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The Office of the Securities and Exchange Commission

Notification of the Office of the Securities and Exchange Commission
No. SorThor/Nor/Yor/Khor. 3/2550
Re: Rules, Conditions and Procedures for Establishment of Risk Management System to Prevent the Use of Securities Business for Money Laundering and Financing of Terrorism

By virtue of

(1) Clause 4(2) of the Notification of the Securities and Exchange Commission No. KorThor. 42/2543 Re: Rules, Conditions and Procedures for Brokerage and Dealing of Securities That Are Not Debt Instruments dated 26 September 2000, and Clause 25/1 of the Notification of the Securities and Exchange Commission No. KorThor. 42/2543 Re: Rules, Conditions and Procedures for Brokerage and Dealing of Securities That Are Not Debt Instruments dated 26 September 2000, as amended by the Notification of the Securities and Exchange Commission No. KorKhor. 23/2549 Re: Rules, Conditions and Procedures for Brokerage and Dealing of Securities That Are Not Debt Instruments (No. 10) dated 25 October 2006;

(2) Clause 4 of the Notification of the Securities and Exchange Commission No. KorThor. 43/2543 Re: Rules, Conditions and Procedures for Dealing of Securities That Are Debt Instruments dated 26 September 2000, and Clause 20/1 of the Notification of the Securities and Exchange Commission No. KorThor. 43/2543 Re: Rules, Conditions and Procedures for Dealing of Securities That Are Debt Instruments dated 26 September 2000, as amended by the Notification of the Securities and Exchange Commission No. KorYor. 26/2549 Re: Rules, Conditions and Procedures for Dealing of Securities That Are Debt Instruments (No. 11) dated 25 October 2006;

(3) Clause 3 and Clause 4 of the Notification of the Securities and Exchange Commission No. KorThor. 24/2549 Re: Rules, Conditions and Procedures for Supervision of the Operation of Securities Underwriting dated 25 October 2006;

(4) Clause 2(1) and (3) and Clause 19 of the Notification of the Securities and Exchange Commission No. KorNor. 30/2547 Re: Rules, Conditions and Procedures for Establishment and Management of Funds dated 10 June 2004;

(5) Clause 4(3) of the Notification of the Securities and Exchange Commission No. KorThor. 5/2539 Re: Rules, Conditions and Procedures for Margin Lending dated 13 July 1996;

(6) Clause 6(5) of the Notification of the Securities and Exchange Commission No. KorDor. 29/2540 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending dated 31 July 1997, as amended by the Notification of the

Securities and Exchange Commission No. KorThor. 27/2549 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 4) dated 25 October 2006; and

(7) Clause 2(1) and (2) and Clause 9 of the Notification of the Securities and Exchange Commission No. KorKhor. 42/2547 Re: Rules, Conditions and Procedures for Brokerage, Dealing and Underwriting of Investment Units dated 3 August 2004.

The Office of the Securities and Exchange Commission hereby issues the following regulations.

Clause 1. This Notification shall come into force as from 16 March 2007.

Clause 2. In this Notification;

(1) "securities company" means any company licensed to undertake securities businesses to perform securities brokering, dealing, underwriting, mutual fund management, private fund management, securities financing, securities borrowing and lending;

(2) "customers/ clients" means natural persons or entities opening accounts or engaging in business relationships with a securities company, but not including provident funds under the provident fund laws;

(3) "ultimate beneficial owner of the transactions" means a natural person who ultimately owns the account, or has significant interests in the customer's transactions;

(4) "ultimate controlling person of the transactions" means a natural person who ultimately exercises effective control in relation to the customer's account or transactions;

(5) "suspicious transaction" means suspicious transactions to be reported under anti-money laundering legislations;

(6) "anti-money laundering legislations" means all legislations in relation to anti-money laundering, including ministerial regulations, notifications, rules, regulations, and other subsidiary legislations;

(7) "Industry Association Guidelines" means guidelines concerning risk management to prevent the use of securities business for money laundering and financing of terrorism issued by the Securities Industry Associations, which are approved by the Office;

(8) "Office" means the Office of the Securities and Exchange Commission.

Clause 3. This Notification shall not be applied to those financial institutions holding securities business licenses, which are under direct supervision of other regulators and are subject to anti-money laundering and terrorist financing regulatory and oversight regimes that are comparable to this Notification.

