company shall segregate the assets under its custody as customer's assets not less than the followings:

(1)⁴ money; the amount of money for each day shall not be less than the total amount of net balance calculated at the end of prior working day or at the end of present working day from cash account and margin account of all client after subtracting collateral for securities borrowing for short sale of each client at the rate agreed upon by the securities company and the borrower securities. However, if the securities company selects the total net balance at the end of present working day as a base, the securities company shall continually use such method for calculation at all times, except in case of necessity where the securities company is unable to use such method at the end of present working day, it may use the total net balance at the end of prior working day; in such case, the securities company shall forthwith inform such necessity to the Office.

A securities company may subtract the following money from the assets segregated as client's asset under the first paragraph:

- (a) debt repayment paid prior to the due date;
- (b) debt repayment for securities purchase that exceeds the due amount and the securities company has already returned such money to the client within five working days from the date of receipt of such payment;
- (c) money from securities selling, which the securities company receives on behalf of the client and already issued a cheque for payment or delivered such money to the client within the clearing date;
- (d) money which is dividend or interest on securities or instruments owned by the client which the securities company receives on behalf of the client and the securities company has already delivered all of such money to the customer within five working days from the date of receipt of such money.

In case where the client informs the securities company to keep the money under (b) (c) or (d) for the benefit of future transaction, the securities company shall include such money to the balance on the notification date for the calculation of segregated assets as the client's assets under the first paragraph.

(2) securities; the amount of securities segregated for each day shall not be less than the aggregate amount of securities recorded as the client's assets at the end of such working day.

(3) other assets; the amount of other assets segregated for each day shall not be less than the aggregate amount of other assets recorded as the client's assets at the end of such working day.

⁴ As added by the notification of the Securities and Exchange Commission No. KorThor.29/2545 Re: Custody of Client Assets of a Securities Company (No. 2), dated 28 March 2002.

Clause 18. The following practice shall be deemed as the segregation of assets under Clause 17:

(1) money;

(a) segregated by depositing with commercial bank or other bank established under the specific law or investing in promissory note issued by a finance company or the TSFC Securities Limited, or other investment specified by the Office, which is clearly defined in such bank deposits or promissory notes or investment that such transaction is done by securities company for client's benefit.

In case where bank deposits or promissory notes in the first paragraph are pay-to-maturity, such bank deposits or promissory notes shall not have any restriction to redeem before date of maturity;

(b) segregated by its own custody which must be done in a manner that such money can be clearly identified without suspicion that it belongs to the clients;

(2) securities;

(a) segregated by deposit with central securities depository, or the Bank of Thailand in a manner that such deposits are clearly identified that the depository is done by securities company for client's benefit;

(b) segregated by its own custody which must be done in a manner that such money can be clearly identified without suspicion that it belongs to the clients;

(3) Other assets shall be segregated in a manner that such assets can be clearly identified that they belong to the clients.

Clause 19. A securities company may negotiate with the client on rate of return which securities company will calculate from the amount of money segregated by the securities company as the client's asset under this notification. However, such rate of return shall not be higher than the rate which the securities company actually gains from the deposit or investment in a promissory note or other means of investment.

Clause 20. A securities company shall not utilize the client's money segregated under Clause 18 as debt collateral for the benefit of other persons or itself.

Clause 21.⁵ Subject to the provisions under clause 18 (1)(a), securities company shall not take client's money segregated as client's assets to deposit with or invest in financial institution having a relationship as a parent company, subsidiary or affiliate company, unless the consent is made by the client.

The definition of "parent company", "subsidiary company" and "affiliate company" in the first paragraph shall be in accordance with the definition of such terms in the notification of the Securities and Exchange Commission on Filing or Exemption from Filing of Registration Statement of Securities.

Clause 22. In case where the securities company keeps the client's assets in its own custody, whether in its own premise or other person's, such premise must be secure. In case of using other person's premise, the securities company shall notify to such person explicitly that the assets belong to the client.

⁵ As added by the notification of the Securities and Exchange Commission No. KorThor.29/2545 Re: Custody of Client Assets of a Securities Company (No. 2), dated 28 March 2002.

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Notified this 4th day of January 2000.

Tharin Nimmanhaemin
(Mr. Tharin Nimmanhaemin)
Minister of Finance,
Chairman of the Securities and Exchange Commission

Remarks:

Notification of the Securities and Exchange Commission No. KorThor. 4/2543
Re: Custody of Client Assets of a Securities Company dated 4 January 2000,
published in the Government Gazette, Volume 117, Special section 4Ngor, dated 14
January 2000.

Notification of the Securities and Exchange Commission No. KorThor.
29/2545 Re: Custody of Client Assets of a Securities Company (No.2) dated 28
March 2002, published in the Government Gazette, Volume 119, Special section
32Ngor, dated 4 April 2002.