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Notification of the Securities and Exchange Commission

No. KorNor. 14/2543

Re: Rules, Conditions and Procedures for Management of Private Funds<sup>1</sup>

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By virtue of Section 14 of the Securities and Exchange Act B.E. 2535 (1992) and Section 133 of the Securities and Exchange Act B.E. 2535 (1992), as amended by the Securities and Exchange Act (No. 2) B.E. 2542 (1999), the SEC hereby issues the following regulations:

**Clause 1.** The following Notifications shall be repealed:

(1) The Notification of the Securities and Exchange Commission No. KorNor. 9/2539, Re: Rules, Conditions and Procedures for Management of Private Funds, dated 16 July 1996; and

(2) The Notification of the Securities and Exchange Commission No. KorNor. 12/2541, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 27 April 1998.

**Clause 2.** In this Notification:

“Management company” means a securities company licensed to undertake securities business in the category of private fund management;

“Customer” means any person or group of persons who authorizes or will authorize a management company to manage a private fund, and in case where the management company manages a private fund which is a provident fund, the term “customer” refers to a provident fund;

“Association” means any association relating to securities business, which has been approved by and registered with the Office, whose main objective is to promote and develop securities businesses in the category of investment

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<sup>1</sup> This Notification is repealed by the Notification of the SEC No. KorNor. 29/2547, Re: Cancellation of the Notification of the Securities and Exchange Commission relating to Management of Mutual Funds and Private Funds, dated 10 June 2004.

management, and which has been approved by the Office to take any actions under this Notification and relevant notifications;

“Person authorized to manage private funds” means any person responsible for the management of private funds in the position from private fund manager to manager;

“Manager” means any person who is authorized by the board of directors of the management company to take the highest responsibility in managing the management company, regardless of the title;

<sup>2</sup>“Assets” means deposits and financial instruments;

“Buy and sell back agreement” means a purchase of securities or debt instruments with an agreement to sell back such securities or debt instruments on the date specified in the agreement;

“Securities lending” means an agreement by which a management company transfers securities of a private fund to another party called borrower and the borrower agrees to transfer back to the private fund the securities issued by the same juristic person or mutual fund management scheme, of the same category, issue and type, in an equal quantity;

“Company” means a limited company, public limited company including a juristic person established under specific law, with an objective to operate business;

<sup>3</sup>“Portfolio duration” means a weighted average age of cash flows received from assets of a provident fund, calculated according to the rules and procedures as specified by the association;

“Custodian” means the custodian of assets of a private fund;

“Affiliated company” means a company which holds ten percent or more of all outstanding shares in a management company or an employer and a company in which the management company or the employer holds ten percent or more of all outstanding shares in such company, as the case may be;

“Employer” means a person who agrees to recruit the employee to work by paying the wages, notwithstanding whether it is a natural person or a juristic person;

“Employee” means a person who agrees to work for the employer and receives the wages;

<sup>4</sup>“Housing loan scheme” means a scheme which entitles members of a provident fund to borrow a housing loan from a financial institution, excluding a lending for refinancing;

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<sup>2</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>3</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>5</sup> “Financial institution” means a financial institution under the laws governing interest on loans from financial institutions;

“Private fund manager” means a director or staff authorized by the management company to make an investment decisions to acquire benefits from securities or other assets on behalf of the customers;

“Related staff” means staff of the management company who is aware of information relating to private fund investment from the performance of duty;

“Brokerage company” means a securities company licensed to undertake securities business in the category of securities brokerage; and

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

**Clause 3.** In the management of a private fund, the management company shall manage such fund with integrity and care to preserve the customers’ interest by exercising its knowledge and expertise as a professional, as well as shall be a member of the association and comply with the professional ethics and standards as specified by the association with the approval of the Office, and shall ensure that the person authorized to manage private funds and related staff shall comply with the aforesaid ethics and standards.

**Clause 3/1.**<sup>6</sup> In authorizing the management of a private fund, a customer may authorize one or more management companies to manage its securities and assets.

**Clause 3/2.**<sup>7</sup> In case where a customer authorizes one management company to manage its securities and assets, such authorized management company shall not subcontract such management to any other person to act on its behalf, except with written consent from the customer to subcontract any part or several parts of such management under paragraph two hereof.

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<sup>4</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>5</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>6</sup> This is added by the Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000.

<sup>7</sup> This is added by the Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000.

<sup>8</sup>In subcontracting the management under paragraph one hereof, in case the subcontract is related to the investment management, this shall be subcontracted only to a management company. As for the subcontract is related to the provision of services to the customer or the private fund operation, this may be subcontracted to other management companies or any other person who is not a management company. In this regard, in subcontracting such management to any other person who is not a management company, a prior permission of the Office must be obtained.

<sup>9</sup>In subcontracting the management, the management company which subcontracts such management shall remain responsible to the customer and must strictly supervise and ensure that the management subcontractor shall comply with the applicable laws and notifications relating to the management of private funds in respect of such subcontracted activities.

**Clause 3/3.**<sup>10</sup> In case where the customer authorizes more than one management company to manage its securities and assets, all relevant management companies shall jointly manage and be responsible to the customer, including having such obligations and liabilities in accordance with the applicable laws and notifications relating to the management of private funds. In case where such obligations and liabilities are clearly separated for the respective companies as per their mutual agreement, whether they be the obligations and liabilities relating to investment management, provision of services to the customer or private fund operation, each management company shall have the obligations and liabilities under the applicable laws and notifications in respect of its activity as authorized by the customer:

<sup>11</sup>Each management company under paragraph one hereof may subcontract the management to other person to act on its behalf. In this regard, the provisions under Clause 3/2 shall apply *mutatis mutandis*.

**Clause 4.** In authorizing the management of a private fund, the customer may authorize the management company to manage its securities and assets as follows:

- (1) Cash;
- (2) Deposits with commercial banks or other banks which are established under specific law;
- (3) Certificates of deposit issued by commercial banks or finance companies;
- (4) Promissory notes;
- (5) Bills of exchange;
- (6) Buy and sell back agreements;

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<sup>8</sup> This is added by the Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000.

<sup>9</sup> This is added by the Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000.

