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**Notification of the Securities and Exchange Commission**

**No. KorNor. 69/2547**

**Re: Rules, Conditions, and Procedures for Approval of  
the Private Fund Custodian**

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By virtue of Section 14 of the Securities and Exchanges Act, B.E. 2535 (1992) and Section 135 of the Securities and Exchanges Act, B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 2), B.E. 2542 (1999), the Office of the Securities and Exchange Commission hereby issues the following regulations:

**Clause 1.** The following shall be repealed:

(1) Notification of the Securities and Exchange Commission No. KorNor. 15/2543 Re: Rules, Conditions and Procedures for Approval of the Private Fund Custodian dated 4 April 2000.

(2) Notification of the Securities and Exchange Commission No. KorNor. 09/2544 Re: Rules, Conditions and Procedures for Approval of the Private Fund Custodian dated 30 March 2001.

**Clause 2. In this Notification**

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

“Manager” means a person assigned by director of a juristic person to take the highest responsibility in managing such juristic person, no matter what the title is.

“Custodian” means private fund custodian.

“Institutional investor” means:

- (1) Commercial Banks;
- (2) Financial companies;
- (3) Securities companies which purchase investment units for proprietary trading, managing for private funds, or for management of investment schemes established under the Act on Undertaking of Finance Business, Securities Business and Credit Foncier Businesses;
- (4) Credit foncier companies;
- (5) Insurance companies;

- (6) Juristic persons established under specific law which are not persons under (9);
- (7) Bank of Thailand;
- (8) International financial institutions;
- (9) Government agencies and state enterprises under the laws on budgetary procedure;
- (10) The Financial Institutions Development Fund;
- (11) The Government pension fund;
- (12) Mutual funds under the securities and exchange law;
- (13) Juristic persons with investment fund of Baht one hundred million or more in securities as per the audited financial statements for the most recent year;
- (14) Juristic person in which the shareholders are such persons under (1) to (13) holding shares in an aggregate of more than 75% of all shares with voting right;
- (15) Foreign investors with the same characteristics as such investors under (1) to (14) *mutatis mutandis*;
- (16) Juristic person as permitted, on a case-by-case basis, by the Office, with the primary businesses in line with the primary business in which the mutual fund intends to invest, as specified in the investment policy;

“Client” means person or a group of persons who authorized a management company to manage a private fund;

“Liquid asset” means assets as follow:

- (a) Cash or deposit money;
- (b) Certificate of deposit or promissory notes issued by a commercial bank, a commercial bank established under specific law, or a finance company;
- (c) Treasury bill, government bond, Bank of Thailand bond and the Financial Institutions Development Fund bond;
- (d) Other liquid asset specified by the Notification of the Office.

In this regard, liquid assets as in (a) (b) (c) and (d) must be assets without encumbrance.

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

**Clause 3.** Applicant for an approval to be a custodian under Clause 4 must be a financial institution in any of the following categories:

- (1) Commercial bank under the law on commercial bank business;
- (2) Financial company under the law on undertaking of finance business, securities business, and credit foncier business;

- (3) Securities company under the law on securities and exchange;
- (4) Life insurance company under the law on life insurance business; or
- (5) Financial institution established under specific law.

**Clause 4.** The person under Clause 3 will be granted the approval by the Office to be a custodian only if such person has the following qualifications:

- (1) Its financial position must be as follows:

- (a) In the case where the applicant is a financial institution, which is a securities company under the law on securities and exchange, with no responsibility to maintain its net liquid capital adequacy, such person shall have liquid assets not less than one hundred million Baht.

- (b) In the case where the applicant is a financial institution other than those prescribed in (a), such financial institution shall maintain its capital adequacy and reserved capital to be not less than the amount specified under the law controlling the undertaking of such business.

- (2) Within three years preceding the year of application filing toward the date which an approval is granted, the applicant shall have no record of violation of the law governing the undertaking of its business, other laws relating to financial business and concerning unfair securities trading, fraudulent or dishonest business practice, or the law on anti-money laundering, regardless of whether such laws are domestic legislations or foreign legislations. It also shall have no record indicating frauds, dishonesty, irresponsibility, carelessness to the client's benefit, recklessness or unfair or unreliable business conducts, except where the applicant has received the permission from the Office due to the improvement in its business operation and personnel to ensure that such misconducts will not happen again.

- (3) Demonstrate that the applicant has at least the following operation systems which are ready for it to operate as a custodian:

- (a) System for separating the private fund assets from the custodian's assets, system for safe keeping of such assets, and internal control system to prevent the misuse of its client's assets;

- (b) System to prevent damages to private fund assets, as well as related information and documents, and controlling system for acquisition and disposition of private fund assets;

- (c) System for verification and reconciliation of private fund assets to ensure accuracy and completeness;

(d) System for asset inventory demonstrating details and amount of private fund assets and records of acquisition and disposition of assets of each private fund;

(e) System for monitoring and tracking benefits arisen from private fund asset;

(f) System to prevent conflict of interest and protect confidential information of private fund;

(g) Other systems showing the readiness to undertaking business as specified by the Notification of the Office.

(4) Demonstrate that its personnel of the unit responsible for assets custody function will be ready. Such personnel shall have knowledge, abilities and experiences suitable for the assigned tasks and shall have understanding of general laws related to the professional.

The approved custodian under this Notification shall maintain the qualifications as specified for all times.