Chapter 1
Risk Management System

Clause 4. Securities company must have in place written policies and procedures concerning risk management to prevent the use of securities transactions in money laundering and financing of terrorism, which include :

(1) customer acceptance / establishment of a business relationship

(2) temporarily restriction /suspension of services, termination of services, or other types of actions; in case where a customer is found involved in a predicate offence or a money laundering offence under anti-money laundering legislations, or where the know-your-client / customer due diligence process cannot be materially performed by the securities company.

(3) know-your-client/ customer due diligence process (or KYC/CDD)

(4) reporting of suspicious transactions under anti-money laundering legislations

(5) record keeping and retention of records in relation to know-your-client/ customer due diligence process and reporting of suspicious transactions.

The policy mentioned in the first paragraph must be approved by the securities company's Board of Directors, except for the company whose shareholding and functional structures indicate that it is acting as a business unit within a financial conglomerate as accepted by the Office.

The procedures mentioned in the first paragraph should contain all necessary details to be practicable to employees of the securities company, including those entrusted by the company. Also, the procedures shall accommodate non face-to-face contact with the clients and the use of new or developing information technologies in securities business.

Clause 5. The policies and procedures mentioned in Clause 4. must be regularly reviewed within the timeframe deemed appropriate by the securities company.

Clause 6. Securities company must designate an anti-money laundering officer to be responsible for rendering advices, monitoring, and reviewing transactions in order to ensure compliance with this Notification, the anti-money laundering legislations, the internal policies and procedures, as well as the Industry Association Guidelines. The securities company shall arrange for the afore-mentioned activities to be reported to their Board of Directors at least on an annual basis.

Clause 7. Securities company shall arrange for on-going training for all employees, including those delegated by the companies, so as to ensure compliance with this Notification, the anti-money laundering legislations, the internal policies and procedures, and the Securities Industry Association Guidelines, and to keep up with new money laundering and financing of terrorism techniques. The timeframe for trainings shall be set out as the securities company deems appropriate.

Chapter 2
Know-Your-Client / Customer Due Diligence Process

Clause 8. Securities company must conduct know-your-client/ customer due diligence process (KYC/CDD) on the client and the ultimate beneficial owners and controlling persons of the transactions when the accounts are opened or when the first transaction is processed in case where there is no account-opening (initial KYC/CDD) and on an on-going basis throughout the course of the relationship with clients (on-going KYC/CDD).

Clause 9. In conducting the KYC/CDD process pursuant to Clause 8, securities company is required to perform the following:-

(1) identify the client's true identity (client identification), including the identity of the ultimate beneficial owner and the controlling person of the transactions;

(2) verify the client's identity using reliable sources of information (client verification)

(3) record information gathered as well as opinions made under the KYC/CDD process.

In identifying the client's true identity under (1), the securities company must gather information on name, last name, nationality, occupation, residential address, contacting address, name of ultimate beneficial owner, name of ultimate controlling person, name of the entity, shareholding structure of the entity, nature of business, place of incorporation, place of operating business, financial status, objective of transaction, as well as all documents concerning identification data. In this regard, all information requested from clients must be up-to-date at the time the KYC/CDD process is undertaken. Furthermore, where the customer is a natural person, the securities company shall ensure that the identification document bears the customer's photo.

Clause 10. In conducting the KYC/CDD process under Clause 8, the securities company shall classify, and apply the scope and intensity of the procedures mentioned in Clause 9 (1) and (2) for each client in accordance with the client's level of risk associated with money laundering (risk-sensitive basis).

Clause 11. Securities companies shall not allow the use of anonymous or fictitious names in opening of accounts or conducting securities transactions.

Clause 12. In case where an account is opened by a financial institution in order to engage in securities transactions on behalf of its clients (omnibus accounts), securities company may merely conduct the KYC/CDD on the financial institution instead of the financial institution's clients. However, the securities company must, in case of cross-border omnibus accounts, assess the adequacy and effectiveness of the financial institutions' KYC/CDD measures and controls prior to requesting for approval from senior management to open such accounts or establishing new business relationships.

Clause 13. Securities company may rely on another financial institution to conduct face-to-face meeting with clients when an account is opened / the first transaction is processed, provided that the following criteria are met:

(1) the financial institution is under supervision of a financial regulator and is subject to anti-money laundering and terrorist financing regulatory and oversight regime that is comparable to international standards accepted by the Office, e.g. Financial Action Task Force (FATF) Recommendations.

(2) the financial institution implements adequate and effective KYC/CDD process on clients, and

(3) a written agreement has been made with the financial institution to ensure that face-to-face contact will be undertaken by such financial institution and that the financial institution shall verify clients' original identification documents. In this regard, all documents and information related to the face-to-face contact shall be made available to the securities company upon request without delay.