<sup>10</sup> This is added by the Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000.

<sup>11</sup> This is added by the Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000.

- (7) Securities lending; and
- (8) Other assets as specified in the notification of the Office.

**Clause 5.** In the management of a private fund which is not a provident fund, the management company shall invest in or hold the following securities and assets:

- (1) Deposits with commercial banks or other banks which are established under specific law;
- (2) Certificates of deposit issued by commercial banks or finance companies;
- (3) Promissory notes;
- (4) Bills of exchange;
- (5) Buy and sell back agreements;
- (6) Securities lending; and
- (7) Other assets as specified in the notification of the Office.

<sup>12</sup>The management company is prohibited from investing in or holding securities or assets under paragraph one hereof if the issuer or offeror of such securities and assets is neither a financial institution established under specific law nor a juristic person registered and established under Thai law, except in the following cases:

(1)<sup>13</sup> Where the issuer or offeror of such securities or assets is a branch of a foreign bank permitted to undertake commercial banking business under the laws governing commercial banking and such issuance or offering is intended to use funds in Thailand;

(2)<sup>14</sup> Where it is an investment in or holding of securities permitted by the Office to be offered for sale in Thailand; or

(3)<sup>15</sup> Other cases as permitted by the Office.

**Clause 6.**<sup>16</sup> In the management of a private fund, which is a provident fund, the management company shall invest in or hold any of the following securities and assets or the combination thereof, subject to the ratios and conditions as specified in the notification of the Office:

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<sup>12</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>13</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>14</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>15</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>16</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

(1)<sup>17</sup> Equity instruments, which refer to:

- (a)<sup>18</sup> Shares;
- (b)<sup>19</sup> Investment units or warrants on investment units of equity fund or other mutual funds with a policy to invest in equity instruments, such as, balanced funds, sector funds, etc.;
- (c)<sup>20</sup> Share warrants;
- (d)<sup>21</sup> Transferable subscription rights;
- (e)<sup>22</sup> Depository receipts of which the underlying securities are equity instruments;
- (f)<sup>23</sup> Index options in long position, as specified by the Stock Exchange of Thailand;
- (g)<sup>24</sup> Securities lending in the category of equity instruments; and
- (h)<sup>25</sup> Other securities or assets specified by the Office as equity instruments.

(2)<sup>26</sup> Debt instruments, which refer to:

- (a)<sup>27</sup> Bonds or treasury bills;
- (b)<sup>28</sup> Certificates of deposit;

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<sup>17</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions, and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>18</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>19</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>20</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions, and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>21</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>22</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>23</sup> This is added by the Notification of the SEC No. KorNor. 4/2544 Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>24</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>25</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management for Private Funds (No. 3), dated 2 February 2001.

<sup>26</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>27</sup> This is added, by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>28</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

- (c)<sup>29</sup> Promissory notes;
  - (d)<sup>30</sup> Bills of exchange;
  - (e)<sup>31</sup> Debentures, excluding convertible debentures;
  - (f)<sup>32</sup> Debenture warrants;
  - (g)<sup>33</sup> Investment units or warrants on investment units of fixed income fund or other mutual funds with a policy to invest only in debt instruments or deposits, such as, short-term fixed income funds, long-term fixed income funds, etc.;
  - (h)<sup>34</sup> Securities lending in the category of debt instruments;
  - (i)<sup>35</sup> Buy and sell back agreements; and
  - (j)<sup>36</sup> Other securities or assets specified by the Office as debt instruments;
- (3)<sup>37</sup> Deposits, which refer to:
- (a)<sup>38</sup> Deposits with commercial banks or other banks established under specific law;
  - (b)<sup>39</sup> Deposits with savings cooperatives or federation of savings cooperatives; and
  - (c)<sup>40</sup> Deposits with financial institutions under the laws governing interest on loans from financial institutions as specified by the Office;

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<sup>29</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>30</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>31</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>32</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>33</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>34</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>35</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions, and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>36</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>37</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>38</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>39</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>40</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

- (4)<sup>41</sup> Hybrid instruments, which refer to:
  - (a)<sup>42</sup> Convertible debentures; and
  - (b)<sup>43</sup> Other securities or assets specified by the Office as hybrid instruments;
- (5)<sup>44</sup> Derivative warrants; and
- (6)<sup>45</sup> Other securities or assets as specified by the Office.

<sup>46</sup>The provisions under paragraph two of Clause 5 shall apply *mutatis mutandis* with the investment in or holding of securities and assets under paragraph one hereof.

**Clause 6/1.**<sup>47</sup> In the management of a private fund, which is a provident fund, the management company is required to propose its investment policy as specified in Clause 6/2 and may propose more than one investment policy in order that the provident fund committee can propose the same to the provident fund members for selection of their investment. In this regard, the management company is required to clearly determine its investment policy for each provident fund. In case where the management company determines its investments in compliance with Clause 6/3 to Clause 6/12, the management company shall name such investment policy following Clause 6/3 to Clause 6/12, respectively, as the case may be.

**Clause 6/2.**<sup>48</sup> Low risk investment policy (conservative fund) refers to an investment by the management company in the following securities and assets:

- (1)<sup>49</sup> Government bonds, treasury bills or the Bank of Thailand bonds;

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<sup>41</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>42</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>43</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>44</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>45</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>46</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>47</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>48</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>49</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.



(2)<sup>50</sup> Deposits with commercial banks or other banks which are established under specific law;

(3)<sup>51</sup> Certificates of deposit issued by commercial banks or finance companies;

(4)<sup>52</sup> Promissory notes or bills of exchange which are issued, certified, avaled or endorsed without limitation of liabilities by commercial banks, finance companies or credit foncier companies, and which were not endorsed in any preceding order by such provident fund;

(5)<sup>53</sup> Debt instruments issued by commercial banks, finance companies or credit foncier companies;

(6)<sup>54</sup> Debt instruments issued by the Financial Institutions Development Fund, state enterprises established under specific law, state enterprises under the budget procedure law other than state enterprises established under specific law; Small Industry Credit Guarantee Corporation, Small Industry Finance Corporation, Industrial Finance Corporation of Thailand or TSFC Securities Limited;

(7)<sup>55</sup> Debt instruments issued by limited companies;

(8)<sup>56</sup> Investment units and warrants on investment units;

(9)<sup>57</sup> Buy and sell back agreements;

(10)<sup>58</sup> Securities lending; and

(11)<sup>59</sup> Other securities or assets as specified by the Office.