**Clause 5.** An application under Clause 4 shall be prepared in form with supporting documents as specified by the Notification of the Office, and shall be submitted with two copies.

**Clause 6.** The Office shall consider such application within forty five days from the date of receiving the completed application and supplementing documents.

**Clause 7.** The custodian may commence such securities business only after the Office has approved that the custodian has arranged its operation system and personnel to be ready to undertake the business as approved.

**Clause 8.** Any changes in the operation system from the system approved by the Office, the custodian shall notify the Office in advance in writing. If the Office has no objection in writing within fifteen days from the date of receiving such notification, the custodian may proceed with changes of such operation system. In case where it is necessary to change the operation system immediately, the custodian may notify to the Office and request for the outcome of the consideration before the period of fifteen days.

**Clause 9.** In case where the custodian can not maintain its financial position as specified under Clause 4 (1), the custodian shall notify to the Office and client within the day following the date of acknowledgement that the financial position cannot be maintained. If the custodian receives a notification from its clients in order to switch to another custodian, the custodian shall hand over the assets to the other custodian within fifteen days.

**Clause 10.** The custodian must not expand its business operation, during the period which the custodian can not maintain its financial position as specified under Clause 4, until such custodian can regain its financial position to be as required by the rules, and receives the permission from the Office to expand their business operation

For the purpose of the first paragraph hereof, “Expansion of operation” means:

- (1) Enter into a new custodian agreement;
- (2) Renew the existing custodian agreement;
- (3) Other acts specified by Notification of the Office.

**Clause 11.** The custodian granted with an approval under this notification can keep the client’s assets into its custody. Such custody of assets must be only for institutional investors or non-provident fund clients with the securities and assets of more than one million baht.

**Clause 12.** In the case where it appears that the custodian violates or does not comply with the prescriptions under Clause 8 to Clause 11, the Office shall proceed as follows:

- (1) Put on probation;
- (2) Suspend the approval to be a custodian for the certain period of time or under the specific conditions;
- (3) Revoke an approval to be a custodian, and the Office may use such information for the next consideration.

**Clause 13.** The custodian who undertakes the business as a custodian prior to this Notification become effective, shall be deemed as a custodian approved by the Office and shall comply with this Notification.

**Clause 14.** All the Notifications, orders and circular letters, under Clause 1, issued under or providing guidelines for compliance with the Notification of the Securities and Exchange Commission, which were effective prior to the effective

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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 the Notifications, orders and circular letters issued under or providing guidelines for compliance with this Notification shall come into effect.

**Clause 15.** This Notification shall come into force as from 16 December 2004.

Notified this 22<sup>nd</sup> Day of December 2004.

Somkid Jatusripitak  
(Mr. Somkid Jatusripitak)  
Minister of Finance  
Chairman of the Securities and Exchange Commission

## **Internal Control System to Prevent the Misuse of Client's Assets**

### **Chapter 1 Management oversight system**

Management shall be responsible for providing;

1. Policies and practices on keeping client's assets in writing.
2. Regular assessment of the internal control system to prevent the misuse of the client's assets, in accordance with Chapter 2, to ensure that the system is suitable and effective.
3. Clear procedures to report mistakes or frauds to the superiors and high level executives.
4. Approach to solve problems immediately regarding keeping the client's assets.
5. Person responsible for taking client complains about the custodian practices.

### **Chapter 2 Internal Control System to Prevent the Misuse of Client's Assets**

Custodian shall put in place at least the following operation procedures and practices which can prevent the misuse of client's assets:

1. Operation manual on the payment made from the client's private fund account.  
The custodian shall not make any payment from the client's private fund account of the client except:

- 1.1 Payment made by the order of the client;
- 1.2 Payment made to the client;
- 1.3 Payment for investment of the fund;
- 1.4 Payment for fees arising from the investment of the fund;
- 1.5 Payment as required by laws.

2. Practice on asset withdrawal from the client's private fund account.

The custodian shall not withdraw assets from the client's private fund account except:

- 2.1 Withdraw by the order of the client;
- 2.2 Withdraw for the client;
- 2.3 Withdraw assets in accordance with sell order;
- 2.4 Withdraw assets for securities lending;
- 2.5 Withdraw assets for collateral pledged with the fund's counter parties;

Transferring of money or assets for other objectives other than the objectives provided in 1 and 2 shall be approved by the authorized person (such as compliance).

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3. Check and balance system.

By appointing a person who will monitor and inspect for the misuse of the client's assets such as:

3.1 Compliance or other assigned person who will inspect and verify the movement of money and assets of the fund, and approve money and asset transferring for the purpose other than those provided in 1 and 2.

3.2 External auditor to perform the audit of the fund assets at least once a year to ensure the correctness of assets in custody.

4. Document keeping system for checking evidences of money or assets transferring of the fund for at least one year.

<b>Chapter 3 System to Disclose Information related to the assets in custody to the clients</b>
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Custodian shall report the investment position, the flow of assets, rights and dividends received from the investment, and accrual/payable balance, and shall confirm the transfer of money or assets in and out of the fund. There shall be system to issue and send the reports on asset flow of the fund to the clients regularly and in appropriate timing such as:

1. Issue monthly report to show the flow and the balance of assets in each month;
2. Issue daily report in the case of client's order to transfer money or assets to other person or in the case of money or assets transferring for purposes other than those provided in 1 and 2 of Chapter 2.