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**Notification of the Capital Market Supervisory Board
No. TorNor. 20/2552**

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

By virtue of Section 16/6 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 4) B.E. 2551 (2008), and Section 135 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 2) B.E. 2542 (1999), which contain certain provisions in relation to the restriction of rights and liberties of persons which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44, and Section 64 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board under Section 60 of the Securities and Exchange Act (No.4) B.E. 2551 (2008) hereby issues the following regulations:

Clause 1 In this Notification:

- (1) “custodian” means a private fund custodian.
- (2) “liquid assets” mean the following assets:
 - (a) Cash and bank deposits;
 - (b) Certificates of deposit or promissory notes issued by a commercial bank, a commercial bank established under specific law, or a finance company;
 - (c) Treasury bills, government bonds, Bank of Thailand bonds and the Financial Institutions Development Fund bonds;
 - (d) Other liquid assets prescribed by the Office.

In this regard, liquid assets under (a) (b) (c) and (d) shall be free of any encumbrance.

(3) “client” means a person or a group of persons who mandates a management company to manage private funds.

(4) “management company” means a securities company licensed to undertake securities business in the category of private fund management.

(5) “custodial agent” means a person appointed by the custodian as its agent in performing the duties relating to custody of assets of private fund.

(6) “institutional investors” mean:

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- (a) Commercial banks;
- (b) Finance companies;
- (c) Securities companies which purchase investment units for proprietary account, for management of private funds or for management of investment schemes established under the law on undertaking of finance, securities and credit foncier businesses;
- (d) Credit foncier companies;
- (e) Insurance companies;
- (f) Juristic persons established under specific law, which are not the persons under (i);
- (g) Bank of Thailand;
- (h) International financial institutions;
- (i) Government agencies and state enterprises under the law on budgetary procedure;
- (j) The Financial Institutions Development Fund;
- (k) The Government Pension Fund;
- (l) Mutual funds under the law governing securities and exchange;
- (m) Juristic persons having investments in securities amounting to one hundred million Baht or more according to the audited financial statements for the most recent year;
- (n) Juristic persons in which persons under (a) to (m) hold shares in aggregate of more than seventy-five percent of total shares with voting right;
- (o) Foreign investors with the same characteristics as such investors under (a) to (n) *mutatis mutandis*;
- (p) Juristic person approved by the Office on a case-by-case basis whose business undertaking is in line with the core business set forth in the mutual fund's investment policy.

Clause 2 Applicants eligible to file for an approval to become a custodian under Clause 3 shall be the following financial institutions:

- (1) Commercial banks or finance companies under the law governing financial institution business;
- (2) Securities companies under the law governing securities and exchange;
- (3) Life insurance companies under the law governing life insurance; or
- (4) Financial institutions established under specific law.

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Clause 3 The person under Clause 2 will be approved by the Office to be a custodian only if it 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 governing securities and exchange not being subject to a duty to maintain the net liquid capital adequacy, such securities company shall have the liquid assets amounting to no less than one hundred million Baht.

(b) In the case where the applicant is a financial institution other than those prescribed under (a), such financial institution shall maintain the minimum capital funds and reserved capital as required under the law governing the undertaking of its business.

(2) During the period from three years preceding the year of the application filing to the approval date, the applicant must not have any record of violation under the law governing the undertaking of its business, other laws relating to financial business with respect to unfair conducts relating to securities trading, business undertaking amounting to deception, fraud or dishonesty, or the law governing anti-money laundering, regardless of whether such laws are of Thailand or foreign jurisdiction. Such person also must not have any record on business undertaking in a manner which indicates fraud, dishonesty, unaccountability, lack of due care of clients' interest or lack of prudence, or which reflects unfair or unreliable business conducts, unless an exemption has been granted by the Office on grounds of the applicant's improvement of its business management and personnel to prevent such misconducts.

(3) The applicant must demonstrate that, at a minimum, the following operating systems are in place and ready for undertaking of custodian business:

(a) System for segregation of the private fund assets from the custodian's assets, system for safekeeping of such assets, and internal control system to prevent the misuse of clients' assets;

(b) System for prevention of damages to the private fund assets, relevant information and documents, and system for control of the deposit and release of private fund assets;

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

(d) System for preparation of books of assets containing particulars and quantities of private fund assets and record of deposit and release of assets of each private fund;

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

(f) System for prevention of any conflict of interest and protection of confidentiality of private fund;

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(g) In the case where the applicant wishes to appoint any person as a custodial agent, it shall demonstrate that the following operating systems are in place:

1. System for selection of custodial agent to ensure that the custodial agent has the operational systems being ready for such operations.
2. System for contacting and coordinating with the custodial agent to allow the applicant to duly and completely discharge its custodial duties.
3. System of oversight to ensure that the custodial agent carries out its assignment in compliance with the notification of the Office of the Securities and Exchange Commission concerning the rules, conditions and procedures regarding clients' assets received by a custodian.