<sup>60</sup>In the investment in or holding of securities and assets under (2) and (6), the principal amount and interest thereof must be secured by the Ministry of Finance or such securities and assets have been rated by a credit rating agency approved or accepted by the Office, not lower than the rate as specified in the notification of the Office.

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<sup>50</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

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<sup>52</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

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<sup>58</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>59</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>60</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>61</sup>The investment in or holding of securities and assets under (3) and (4) must be issued, certified, avaled or endorsed without limitation of liabilities and rated by a credit rating agency approved or accepted by the Office, not lower than the rate as specified in the notification of the Office.

<sup>62</sup>The investment in or holding of securities and assets under (5) and (7) must be rated by a credit rating agency approved or accepted by the Office, not lower than the rate as specified in the notification of the Office.

<sup>63</sup>The investment in securities under (8) shall be made only in investment units of mutual funds with a policy to invest in securities and assets under (1) to (11) in accordance with the criteria as specified in paragraph two, paragraph three, and paragraph four hereof, as the case may be.

<sup>64</sup>The investment in assets under (9) and (10) shall be made only in securities or assets which have been purchased under buy and sell back agreements or with collaterals which are securities and assets under (1) to (7) and (11) only.

<sup>65</sup>The investment in any particular securities and assets which are issued, certified, avaled or endorsed by any persons without guarantee against the principal amount and interest thereof by the Ministry of Finance or the combination thereof, shall altogether not exceed ten percent of the net asset value of the provident fund. In case where an investment in securities and assets under (2) or (3) is included, such investment shall not exceed fifteen percent of the net asset value of the provident fund.

**Clause 6/3.**<sup>66</sup> Equity instrument investment policy refers to such investment by which the management company determines the investment policy with an objective to invest in or hold equity instruments at an average of not less than sixty five percent of the net asset value of the provident fund in each accounting year.

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<sup>61</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>62</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

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<sup>66</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>67</sup>The management company shall prepare a report on investment in or holding of equity instruments on average every three months, six months, nine months, and twelve months in each accounting year, in accordance with the rules and procedures as specified by the association. In case where it is unable to invest in or hold equity instruments in accordance with the objective as specified in paragraph one hereof, the management company is required to submit a report and provide the reasons thereof to the provident fund committee within fifteen days following the end of the relevant period in order for the provident fund committee to disclose such information to the provident fund members.

**Clause 6/4.**<sup>68</sup> Debt instrument investment policy refers to such investment by which the management company invests in or holds only debt instruments, deposits or any other securities or assets as specified by the Office.

**Clause 6/5.**<sup>69</sup> Long-term debt instrument investment policy refers to such investment by which the management company invests in or holds only debt instruments, deposits or any other securities or assets as specified by the Office with an objective to maintain the portfolio duration of such provident fund at any time for a period of more than one year.

<sup>70</sup>Upon a lapse of six months from the day following the provident fund registration date, the management company shall prepare a report on portfolio duration of the provident fund at the close of each business day in accordance with the rules and procedures as specified by the association. In case where it is unable to maintain the portfolio duration of the provident fund in accordance with the objective as specified in paragraph one hereof, the management company is required to report and provide the reasons thereof to the provident fund committee on a monthly basis by the fifteenth day of the following month in order for the provident fund committee to disclose such information to the provident fund members.

**Clause 6/6.**<sup>71</sup> Short-term debt instrument investment policy refers to such investment by which the management company invests in or holds only debt instruments, deposits or any other securities or assets as specified by the Office with an objective to maintain the portfolio duration of the provident fund at any time for a period of not exceeding one year.

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<sup>67</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>68</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>69</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>70</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>71</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>72</sup>The management company shall prepare a report on portfolio duration of the provident fund at the close of each business day in accordance with the rules and procedures as specified by the association. In case where it is unable to maintain the portfolio duration of the provident fund in accordance with the objective as specified in paragraph one hereof, the management company is required to report and provide the reasons thereof to the provident fund committee on a monthly basis by the fifteenth day of the following month in order for the provident fund committee to disclose such information to the provident fund members.

**Clause 6/7.**<sup>73</sup> Money market investment policy refers to such investment by which the management company invests in or holds debt instruments, deposits or any other securities or assets as specified by the Office, which shall become due and payable on demand or which shall become due and payable not exceeding one year following the investment date.

**Clause 6/8.**<sup>74</sup> Balanced investment policy refers to such investment by which the management company determines the investment policy with an objective to invest in or hold securities or assets as specified by the Office and to maintain the ratio of investment or holding of equity instruments, at any time, of not exceeding sixty five percent, but not less than thirty five percent of the net asset value of the provident fund.

<sup>75</sup>Upon a lapse of six months from the day following the provident fund registration date, the management company shall submit a report on investment in or holding of equity instruments at the close of each business day in accordance with the rules and procedures as specified by the association. In case where it is unable to invest in or hold equity instruments in accordance with the objective as specified in paragraph one hereof, the management company is required to report and provide the reasons thereof to the provident fund committee on a monthly basis by the fifteenth day of the following month in order for the provident fund committee to disclose such information to the provident fund members.

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<sup>72</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>73</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>74</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>75</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

**Clause 6/9.**<sup>76</sup> Flexible investment policy refers to such investment by which the management company invests in or holds securities or assets as specified by the Office, depending on investment decision of the management company, taking into consideration the appropriateness of circumstances on each occasion.

**Clause 6/10.**<sup>77</sup> Investment unit investment policy refers to such investment by which the management company determines the investment policy with an objective to invest in or hold investment units and warrants on investment units of mutual funds on average in each accounting year not less than sixty five percent of the net asset value of the provident fund. In this regard, in case where the provident fund intends to invest only in investment units of fixed income funds or investment units of other mutual funds with a policy to invest only in debt instruments, deposits or any other securities or assets as specified by the Office, the management company is required to invest in or hold only debt instruments, deposits or any other securities or assets as specified by the Office in the same manner as an investment of a provident fund with a policy to invest in debt instruments.

