

(Translation)

*Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference. The SEC, Thailand cannot undertake any responsibility for its accuracy, nor be held liable for any loss of damages arising from or related to its use.*

---

## **The Securities and Exchange Commission**

Notification of the Securities and Exchange Commission

No. KorNor. 30/2547

Re: Rules, Conditions and Procedures for  
Establishment and Management of Funds

---

The supervision of securities business in the category of management of other persons' funds, whether it be the mutual fund or private fund management, has the common objective to protect and maintain the best interest of investors based on proper and effective rules and regulations. This serves to assure investors that management companies will appropriately manage the investments for investors, keeping in mind the protection and maintenance of the best interest of investors under acceptable risk exposure. Therefore, in the supervision of the business of mutual fund or private fund management, it is necessary that the basis of rules and regulations which would serve as management standards must be set out. In this respect, management companies, which are entrusted by their customers, shall manage the investments on the basis of integrity and prudence, exercise their knowledge and expertise as professional to ensure the full protection of investors' interest, as well as provide proper and sufficient information disclosure to investors. It is thus deemed appropriate that the notification relating to establishment and management of funds as specified in the Notification of the Securities and Exchange Commission 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the Securities and Exchange Commission relating to Management of Mutual Funds and Private Funds, dated 10 June 2004, be repealed and incorporated into a single notification.

By virtue of Section 14, Section 100, Section 109, Section 117 and Section 124 of the Securities and Exchange Act B.E. 2535 (1992), Section 126(5) of the Securities and Exchange Act B.E. 2535 (1992), as amended by the Securities and Exchange Act (No. 3) B.E. 2546 (2003), paragraph two of Section 133 and paragraph one of Section 134 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.** In this Notification:

“Fund” means any mutual fund or private fund;

“Provident fund” means any provident fund under the laws on provident funds;

“Open-end fund” means any mutual fund which accepts the redemption of its investment units;

“Management company” means any mutual fund management company and private fund management company;

“Mutual fund management company” means any securities company licensed to undertake securities business in the category of mutual fund management;

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

“Fund manager” means any natural person who is authorized by a management company to have power to make decisions on investments for a 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 management;

“Customer” means any person who authorizes a management company to manage a fund;

“Repurchase agreement” means a sale of securities or debt instruments with an agreement to repurchase such securities or debt instruments on the date specified in the agreement;

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

**Clause 2.** In order to ensure that each management company shall conduct its business as professional to conform to the level of trust from investors, the management company shall:

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

(2) Arrange to have personnel to perform duties as fund manager, subject to approval of the Office, and arrange to have contact persons with investors, subject to approval of the Office, to sell investment units or to solicit customers or to prepare investment plans for customers. Any person so approved by the Office must possess knowledge, ability and understanding in fund management business and the relevant rules and regulations, be a person of

integrity and honesty and without any disgraceful record, and must comply with the performance standards as specified in the notification of the Office;

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

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

**Clause 3.** The mutual fund management company shall be approved by the Office to establish and manage a mutual fund in accordance with the following rules:

(1) The mutual fund management scheme must be sufficiently intelligible to investors in respect of investment policy, securities or assets or contracts in which the mutual fund intends to invest, the liquidity of securities or assets in which the mutual fund invests, risks relating to the investment, types of investment units, procedures for purchase and sale of investment units, the relevant fees or expenses. This is to enable investors to decide and select such investment in a mutual fund suitable to their need.

(2) The mutual fund management company has duly proceeded to apply for approval for the mutual fund management scheme in compliance with the steps and procedures within the specified period and has attached all supporting documents as specified in the notification of the Office.

In the consideration and grant of approval for the establishment and management of the mutual fund under paragraph one hereof, the Office, upon the approval from the SEC, shall have the authority to set out rules, conditions and procedures for approval corresponding to each type of investment units and group of investors.

**Clause 4.** Upon the expiry date of the offering period of investment units of any scheme, should any of the following events occur, the Office's approval for the establishment and management of the mutual fund shall cease accordingly, unless there is an appropriate reason and a waiver is granted by the Office:

(1) The value of outstanding investment units is insufficient to accommodate the expenses for further investment management;

(2) The nature of the sale of investment units, the number of unitholders or the nature of investors does not correspond to the scheme as approved by the Office.

Once the approval has ceased, the management company shall fairly return payments for subscription for investment units to subscribers within a reasonable period.

**Clause 5.** Regarding the registration of a pool of assets as a mutual fund, the management company must provide details of the results of the offering of investment units of each mutual fund, together with sufficient description thereof illustrating the distinctive nature of each mutual fund and the value of the pool of assets. Should there be any change in such information which has been registered, the management company shall immediately submit an application for the change and revision of such items in the registration so that the information thereof shall be up-to-date at all times.