Clause 14. To facilitate the KYC/CDD process, securities company shall monitor public and media releases as well as establish and maintain databases or put in place procedures so as to gain access to external databases on the following information:

(1) list of name of persons who have committed predicate offences or money laundering offences under the Thai or foreign laws, including their associates;

(2) list of name of politically exposed persons (PEPs), either Thai or foreign, including their associates;

(3) list of jurisdictions or countries that do not or insufficiently apply the FATF Recommendations, including non-cooperative countries & territories (NCCTs).

The information in (1) (2) and (3) must be in accordance with the guidelines prescribed by the anti-money laundering authorities.

Clause 15. Where it is found that a customer, including his ultimate beneficial owner or ultimate controlling person, falls into one of the following situations, securities company shall classify the customer into a group that extra care is given and enhanced KYC/CDD process must be performed :-

(1) the client's name is listed on the database in Clause 14(1) or (2), or the client's nationality, residential address, source of fund, country of origin, contact address, or business address is in a country or jurisdiction specified in the database in Clause 14(3);

(2) a corporate client with complex shareholding or functional structures that may raise doubt or difficulty in determining the true identity of the client or the beneficial owner and controlling person of the company;

(3) a foreign collective investment scheme (CIS) which is not registered with or authorized by its official regulator;

(4) an uncooperative client who fails to provide identification document or other document/ information under the normal KYC/CDD process, or a client who produces doubtful evidence or documents which can clearly be identified that they are forged;

(5) a client whose transaction has been reported by the securities company as a suspicious transaction;

(6) a client whose occupation or business is classified by anti-money laundering authority as high risk business/ profession;

(7) a client who is categorized as higher-risk categories by the anti-money laundering authorities or the Securities Industry Associations.

The enhanced KYC/CDD process mentioned in the first paragraph shall include: extension of scope in gathering and verifying of information, information gathering in relation to sources of funds used for transactions, requirement to obtain approval from or report to senior management, face-to-face contact with the client or his ultimate beneficial owners or ultimate controlling persons, assessment on the effectiveness of clients' KYC/CDD measures and controls in case of omnibus accounts, or closely monitoring of clients' transactions.

Clause 16. Notwithstanding the provisions in Clause 15, securities company may apply a reduced KYC/CDD process should the client have the following quality (reduced KYC/CDD):-

(1) information on the client's true identity, including his ultimate beneficial owners and ultimate controlling persons, is adequately disclosed to the public;

(2) the client is a financial institution or a CIS under supervision of a regulator whose regulatory and oversight regime in relation to anti-money laundering and terrorist financing is comparable to international standards accepted by the Office, and the financial institution or fund has adequately and effectively complied with such measures;

(3) the client is a government agency, a state enterprise or a juristic person established under specific laws;

(4) the client has qualities as prescribed by the Securities Industry Associations.

Clause 17. In conducting KYC/CDD process throughout the course of the relationship with clients (on-going KYC/CDD), securities company shall establish a review process to ensure that the client's records previously obtained remain accurate, complete, and up-to-date in accordance with the following provisions:-

(1) periodically review the client's records previously obtained. In this regard, the frequency in reviewing shall depend on the level of client's risk;

(2) review client's existing records and gather further information, if it is found that or there is a circumstance where :-

(a) there is a material change in value, form, or condition of transactions, including payment and receipts of funds (transaction monitoring);

(b) there is doubt concerning the accuracy, up-to-date, reliability, or adequacy of the client's existing records obtained under the KYC/CDD process;

(c) it is, or should become, known by the securities company that the database in Clause 14(1) or (2) contains the client's name, or that the client's nationality, residential address, source of fund, country of origin, contact address, or business address belongs to a country or jurisdiction whose name is listed in the database under Clause 14(3);

The process under (2) must enable the securities company to monitor and review the client's records soon after the circumstances in (a) and (b) occur, and within timeframe specified by the securities company for the circumstance in (c).

The securities company shall record and maintain all information obtained under the on-going KYC/CDD process in the first paragraph. Also, where there is material change in the records, the securities company shall repeat the process mentioned in Clause 9(1) and (2) as deemed necessary and shall re-classify the client's risk accordingly (re-classification of client).

Clause 18. Securities company must perform KYC/CDD process on all existing customers within three years from the date this Notification comes into effect, except for the case that the customer or the ultimate beneficial owner or the ultimate controlling person of the customer who can be classified into the group that special care is required under Clause 15, when the KYC /CDD process must be undertaken by the securities company within the timeframe specified under the Securities Industry Association Guidelines.