<sup>78</sup>The management company shall prepare a report on investment in or holding of investment units and warrants on investment units on average for every three months, six months, nine months, and twelve months in each accounting year in accordance with the rules and procedures as specified by the association. In case where it is unable to invest in or hold investment units and warrants on investment units in accordance with the objective as specified in paragraph one hereof, the management company is required to report and provide the reasons therefor to the provident fund committee within fifteen days following the end of the relevant period in order for the provident fund committee to disclose such information to the provident fund members.

**Clause 6/11.**<sup>79</sup> Warrant investment policy refers to such investment by which the management company determines the investment objective to invest in or hold share warrants, debenture warrants, warrants on investment units, and subscription rights on average in each accounting year not less than sixty five percent of the net asset value of the provident fund. In this regard, in case where any provident fund intends to invest in warrants, particularly debenture warrants, warrants on investment units of fixed income funds or other mutual funds with a policy to invest only in debt instruments, deposits or any other securities or securities as specified by the Office, the management company shall invest only in debt instruments, deposits or any other securities or securities as specified by the Office in the same manner as an investment of a provident fund with a policy to invest in debt instruments.

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<sup>76</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>77</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>78</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>79</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>80</sup>The management company shall prepare a report on investment in or holding of warrants and subscription rights under paragraph one hereof on average for every three months, six months, nine months, and twelve months in each accounting year in accordance with the rules and procedures as specified by the association. In case where it is unable to invest in or hold warrants and subscription rights in accordance with the objective as specified in paragraph one hereof, the management company is required to report and provide the reasons thereof to the provident fund committee within fifteen days following the end of the relevant period in order for the provident fund committee to disclose such information to the provident fund members.

**Clause 6/12.**<sup>81</sup> Equity instruments of companies with the same primary business investment policy refers to such investment by which the management company determines the investment policy with an objective to invest in or hold equity instruments of companies with the same primary business as specified by the Stock Exchange of Thailand on average in each accounting year not less than sixty five percent of the net asset value of the provident fund.

<sup>82</sup>The management company shall prepare a report on investment in or holding of equity instruments in companies with the same primary business as specified by the Stock Exchange of Thailand in paragraph one hereof on average every three months, six months, nine months, and twelve months in each accounting year in accordance with the rules and procedures as specified by the association. In case where it is unable to invest in or hold equity instruments in accordance with the objective as specified in paragraph one hereof, the management company is required to report and provide the reasons thereof to the provident fund committee within fifteen days following the end of the relevant period in order for the provident fund committee to disclose such information to the provident fund members.

**Clause 7.** In undertaking the management of a private fund for a customer which is a group of persons, such group must comprise two to nine persons, whereby either every person must be Thai national or every person must be non-Thai national.

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<sup>80</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>81</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>82</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

**Clause 8.** The management company shall notify the customer in writing of such duties and responsibilities to be performed by the customer in compliance with the provisions governing acquisition of securities for business takeover and the provisions governing preparation and disclosure of report on securities holding as required by Section 59 of the Securities and Exchange Act B.E. 2535 (1992).

**Clause 9.** In the management of a private fund, the management company shall:

(1) Prepare the customer's profile in writing with detailed information, and update such information as specified by the association with the approval of the Office. In this regard, if the customer refuses to provide such information, the management company shall inform the customer that in preparing a proposal on investment policy to the customer, the management company shall take into consideration only such information provided by the customer to the management company; and

(2) Propose an investment policy appropriate for the customers, as assessed from the customer's investment objective, investment experience, financial status, financial responsibilities, investment requirements and restrictions, taking into consideration the customer's profile under (1), and manage the private fund in compliance with such investment policy;

**Clause 10.** In the management of a private fund, the management company shall execute a written agreement with the customer, containing at least the following material contents:

(1) Rights, duties and responsibilities of the management company;

(2) Types, rates and payment procedures of fees, and any other forms of remuneration or expenses in relation to the private fund management;

(3) Investment policy under Clause 9;

(4) Investment restrictions by determining conditions or ratio of investment in or holding of each type of securities or assets (if any);

(5) Commencement and expiry dates of the agreement;

(6) Procedures for appointment of the custodian, and if the custodian is an affiliated company of the management company, complete material information under Clause 15 (6) is required;

(7) The following information to be disclosed to the customer and the time schedule for disclosure of such information:

(a) Information relating to the customer's rights under Clause 21(3);

(b) Information relating to the private fund under Clause 22;

(c) Report on investment under Clause 11 or creation of obligations under Clause 12;

(d) Transactions that require written consent from the customer under Clause 13(2) and Clause 14(4); and

(e) Any other information to be additionally disclosed as agreed upon between the management company and the customer.

(8) Conditions of amendment, renewal and termination of the agreement;

(9) Schedule and method of payment of benefit to the customer during the term of the agreement;

(10) Statement relating to prohibition of the management company from investing in or holding securities or assets that may give rise to conflict of interest or may create any obligations on the assets of the customer, with complete material information under Clause 11 and Clause 12;

(11) Warning statement regarding a risk which would prevent the customer from receiving funds and benefits in return equivalent to the amount of investment funds as authorized to the management company; and

(12) Any other particular information as specified by the Office for the purpose of protecting the customer's interest.

The font size of the statement under (10) and the warning statement under (11) must be clearly visible and legible, provided that the font size shall not be smaller than the normal font size used in the agreement.

**Clause 11.**<sup>83</sup> In the management of a private fund, which is a provident fund, the management company is prohibited from investing in or holding securities or assets issued, certified, avaled, endorsed, guaranteed or accepted for deposit of funds by the employer or its affiliated company, unless the following have been complied with:

(1)<sup>84</sup> A written consent from the customer is obtained, whereby the conflict of interest has been explained to the customers.

<sup>85</sup>The receipt of the customer's consent under paragraph one hereof may be specified in the agreement or such consent may be obtained prior to making such investment.

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<sup>83</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>84</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>85</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.