(h) Other systems demonstrating the readiness for business undertaking as prescribed by the Office.

(4) The applicant must demonstrate its personnel readiness of the operating units responsible for custodial functions whereas such personnel shall have appropriate knowledge, skill and experience for the assigned tasks and shall have a fundamental understanding of general laws related to their professional undertaking.

The custodian approved under this Clause shall maintain the qualifications as specified under this Notification at all time.

Clause 4 The applicant shall file the application under Clause 3 together with supporting documents as specified by the Office.

Clause 5 The Office shall complete its consideration of the application for custodian approval within forty five days from the date of receiving the complete and correct application and supporting documents.

Clause 6 The custodian may commence its business undertaking only after the Office has verified and determined that the custodian has arranged its operating systems and personnel to be ready to undertake the business as approved.

Clause 7 The custodian shall notify the Office in writing in advance of any change in the operating systems from those approved by the Office. If the Office makes no objection in writing within fifteen days from the date of such notification, the custodian may proceed with such change of the operating systems. If any urgent change of the operating systems is necessary, the custodian may notify to the Office and request for the outcome of the consideration before expiration of the period of fifteen days.

Clause 8 In the case where the custodian fails to maintain its financial position as specified under Clause 3(1), it shall notify the Office and its clients within the business day following the date of being aware of such fact. If the custodian is notified by its clients that they want to switch to another custodian, the custodian shall hand over the assets to the other custodian within fifteen days.

Clause 9 The custodian shall not expand business operation during the period which it fails to maintain its financial position as specified under Clause 3(1) unless the

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custodian can re-maintain its financial position as required by the rules and has been permitted by the Office to expand business operation

For the purpose of the first paragraph, “expanding business operation” means:

- (1) Entering into a new custodian agreement;
- (2) Renewing existing custodian agreements;
- (3) Taking any other actions as prescribed by the Office.

Clause 10 The custodian approved under this notification can take custody of assets for private funds under its management. In such case, custody of assets must be made only for clients who are institutional investors or who are not provident funds whose value of securities and assets is one million baht or more.

Clause 11 The following person shall be deemed a custodian approved under this Notification:

(1) The custodian who can duly undertake its business under the law of the jurisdiction in which the management company invests in securities or other assets for account of private fund, or of the jurisdiction in which the custodian is located, but only with respect to clients not having domicile in Thailand or having a policy of making offshore investments only;

(2) The financial institution undertaking business relating to custodial service under the supervision of the Office or other regulatory agencies, but only with respect to the custody of assets of private fund of such financial institution.

The provision under Clause 6, Clause 7, Clause 8 and Clause 9 shall not apply to the custodian approved under the provision of the first paragraph.

Clause 12 In the case where any custodian violates or fails to comply with the provision under Clause 7, Clause 8, Clause 9 and Clause 10, the Office may:

- (1) Impose probation;
- (2) Suspend custodian approval for a period of time or under the conditions as specified;
- (3) Revoke custodian approval and the Office may take into account such fact in considering the custodian’s subsequent application.

Clause 13 Any person who has already been approved as custodian prior to the effective date of this Notification shall be deemed a custodian approved under this Notification and shall comply with this Notification.

Clause 14 Any and all notifications of the Office of the Securities and Exchange Commission, orders and circular letters issued under or providing guidelines for compliance with the Notification of the Securities and Exchange Commission No. KorNor. 69/2547 Re: Rules, Conditions and Procedures for Approval of the Private Fund Custodian dated 22 December 2004 which were in effect prior to the effective date of this Notification, shall remain in full force and effect to the extent that they are not

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inconsistent with nor contrary to the provisions of this Notification, until any notifications, orders and circular letters issued under or providing guidelines for compliance with this Notification come into effect.

Clause 15 Any reference made under any other notifications to the Notification of the Securities and Exchange Commission No. KorNor. 69/2547 Re: Rules, Conditions and Procedures for Approval of the Private Fund Custodian dated 22 December 2004 shall mean the reference to this Notification.

Clause 16 This Notification shall come into force as from 1 June 2009.

Notified this 14th day of May 2009.

(Vijit Supinit)

Chairman
Securities and Exchange Commission

Remark: The reason for promulgation of this Notification is that (i) the Securities and Exchange Act (No. 4) B.E. 2551 (2008) stipulates that the issuance of the rules on granting approval of custodians shall be the power of the Capital Market Supervisory Board, therefore, it deems expedient to issue this Notification to replace the Notification of the Securities and Exchange Commission No. KorNor. 69/2547 Re: Rules, Conditions and Procedures for Approval of the Private Fund Custodian dated 22 December 2004; and (ii) in order to allow management companies to appoint a global custodian to discharge custodial duties for clients not having domicile in Thailand or having a policy of making only offshore investments as well as to appoint a financial institution undertaking custodial business to act as a custodian of assets of private funds of such financial institution. Also, given the fact that such persons have already been under supervision of foreign agencies or other regulatory agencies, such persons should be granted approval in general to act as a private fund custodian.