**Clause 6.** To assure the conformity with the capital market policy at each particular time, or to enable investors to clearly understand the selection of appropriate tools for investment according to their investment objectives, the Office, upon the approval from the SEC, shall have the authority to issue notification determining types or details of such a mutual fund for which the management company may apply for approval for establishment, or types and the nature of investors who will become a counterparty to the private fund management contract with the management company.

**Clause 7.** To contact and solicit an investor to become a counterparty of a private fund, the management company must take into consideration such investor's investment policy, and offer an investment which is suitable to the investment objectives, knowledge and understanding of investment, acceptable risks, and other factors of the investor. The management company must request the investor to provide such information for consideration.

The provisions in paragraph one hereof shall not apply to the management of a private fund, of which investment policy is standardized as specified in the notification of the Office.

**Clause 8.** In offering investment units or contacting and soliciting any investor to purchase investment units of a mutual fund or to become a counterparty to a private fund management contract, the management company must disclose or cause to be disclosed adequately such information necessary for making a decision to invest in investment units or to enter into a private fund management contract with the management company within a reasonable period. In this regard, such information must be accurate and up-to-date, present neither misleading, distorted facts, nor material content that differs from such information filed with the Office.

**Clause 9.** To ensure that the management of private funds shall be duly carried out in accordance with customers' objectives and needs, each private fund management contract must contain the scope or policy on investment, investment restrictions, and the customers' right to obtain intelligible and adequate information on the private fund management. Furthermore, any provision which may in any manner give rise to a conflict of interest between customers and the management company as well as related persons as specified in the notification of the Office shall be subject to customers' consent.

**Clause 10.** The management company, as a party entrusted to manage a fund, shall manage the investment using its best effort to protect its customers' interest, take into account and protect the customers' optimum benefit, on the basis of integrity, prudence and due care.

**Clause 11.** To ensure that the management company shall carefully invest or seek benefit for a fund from securities, derivatives contracts or other assets, execute a short sale, create any obligation or seek interest or benefit by other means, as the case may be, in accordance with the investment policy, objectives of the fund, the nature of investors, including on the basis of diversification of risks, the Office, upon the approval from the SEC, shall have the authority to issue notification to specify types of securities, derivatives contracts, other assets, short sales, creation of obligations or seeking of interest or benefit by other means, as the case may be, which each type of funds can invest or acquire, as well as specify the investment ratios and conditions for the fund to comply.

**Clause 12.** The management company shall regularly evaluate the performance of the respective funds and disclose the operational results, as well as other information relating to the condition of such funds at each particular period, such as, details of investment, financial position, expenses and opinions of the fund supervisor, to investors and the general public by efficient method which sufficiently allows investors and the general public to uninterruptedly obtain such information at all times as appropriate to the current circumstances, subject to the rules, conditions and procedures as specified in the notification of the Office.

The performance evaluation and calculation of the value of assets of each fund shall conform to the generally accepted academic principles or international standards as set out by the association.

The Office shall have the authority, if necessary and appropriate, to order any management company to perform differently or in addition to the performance standards as set out by the association as per paragraph two hereof.

**Clause 13.** In the event that any management company shall designate another person to undertake the investment management, such designation shall comply with the following rules:

<sup>1</sup>(1) The person so designated must be qualified to undertake securities business in the category of private fund management or derivatives business in the category of derivatives fund manager, as the case may be. In case of overseas investment management, the designated person must be authorized to undertake the aforesaid business from securities and exchange regulators that are members of the International Organization of Securities Commissions (IOSCO) and must be acceptable to the Office and

---

<sup>1</sup> Repealed for amendment by the Notification of the Securities and Exchange Commission No. KorNor. 14/2548, Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 2), dated 21 January 2005.

(2) The customers' consent must be obtained or specified in the details of the mutual fund scheme in case of a private fund or mutual fund, as the case may be.

In the designation for investment management under paragraph one hereof, or in the back office operation, the management company shall carefully consider selecting such persons suitable for the tasks to be designated, and shall also ensure that such persons perform their tasks in compliance with the laws on securities and exchange. In case any designated person becomes no longer suitable for the designated tasks, the management company shall cancel such designation or replace such designated person without delay.

**Clause 14.** To ensure that each open-end fund shall have adequate liquid assets to accommodate the redemption of investment units and that the unitholders shall sustain the least possible impact upon the redemption of investment units of the open-end fund, the management company shall require such open-end fund to maintain its liquidity and file a report on liquidity maintenance in accordance with the rules, conditions and procedures as specified in the notification of the Office.