(2)<sup>86</sup> Unless otherwise specified by the customer, the management company shall report in writing to the customer within the period as specified in the agreement, providing the particulars of investment date, names of securities or assets invested, quantity, unit price, value of the securities or assets invested, and the investment ratio in comparison with the net asset value of the provident fund.

(3)<sup>87</sup> Invest in securities or assets issued, certified, avaled, endorsed, guaranteed or accepted for deposit of funds by the employer or its affiliated company at an aggregate value of not exceeding fifteen percent of the net asset value of the provident fund, calculated on the basis of liabilities or obligations of the employer or its affiliated company. In this regard, the said ratio shall be exclusive of treasury bills, government bonds, the Bank of Thailand bonds, bonds or debt instruments issued, certified, avaled or guaranteed by the Financial Institution Development Fund, and bonds or debt instruments which are avaled or secured by the Ministry of Finance.

<sup>88</sup>The calculation of the investment ratio under (3) of paragraph one hereof shall incorporate investment in investment units of mutual funds with an objective to use all proceeds from the sale thereof to invest in securities or assets of the employer or any other securities or assets as specified by the Office.

<sup>89</sup>The provisions under paragraph one hereof shall not apply to:

(a)<sup>90</sup> The management of a provident fund which is a pooled fund and the number of employers, which are affiliated companies, shall be less than two thirds of the total number of employers; or

(b)<sup>91</sup> The investment in securities or assets under a housing loan scheme managed by the employer or its affiliated company.

**Clause 11/1.**<sup>92</sup> In the management of a private fund, which is a provident funds, the management company is prohibited from investing in or holding securities and assets of financial institutions with an objective to use such financial institutions as sources for loans to be borrowed by members, except for such investment in or holding of securities and assets of financial institutions providing housing loan schemes by which members are entitled to apply for housing loans from financial institutions in accordance with the rules and procedures as specified in the notification of the Office.

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<sup>86</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>87</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>88</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>89</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>90</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>91</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>92</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

**Clause 12.** In the management of a private fund, the management company is prohibited from creating any obligations over assets of the customer, including any sale of index options, which is not dissolution of the option status arising from the purchase of index options, unless the following has been complied with:

(1) A written consent from the customer is obtained, whereby the risks, which may arise from creating any obligations over assets of the customer, have been explained to the customer.

The receipt of the customer's consent under paragraph one hereof may be specified in the agreement or such consent may be obtained prior to creating such obligations.

(2) Unless otherwise specified by the customer, the management company shall report in writing to the customer within the period as specified in the agreement, providing the following particulars:

(a) In case of creating an obligation over assets of the customer, which is not a sale of index options, the date and type of creation of obligation over assets, the obligation amount and ratio in comparison with the net asset value of the private fund must be specified; and

(b) In case of a sale of index options, the date of creation of obligation, the underlying securities index, type and expiration date of the options, exercise price, quantity, unit price, value of the options creating such obligation, and the obligation ratio in comparison with the net asset value of the private fund must be specified.

<sup>93</sup>Paragraph two hereof is repealed.

**Clause 13.** In entering into a buy and sell back agreement, the management company shall proceed in accordance with the rules and procedures as follows:

(1) The management company shall enter into a buy and sell back agreement by using the standard agreement as specified by the Bond Dealers Club, Debt Instrument Dealing Center, TSFC Securities Limited or as accepted by the Office;

(2) The value of securities or debt instruments purchased under a buy and sell back agreement as specified in the relevant buy and sell back agreement must not be less than one hundred percent of the value of the buy and sell back agreement, unless a written consent of the customer is obtained;

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<sup>93</sup> This is repealed by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

When the value of securities or debt instruments purchased under a buy and sell back agreement under (2) of paragraph one hereof has been determined, the management company shall cause such value to be maintained at the close of each day not lower than the specified value in the relevant buy and sell back agreement. In case where the value of securities or debt instruments is lower than the ratio as specified in the relevant buy and sell back agreement, the management company shall cause such value of the securities or debt instruments to be not less than the specified ratio by the next business day following the date on which the value of securities and debt instruments becomes lower than the specified ratio, by way of transferring money, securities or debt instruments to the customer or taking any actions in order for the customer to obtain ownership over such money, securities or debt instruments.

In case where the customer's consent under (2) of paragraph one hereof is obtained, the management company shall prepare and submit a report on investment to the customer within the time as specified in the agreement, providing the details of names of securities or debt instruments purchased under the buy and sell back agreement, the value of securities or debt instruments, the value of the buy and sell back agreement, names of the contractual parties, and supporting reasons, unless otherwise specified by the customer.

(3) The management company applies the method in calculating the value of securities or debt instruments to buy and sell back transactions according to the relevant buy and sell back agreements as specified by the Office;

(4) In calculating the value of the buy and sell back agreement, the management company shall use the purchase price of the securities or debt instruments including benefits to be received under the applicable agreement up to the calculation date thereof; and

(5) The management company shall neither further transfer nor resell such securities or debt instruments which are required to comply with the buy and sell back agreement.

**Clause 14.** In a securities lending, the management company shall proceed in accordance with the rules and procedures as follows:

(1) Enter into a securities lending only with those who are licensed to undertake securities business in the category of securities borrowing and lending or securities depository center, regardless whether or not those who are licensed shall act as borrower, agent of the borrower or agent of the management company as lender;

(2) Enter into securities lending by using a securities borrowing and lending agreement containing the description and material content pursuant to the Notification of the Office governing the description and material content of securities borrowing and lending agreements;

(3) Require placement of or call for collateral from the borrower pursuant to the Notification of the Securities and Exchange Commission governing rules, conditions and procedures for operation of securities borrowing and lending business and the Notification of the Office governing requirements relating to collateral in the securities borrowing and lending transactions;

(4) Ensure that the value of collateral to the value of the securities for lending, as specified in the relevant securities borrowing and lending agreement shall not be less than one hundred percent of the value of the securities for lending, except with written consent from the customer.