Chapter 3
Reporting of Suspicious Transactions

Clause 19. To facilitate securities company in performing suspicious transactions reporting duties under anti-money laundering legislations, the securities company must:

(1) determine characteristics and natures of transactions to be regarded as "suspicious transactions;"

(2) have in place monitoring systems to promptly identify or detect suspicious transactions;

(3) arrange to have proper procedures in considering to report a suspicious transaction.

Clause 20. Securities company may prescribe that a transaction with the following nature or other similar transactions be a suspicious transaction which should be considered whether a suspicious transaction report should be made to the anti-money laundering authorities:

(1) the client attempts to open an account or conduct transactions under other person's names, or avoids using his own name to open an account or process the transaction;

(2) the client insists to open several accounts of the same type for no apparent reason, which might indicate an intention to create misleading appearance that the trades are done by many investors;

(3) the client is reluctant to meet in person (face-to-face meeting) with staff of the securities company, when requested under the KYC/CDD process;

(4) the account is re-activated by a large size of transaction after being inactive for some time;

(5) significant amount in terms of size/volume is transacted, which is apparently inconsistent with the client's financial records and no clear justification is given by the client concerning the source of fund;

(6) transactions that are not economically viable e.g. client repeatedly insists that transactions with significant size be done quickly, client repeatedly insists to process transactions at prices that are not advantageous or competitive, terms and conditions of transactions are unnecessarily complex;

(7) the client places both buy and sell orders in proximate prices and time, which may be deemed that he intends to match the trades (matched order) without any justifiable purposes;

(8) the client deposits a significant amount of cash with securities company without a clear order on how the money will be used for investment, or even when an order is made, the amount of money used in investment is immaterial compared to the deposited amount;

(9) terms and conditions of the client's payments and settlements indicate an attempt to avoid conducting transactions through banks, or client repeatedly purchases cashier cheques for settlement;

(10) unexplained settlements or transfers of assets in large amount from or to accounts of third parties, who are not ultimate beneficial owners or ultimate controlling persons;

(11) the client refuses to show the true identity, does not cooperate in producing identification or other documents under the KYC/CDD process, or produces doubtful evidence or documents which can clearly be identified that they are forged;

(12) it is found under the KYC/CDD process that the client is involved with the committing of predicate offence or money laundering offence under the Thai or foreign laws;

(13) the client shows unusual curiosity by making inquiries on internal policies and procedures concerning reporting of suspicious transactions, which would indicate an attempt to avoid transactions being detected or reported, or the client requests the securities company not to report certain transactions.

Clause 21. Securities company shall establish a proper measure to prevent their employees, including those entrusted by the company, from tipping off /disclose information concerning suspicious transaction or other reporting made to anti-money laundering authorities to customers or unrelated persons.

Chapter 4
Record Keeping and Retention of Records

Clause 22. Securities company shall maintain and record all documents and information and opinions made under the KYC/CDD process, as well as those in relation to suspicious transaction reporting, for at least 5 years from the date the account is closed /the business relationship with the client is terminated. Such documents and information shall be stored in the manner that enables prompt access for review by the Office when requested.

Notified this 1st day of March 2007.

Thirachai Phuvanatnaranubala

(Mr. Thirachai Phuvanatnaranubala)

Secretary-General
The Office of the Securities and Exchange Commission

Note : *The rationale for the issuance of this Notification is as follows: Securities companies are required to have proper risk management systems and procedures to ensure that possible damages from conducting business will be managed to the level that does not affect the business and the credibility of the companies. Since it is possible that those committing predicate offences under anti-money laundering legislations may use securities transactions to launder illegal proceeds, risks may be posed to the securities companies in relation to the temporary freeze or seizure of assets. Moreover, under such legislations, securities companies are required to conduct know-your-customer, obtain and verify clients' identification documents, as well as to report certain transactions to anti-money laundering authorities. The duties required under such legislations pose a different type of risk on securities companies due to incompliance with and negligence of the legislations. As a result of the above-mentioned risks, the SEC deems it is necessary to issue a more specific and detailed Notification concerning the practical implications for securities companies to ensure that there is no adverse impact on the operations of securities companies, to uphold the integrity and stability of the securities industry by putting in place measures to prevent the industry from being used as a channel to launder money and finance terrorist acts, and to ensure that securities companies are fully committed to international standards.*