<sup>2</sup>**Clause 15.** If it is necessary for the management company to temporarily manage the liquidity of any open-end fund, the management company may borrow money or enter into a repurchase agreement only when:

- (1) The counter-party is an institution;
- (2) The repayment term is short;
- (3) The ratio of such borrowing or repurchase agreement must be appropriate to the necessity of the temporary liquidity management; and
- (4) The transaction of repurchase agreement shall be in conformity to the standard format as acceptable to the Office.

This shall be in accordance with the rules, conditions and procedures as specified in the notification of the Office.

**Clause 16.** In the management of funds, the Office, upon the approval from the SEC, shall have the authority to issue notification specifying rules, conditions and procedures for management companies to comply so as to apply appropriate rules and regulations to the specific nature of such funds or groups of customers as guaranteed funds, foreign investment funds, customers who are provident funds, government pension funds, customers of similar investment nature.

<sup>3</sup>**Clause 17.** The management company shall prepare the financial statements of each mutual fund in conformity to the accounting standards

---

<sup>2</sup> Repealed for amendment by the Notification of the Securities and Exchange Commission No. KorNor. 14/2548, Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 2), dated 21 January 2005.

<sup>3</sup> Repealed for amendment by the Notification of the Securities and Exchange Commission No. KorNor. 14/2548, Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 2), dated 21 January 2005.

prescribed under Accounting Law. Such financial statements shall be subject to audit and opinion to be conducted and offered by an auditor approved by the Office as per the Office's notification governing approval of auditors. An exception is for the mutual fund that offers all investment units to non-Thai residents (country fund). In this case, the management company shall prepare the financial statements in conformity to the accounting standards prescribed by the International Accounting Standards Committee or the American Institution of Certified Public Accountants or the Financial Accounting Standards Board. Such financial statements shall be subject to audit and opinion to be conducted and offered by an auditor authorized to undertake auditing business in the countries where the investment units are being offered. In this regard the management company shall clearly specify detail of such issue in the mutual fund scheme.

**Clause 18.** To ensure that the investors shall obtain fair treatment within their entitlement, and to ensure the uniformity of the operating standards, the Office shall have the authority to issue notification specifying rules, conditions and procedures on the following matters for the management companies to comply:

- (1) Sale or redemption of investment units of a mutual fund, increase or reduction of investment units of a mutual fund or fund units of a provident fund, payments for redemption of investment units or payment of yields to members of a private fund, which is a provident fund, including such case where there is an incorrect calculation of the number of units or value;
- (2) Fees or expenses collected from investors;
- (3) Merger or acquisition of mutual funds;
- (4) Acceptance of repayment by way of securities or other assets of the fund;
- (5) Actions to be taken in case where the liquidity of any open-end fund is not as specified by the Office; and
- (6) Any other provisions relating to the management of mutual funds to provide protection to investors and to ensure the uniformity of the operating standards.

**Clause 19.** Unless otherwise specified, the Office shall have the authority to issue notification specifying rules, conditions and procedures relating to such matters as specified in this Notification to ensure the intelligibility thereof in the operation, and to allow the Office to monitor such operation.

**Clause 20.** Prior to the effective date of this Notification, if the work system and personnel of any management company do not comply with the provisions of this Notification, the management company shall complete the improvement of its work system and personnel to comply with such provisions within six months from the effective date of this Notification, as the case may be.

**Clause 21.** In the event that any pool of assets which was registered as a mutual fund with the Office prior to the effective date of this Notification contains any details which are inconsistent with or contrary to the provisions of this Notification, the management company shall apply for the Office's approval for

amendment of its scheme to be in compliance with the provisions of this Notification. Such amendment shall be completed within one year from the effective date of this Notification. Should the management company fail to effect such amendment within the specified time, the Office may order dissolution of such mutual fund.

**Clause 22.** In the event that the management company has been granted approval for establishment and management of a mutual fund, but the public offering of investment units has not yet been conducted prior to the effective date of this Notification, and the details of the mutual fund management scheme are inconsistent with or contrary to the provisions of this Notification, the management company shall apply for the Office's approval for amendment of its scheme to be in compliance with the provisions of this Notification before the initial public offering of the investment units. Should the management company fail to effect such amendment before the offering of the investment units, the Office may order termination of the scheme or dissolution of such mutual fund.

**Clause 23.** All provisions as stipulated in the Notification of the Securities and Exchange Commission No. GorNor. 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, including all applicable notifications of the Office, orders and circular letters issued under or providing guidelines for compliance with the said Notification of the Securities and Exchange Commission, which were effective 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 the notifications, orders and circular letters issued under or providing guidelines for compliance with this Notification shall come into effect.

**Clause 24.** This Notification shall come into force from 1 June 2004.

Notified on this 10<sup>th</sup> day of June 2004.

- Signature -

(Mr. Somkid Jatusripitak)

Minister of Finance

Chairman of the Securities and Exchange Commission