When the value of collateral under (4) of paragraph one hereof has been determined, the management company shall cause such value to be maintained at the close of each day not lower than the ratio as specified in the relevant securities borrowing and lending agreement. In case where such collateral value is less than the ratio as specified in the relevant securities borrowing and lending agreement, the management company shall require placement of or call for additional collateral from the borrower in order for the collateral value to be not less than such ratio by the business day following the date on which the collateral value becomes less than the specified ratio.

In case where the management company obtains consent from the customer under (4) of paragraph one hereof, the management company shall prepare and submit to the customer a report on securities lending within the period as specified in the agreement. Such report shall specify the names of securities or debt instruments for lending, the value of securities or debt instruments, the security lending value, names of contractual parties, and supporting reasons, unless otherwise specified by the customer;

(5) In placement of or call for collateral from the borrower as guarantee for the securities lending, the management company shall cause the customer to have ownership over such collateral, by indicating name of the customer as well as name of the management company as the party representing the customer; and

(6) In case where a person licensed to undertake securities business in the category of securities borrowing and lending, who acts as an agent of the management company in the capacity as lender, in addition to the arrangements under (1) to (5), the management company shall specify in the agency agreement that such licensed person shall be obliged to comply with the Notification of the Securities and Exchange Commission governing rules, conditions and procedures for undertaking the securities borrowing and lending business.

**Clause 15.** In the management of a private fund, the management company is prohibited from the following:

(1) Charging fees for management of private funds on a percentage basis of any nature, only on the increased portion of the net asset value of the private fund or on the proceeds gained from the sale and purchase of securities, unless otherwise permitted by the Office;

(2) Providing a credit facility or loan to the customer, including arranging for its affiliated company to do so;

(3) Borrowing funds in the name of the customer;

(4) Entering into a repurchase agreement (sell and buy back agreement) for the customer;

(5) Managing private funds for persons authorized to manage private funds, including the spouses and minor children of such persons, unless the management company has informed the customer of its policy to manage private funds for such persons; and

(6) Arranging for its affiliated company to act as custodian, except with written consent from the customer, whereby the conflict of interest has been explained to the customer.

<sup>94</sup> In addition to the prohibitions under paragraph one hereof, in the management of a private fund, which is a provident fund, the management company is further prohibited from the following:

(1)<sup>95</sup> Providing loan to any provident fund members out of the provident fund, unless such provision of loan complies with the rules, conditions and procedures as specified by the Office; and

(2)<sup>96</sup> Providing or proposing to provide other benefits to the fund committee, with an objective to convince the provident fund committee to make decision to authorize the management of the private fund to the management company.

**Clause 16.** In the management of a private fund, the management company shall:

(1) Arrange to have a work system, which demonstrates its readiness to undertake the business of private fund management as approved by the Office. In case where the management company intends to change such work system, the management company shall give a prior written notice to the Office. Should the Office not make any objection in writing within fifteen days following the date of receipt of such notice by the Office, the management company shall proceed with such change in the work system. In this regard, in case it is necessary to urgently change the work system, the management company may request the results of the consideration from the Office as opposed to awaiting the completion of the fifteen day period;

(2) Arrange to have a system for and supervise the management of private funds taking into consideration the principles of equality and fairness;

(3) Specify clear and concise procedures for coordination among the units responsible for management of private funds and other units in the management company; and

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<sup>94</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 17/2547, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 7), dated 16 April 2004.

<sup>95</sup> This is added by the Notification of the SEC No. KorNor. 17/2547, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 7), dated 16 April 2004.

<sup>96</sup> This is added by the Notification of the SEC No. KorNor. 17/2547, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 7), dated 16 April 2004.

(4) Arrange to have a system for and supervise the investment by the management company, persons authorized to manage private funds, and the related staff, to ensure that they shall perform in accordance with the professional ethics and standards as specified by the association with the approval of the Office, as well as establish a unit for supervision of the operation of the management company, so as to be responsible for issuing rules governing the prevention of conflicts of interest and the internal control of the management company.

**Clause 17.** The management company shall announce a list of private fund managers at a conspicuous place at its business premises and at least once a year provide knowledge or arrange training sessions for the private fund managers and the related staff on the laws governing securities and exchange, applicable rules and regulations, professional ethics and standards as specified by the association with the approval of the Office, as well as the internal policies and regulations of the management company. Upon any issuance or amendment to such matter, the management company shall arrange for the private fund managers and the related staff to sign in acknowledgement thereof at all times.

**Clause 17/1.**<sup>97</sup> The par value of investment unit of a provident fund shall be as specified in the Notification of the Office.

**Clause 18.**<sup>98</sup> In calculating the value of funds and assets of a private fund, the calculation methods in accordance with the rules and procedures as specified by the Office shall apply. In the absence of the rules and procedures as specified by the Office, the calculation method as agreed upon among the contractual parties shall apply. In this regard, the management company shall disclose the applied calculation method to the customer for information.

In case where the management company is authorized to manage a government pension fund under the laws on government pension funds, and intends to apply any method in the calculation of value of funds and assets of the designated government pension fund other than such method as specified in paragraph one hereof, a prior approval from the Office is required.

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<sup>97</sup> This is added by the Notification of the SEC No. KorNor. 16/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 4), dated 3 July 2001.

<sup>98</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 16/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 4), dated 3 July 2001.

**Clause 18/1.**<sup>99</sup> In the management of a private fund, which is a provident fund, the management company shall calculate the value of assets of the provident fund at the close of each business day on which the savings or contributions are remitted to such provident fund, at the close of each business day on which the savings, contributions, and benefits thereof are paid out of the provident fund, as well as at the close of the last business day of each month.

**Clause 18/2.**<sup>100</sup> In the management of a private fund, which is a provident fund, the management company shall calculate the number of investment units and value per unit of the provident fund in accordance with the rules and procedures as specified in the notification of the Office.

**Clause 18/3.**<sup>101</sup> In case where the value of assets, the number of investment units, and value per investment unit of the provident fund is not correct, the management company shall proceed in accordance with the rules and procedures as specified in the notification of the Office.

**Clause 19.** The management company shall prepare and submit to the Office a report on management of private funds in accordance with the rules and procedures as specified in the notification of the Office.

