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**Notification of the Capital Market Supervisory Board**  
**No. TorThor. 84/2552**  
**Re: Custody of Assets of Clients by Licensed Derivatives Brokers**

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By virtue of Section 18, Section 33 and Section 34(2) of the Derivatives Act B.E. 2546 (2003) which contains certain provisions in relation to restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 36, Section 41, Section 43 and Section 45 of the Constitution of the Kingdom of Thailand, so permits by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board under Section 6 of the Derivatives Act (No. 2) B.E. 2551 (2008) hereby issues the following regulations:

**Clause 1.** In this Notification:

“derivatives broker” means a person licensed to undertake derivatives business in the category of derivatives brokerage.

“assets of client” means

(1) assets which a derivatives broker receives or holds as collateral for satisfying obligations under derivatives positions held by a client;

(2) profits or any other interests obtained from derivatives trading of a client;

(3) warehouse receipt, bill of lading, or any other instruments representing entitlement in assets, which are held by a derivatives broker on behalf of its client for the purpose of making delivery, or which are obtained upon receiving delivery according to such client’s derivatives positions;

(4) cash, securities, or any other assets which a derivatives broker receives from a client for payment upon receiving delivery, or which a derivatives broker receives on behalf of a client upon making delivery according to such client’s derivatives positions;

(5) remaining cash from a sale of a client’s securities held under the name of a derivatives broker due to the client’s default on derivatives trading.

**Clause 2.** A derivatives broker shall provide a written contract or an agreement on custody of assets of clients which indicates the right, duty, and responsibility of both parties and contains at least the particulars and substances as specified by the SEC Office.

A contract or an agreement in the first paragraph shall not have any statement denying a derivatives broker's responsibility to a client for any act or omission of any act, whether willfully or negligently, of the derivatives broker or its personnel or employees.

**Clause 3.** A derivatives broker shall not appoint any person as its agent to undertake custody of assets of clients.

**Clause 4.** In undertaking custody of assets of clients, a derivatives broker shall put in place systems as well as rules or procedures for custody of assets of clients to ensure that the client assets under its custody are secured and kept in full and are segregated from its own assets in the manner that is distinguishable without any suspicion, and there shall be accurate, complete and up-to-date records of assets of each client in a separate account which is segregated from the derivatives broker's account. A derivatives broker shall report to clients on custody of assets of clients in accordance with rules specified by the SEC Office.

**Clause 5.** A derivatives broker shall not engage in any act which results in creating, altering, transferring, reserving or terminating a client's right over assets, without or not complying with an order or consent given in writing by the client or any person authorized in writing by the client.

**Clause 6.** A derivatives broker shall take actions as necessary in order for a client to obtain rights and benefits arising from any securities or instruments owned by the client which are under custody of the derivatives broker from the issuers of such securities or instruments within an appropriate time.

A derivatives broker shall not declare its intention to use a client's rights and benefits without the client's order or consent given in writing.

**Clause 7.** A derivatives broker may deposit a client's cash with a commercial bank or other banks established under specific law, invest in promissory notes issued by a finance company or TSFC Securities Limited, or make other investments in compliance with the rules specified by the SEC Office. There shall be a statement in such bank deposits or promissory notes or investments clearly indicating that such transaction is made by the derivatives broker for the client's benefit.

In cases where deposits or promissory notes in the first paragraph are paid at maturity, such deposits or promissory notes shall not have any restriction on redemption before maturity.

**Clause 8.** A derivatives broker shall monitor and supervise its employees to comply with this Notification and rules set out by the derivatives broker for compliance with this Notification.

**Clause 9.** In cases where it appears to the SEC Office that any derivatives broker violates or fails to comply with this Notification or rules set out by the derivatives broker for compliance with this Notification or has improper conducts, the SEC Office may order such person to rectify, act or omit from any act for compliance with this Notification.

**Clause 10.** All notifications of the Office of the Securities and Exchange Commission, orders and circulars issued under or prescribing guidelines for compliance with the Notification of the Securities and Exchange Commission No. KorThor. 68/2547 Re: Custody of Assets of Clients by Licensed Derivatives Brokers dated 22 December 2004 which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with nor contrary to the provisions of this Notification, until notifications, orders and circulars issued under or prescribing guidelines for compliance with this Notification come into force.

**Clause 11.** Any reference made in any other notifications to the Notification of the Securities and Exchange Commission No. Kor.Thor. 68/2547 Re: Custody of Assets of Clients by Licensed Derivatives Brokers dated 22 December 2004 shall mean reference to this Notification.

**Clause 12.** This Notification shall come into force as from 1 September 2009.

Notified this 3<sup>rd</sup> day of August 2009.

- Signature -  
(Vijit Supinit)  
Chairman

Securities and Exchange Commission

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*Remark:* The rationale for issuing this Notification: As the Derivatives Act (No. 2) B.E. 2551 (2008) stipulates that the issuance of rules governing business conduct of licensed derivatives brokers, custody and record keeping of assets of clients and use of assets of clients for seeking benefits is under the authority of the Capital Market Supervisory Board, it is therefore deemed appropriate to issue this Notification as a

replacement for the Notification of the Securities and Exchange Commission No. KorThor. 68/2547 Re: Custody of Assets of Clients by Licensed Derivatives Brokers dated 22 December 2004.