**Clause 20.**<sup>102</sup> In the management of a private fund, which is a provident fund, the management company shall prepare and submit to each member a report on the number of investment units, value per unit of the provident fund, the value of members' savings, employer's contributions as well as benefits derived from such savings and contributions, in accordance with the rules and procedures as specified in the notification of the Office. In this regard, the management company may appoint other persons to make such arrangements, subject to approval of the Office.

**Clause 21.** The management company shall update and submit the following information to the customer at least seven days prior to signing the agreement, and have the customer sign in acknowledgement of such information contained in the agreement:

(1) Information relating to the management company:

(a) An overview of the provision of private fund management services rendered by the management company for its customers;

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<sup>99</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>100</sup> This is added by the Notification of the SEC No. KorNor. 16/2544, Re: Rules, Conditions and Procedures for Management of Private Fund (No. 4), dated 3 July 2001.

<sup>101</sup> This is added by the Notification of the SEC No. KorNor. 16/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 4), dated 3 July 2001.

<sup>102</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

(b) The undertaking of any other category of securities businesses or other businesses which may relate to private fund management;

(c) Characteristics of groups of customers to whom the management company provides the private fund management services;

(d) Minimum capital requirement of each private fund under the management of the management company;

(e) Types of securities or assets under the private fund management of the management company and types of securities or assets specifically within the scope of expertise of the management company in the private fund management (if any) as well as strategies of the management company in the management of private funds;

(f) Rates of fees for private fund management and conditions of payment or refund of fees;

(g) System for the prevention of conflict of interest and the internal control of the management company;

(h) Minimum qualifications of a private fund manager of the management company;

(i) Procedures and sources of information used in the analysis of securities;

(j) Procedures for evaluating the performance of the private fund;

(k) Criteria for selection and conditions for replacement of brokerage company which is a broker or agent in securities dealing;

(l) Procedures for appointment of the custodian;

(m) Procedures for appointment of the auditor or any person in charge of auditing the balance sheet of a private fund (if any); and

(n) Procedures for filing customer's complaint;

(2) Information relating to a private fund to be proposed to each customer for consideration:

(a) Policy on investment and private fund management by identifying strategies in the management of private funds, investment decision-making process, work procedures, restrictions imposed on the management company in undertaking the management of private funds and the relevant facilities in the management of private funds;

(b) Investment restrictions or any other restrictions relating to the management of private funds;

(c) Details on the private fund manager responsible for the private fund as proposed to the customer, comprising at least name, surname, educational background, work experience, duties and responsibilities;

(d) Risks;

(e) Types, rates and procedures for payment of fees, remuneration or expenses;



- (f) Other privileges to be received by the customer;
- (g) Tax burden; and
- (h) Termination of agreement;

(3) Information relating to the customer's rights:

(a) The right of the customer, which is not a provident fund, to terminate the agreement within five business days from the business day following the date of signing the agreement, without giving prior notice and paying any compensation to the management company due to such termination of the agreement;

(b) The right to be informed by the management company in case where the net asset value of the private fund decreases because the value of securities and assets decreases by more than ten percent of the net asset value of the private fund from the value that the management company has informed the customers on the most recent occasion or the value thereof decreases at the rate and within the period as specified in the agreement;

(c) The right to receive disclosure of the information relating to conflicts of interest, e.g., in case where the management company undertakes the private fund management for persons authorized to manage private funds, including their spouses and minor children of such persons or in case where the management company has its affiliated company act as custodian, etc.;

(d) The right to receive warning statement and explanation relating to investment risks according to investment policy; and

(e)<sup>103</sup> The right of provident fund members to change their provident fund, and procedures thereof, within the period as specified by the management company, provided that, the management company is required to grant such right to provident fund members at least once a year.

The management company shall prepare such information under (1) in June and December each year and submit the same to the Office by the fifteenth day of the following month.

**Clause 22.** When the agreement has been signed, the management company shall disclose the following information in writing to the customer:

(1) Performance evaluation of the private fund;

(a) Procedures for evaluation of the performance of the private fund, by comparing to applicable rules, whereby the assumptions and restrictions in the evaluation thereof shall also be specified; and

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<sup>103</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

(b) Evaluation period scheduled to be conducted on a monthly basis;

(2) Name of the custodian, including its duties and responsibilities;

(3) Investment and performance of the private fund;

(4) Information relating to the private fund which has been materially changed;

(5) Information relating to investment in or holding of securities or assets that may give rise to the conflict of interest under Clause 11 or creation of any obligations over assets of the customer under Clause 12, execution of a buy and sell back agreement under Clause 13, and securities lending under Clause 14; and

(6) Any other information relating to the private fund as specified by the Office for the purpose of protecting the customer's interest.

<sup>104</sup>The disclosure of the information under (3), (4) and (6) shall be in accordance with the rules and procedures as specified by the association with the approval of the Office.

**Clause 23.**<sup>105 106</sup> Clause 23 is repealed.

**Clause 24.** The management company or the customer has the right to terminate the agreement prior to its expiry date, by complying with the following:

(1) If the customer, which is not a provident fund, exercises its right to terminate the agreement, the customer shall give written notice of termination of the agreement to the management company without prior notice;

(2) If the customer, which is a provident fund, exercises its right to terminate the agreement, the customer shall give prior written notice of termination to the management company in accordance with the time as specified in the agreement, provided that such period shall not exceed thirty days; and

(3) If the management company exercises its right to terminate the agreement, the management company shall give written notice of termination to the customer at least thirty days in advance.

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<sup>104</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 16/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 4), dated 3 July 2001.

<sup>105</sup> This is repealed for amendment by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

<sup>106</sup> This is repealed by the Notification of the SEC No. KorNor. 10/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 5), dated 1 February 2002.

**Clause 25.** Unless otherwise agreed upon between the management company and the customer, upon the expiry date of the relevant agreement, the management company shall deliver the securities and assets of the private fund to the customer within the period as follows:

(1) In case where the agreement terminates upon its expiration, the management company shall deliver the securities and assets within the business day following the expiry date of the agreement;

(2) In case where the agreement terminates due to the customer's exercising its right to terminate, the management company shall immediately deliver the securities and assets; and

(3) In case where the agreement terminates due to the management company's exercising its right to terminate, the management company shall deliver the securities and assets within the business day following the termination date of the agreement;

In delivering such securities and assets of the private fund, which is a provident fund, the management company shall deliver the same to the new custodian.

**Clause 26.** In case where the management company is authorized to manage a government pension fund under the laws on government pension funds, the provisions under Clause 10, Clause 21, Clause 22, Clause 24 and Clause 25 of this Notification shall not apply to the management of the government pension fund.

In the management of a government pension fund, the management company authorized to manage the government pension fund may invest in other assets or seek benefits by other methods as specified in ministerial regulations issued pursuant to the provisions of the laws on government pension funds.

**Clause 27.** The management company, whose work system has never been approved under Clause 16(1), shall submit documentary evidence showing that the management company has a work system ready to undertake business of private fund management, to the Office for approval within thirty days following the effective date of this Notification.

**Clause 27/1.**<sup>107</sup> In case where the management company has invested in or held securities and assets of the employer under Clause 11(3) prior to the effective date of this Notification, which constitute assets of the provident fund agreed between the employees and the employer for establishment prior to the effective date of the Provident Fund Act (No. 2) B.E. 2542 (1999), the management company may continue to maintain such investment, provided that if such securities or assets have been sold, the management company shall invest in or hold only the remainder of such securities or assets.

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<sup>107</sup> This is added by the Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001.

**Clause 27/2.**<sup>108</sup> In case where a provident fund has invested in or held shares of the employer or its affiliated company under Clause 11(3) and subsequently has exercised its subscription right according to the existing shareholding ratio and such exercise of right has caused the value of such investment in or holding of securities or assets to exceed the ratio as specified in Clause 11(3), the management company shall proceed to determine the investment ratio to comply with the foregoing ratio within one month from the day the Stock Exchange of Thailand posts the “XR” sign in respect of the shares of such company or from the first day the subscribers have no subscription rights.

**Clause 27/3.**<sup>109</sup> In case where a provident fund invests in or holds securities and assets of the employer or its affiliated company under Clause 11(3) and subsequently the value of such securities or assets exceeds the ratio under Clause 11(3) which is not caused by any additional investment in or acquisition of securities or assets, the management company may continue to maintain such securities or assets unless the provident fund committee intends to instruct the management company to sell such securities or assets in order for the value thereof to be not exceeding such investment ratio. In this regard, the management company shall prepare a report, specifying name, quantity, ratio on investment in or holding of such securities or assets, and the date on which the value of such securities or assets exceeds the specified investment ratio, together with the reasons thereof, and submit the same to the provident fund committee within three business days from the date on which the value of such securities or assets exceeds the specified investment ratio as well as keep copies thereof at the management company for inspection by the Office.

**Clause 27/4.**<sup>110</sup> In case where the management company accepts any repayment of debt for a provident fund, in the form of securities or assets of the employer or its affiliated company as a substitute for debt repayment under debt instruments or rights of claim pursuant to the Notification of the Securities and Exchange Commission which requires the management company to accept such debt repayment and such acceptance shall cause the value of securities or assets of the provident fund to exceed the investment ratio as specified in Clause 11(3), the management company may continue to maintain such securities and assets so accepted as debt repayment. In this regard, the management company shall prepare a report, specifying name, quantity, ratio on investment in or holding of such securities or assets, and the date on which the value of such securities or assets exceeds the specified ratio, together with the reasons therefor, including the date on which such securities or assets is accepted as debt repayment, and submit the same to the provident fund committee within three business days from the date on which such securities or assets are accepted as debt repayment.

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<sup>108</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>109</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

<sup>110</sup> This is added by the Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 6), dated 1 July 2002.

**Clause 28.** All applicable notifications of the Office, orders and circular letters issued under or providing guidelines for compliance with the notifications of the Securities and Exchange Commission as listed in Clause 1, which were in force prior to the effective date of this Notification, shall remain in full force and effect to the extent that they are not inconsistent with nor contrary to the provisions of this Notification until notifications, orders and circular letters issued under or providing guidelines for compliance with this Notification shall be enacted.

**Clause 29.** This Notification shall come into force from the day following its publication in the Royal Government Gazette.

Notified this 4<sup>th</sup> day of April 2000.

(Mr. Tharin Nimmanahaeminda)

Minister of Finance

Chairman of the Securities and Exchange Commission

Notes:

The Notification of the SEC No. KorNor. 14/2543, Re: Rules, Conditions and Procedures for Management of Private Funds, dated 4 April 2000, published in the Royal Government Gazette, on 19 April 2000, General Issue, Volume 117, Special Section 36Ngor.

The Notification of the SEC No. KorNor. 58/2543, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 2), dated 26 October 2000, published in the Royal Government Gazette, on 7 November 2000, General Issue, Special Section 114Ngor.

The Notification of the SEC No. KorNor. 4/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 3), dated 2 February 2001, published in the Royal Government Gazette, on 16 February 2001, General Issue, Special Section 14Ngor.

The Notification of the SEC No. KorNor. 16/2544, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 4), dated 3 July 2001, published in the Royal Government Gazette, on 13 July 2001, General Issue, Special Section 64Ngor.

The Notification of the SEC No. KorNor. 10/2545, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 5), dated 1 February 2002, published in the Royal Government Gazette, on 8 February 2002, General Issue, Special Section 10Ngor, Volume 119.

The Notification of the SEC No. KorNor. 41/2545, Re: Rules, Conditions and Procedure for Management of Private Funds (No. 6), dated 1 July 2002, published in the Royal Government Gazette, on 10 July 2002, General Issue, Volume 119, Special Section 63Ngor.

The Notification of the SEC No. KorNor. 17/2547, Re: Rules, Conditions and Procedures for Management of Private Funds (No. 7), dated 16 April 2004, published in the Royal Government Gazette, on 23 April 2004, General Issue, Volume 121, Special Section 44Ngor.

The Notification of the SEC No. KorNor. 29/2547, Re: the Cancellation of the Notifications of the Securities and Exchange Commission Relating to Management of Mutual Funds and Private Funds, dated 10 June 2004, published in the Royal Government Gazette, on 18 June 2004, General Issue, Volume 121, Special Section 67Ngor.