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**Notification of the Office of the Securities and Exchange Commission  
No. SorNor. 14/2553  
Re: Establishment of Mutual Funds and Execution of Agreements for  
Management of Private Funds  
(No. 3)**

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By virtue of:

(1) Section 118 (1) of the Securities and Exchange Act B.E. 2535 (1992) and Section 141(2) of the Securities and Exchange Act B.E. 2535 (1992), with the approval of the Capital Market Supervisory Board, 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 41, Section 43, Section 44 and Section 64 of the Constitution of the Kingdom of Thailand, so permits by virtue of law;

(2) the second paragraph of Clause 4 of the Notification of the Capital Market Supervisory Board No. TorNor. 27/2552 Re: Rules, Conditions and Procedures for Establishment and Management of Funds dated 20 July 2009 with the approval of the Capital Market Supervisory Board;

(3) the first paragraph of Clause 4, Clause 19(1) and (6) of the Notification of the Capital Market Supervisory Board No. TorNor. 27/2552 Re: Rules, Conditions and Procedures for Establishment and Management of Funds dated 20 July 2009;

The SEC Office hereby issues the following regulations:

**Clause 1.** The provisions under Division 2 Submission of Application and Approval for Establishment and Management of Mutual Funds, Clause 8 to Clause 16 of Chapter 1 General Provisions in Part 1 Establishment of Mutual Funds and Sale of Investment Units of the Notification of the Office of the Securities and Exchange Commission No. SorNor. 22/2552 Re: Establishment of Mutual Funds and Execution of Agreements for Management of Private Funds dated 28 July 2009 shall be repealed and replaced with the following provisions:

“Part 2

Approval of Mutual Fund Establishment

Clause 8. In establishing a mutual fund, the management company shall:

(1) for a normal approval, comply with the provisions under Sub-division 1 Normal Approval of Mutual Fund Establishment;

(2) for an automatic approval, comply with the provisions under Sub-division 2 Rules for the Automatic Approval of Mutual Fund Establishment;

After approval of mutual fund establishment according to the first paragraph is obtained, the management company shall comply with the provisions under Sub-division 3 Undertakings following Obtaining Approval.

#### Sub-division 1

#### Normal Approval of Mutual Fund Establishment

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Clause 9. The management company shall submit an application for mutual fund establishment in writing together with supporting documents as follows:

(1) details of the mutual fund scheme in writing with the information as per items specified in the system for approval of mutual fund provided on the SEC Office's website. The management company is also required to submit the same details through the said system;

(2) draft commitment between the unitholders and the management company which shall have at least material content as specified by Section 119. In case of application for establishment of a mutual fund for institutional investors, such draft commitment shall contain the restrictions of transfer of investment units, specifying that the management company or the investment unit registrar shall refuse to accept registration of transfer of investment units if any investment units are transferred to any persons other than institutional investors as specified in the scheme;

(3) draft agreement for appointment of mutual fund supervisor; and

(4) draft prospectus.

Clause 10. The SEC Office shall notify the result of the application within forty five days as from the date when the SEC Office receives complete and accurate application and supporting documents.

In considering the application, the SEC Office may require the management company to provide explanation, proceed to rectify, or submit additional documents within the period prescribed by the SEC Office. If the management company fails to

proceed as required, it shall be deemed that such company no longer intends to apply for the establishment of fund, unless the company can demonstrate to the SEC Office that the failure to proceed within the specified time is caused by any *force majeure* or on a justifiable ground.

Clause 11. The management company eligible to obtain an approval of mutual fund establishment shall comply with the following rules;

(1) details in the application and supporting documents comply with the rules governing establishment and management of funds under the law on securities and exchange as well as the notifications, regulations, or orders issued by virtue of such law. In addition, they must not contain any information that is inconsistent with or contrary to the provisions of such rules;

(2) the management company is not being temporarily suspended from submission of application for mutual fund establishment;

Clause 12. In cases where the SEC Office has a reasonable ground to suspect that the true objective or substance of the establishment of the mutual fund under consideration is to avoid compliance with provisions under the law on securities and exchange, although such fund is in compliance with the rules set forth by Clause 11, the SEC Office may not grant an approval for the establishment of such mutual fund.

## Sub-division 2

### Rules for Automatic Approval of Mutual Fund Establishment

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Clause 13. For an automatic approval application, the management company shall submit the following documents:

(1) an application in writing and supporting documents as prescribed by Clause 9 provided that the details of the scheme and draft commitment between the unitholders and the management company contain a provision indicating that if the management company violates or fails to comply with the rules for automatic approval of mutual fund establishment and such violation or failure to comply causes damage to the fund or the investors, the management company shall remedy such damage without delay. In the event of any dispute between the management company and the investors, the management company shall voluntarily bring the dispute through the arbitration procedure for settlement.

(2) a representation that the information contained in the application and supporting documents according to (1) complies with the rules and conditions prescribed by this Notification in all respects and that the establishment of the mutual fund under consideration is not to avoid compliance with provisions under the law on securities and

exchange. Such representation shall be signed by the authorized directors of the company or in case such authority is delegated, the delegatee shall hold the position of departmental director or higher or any equivalent position called otherwise who is responsible for the line of work related to overseeing such mutual fund establishment.

Clause 14. The automatic approval of mutual fund establishment shall apply to the following cases:

(1) the management company intends to obtain an automatic approval for mutual fund establishment;

(2) the fund to be established is a non-complex fund as prescribed by Clause 15.

Clause 15. A non-complex fund eligible to file an application for an automatic approval of mutual fund establishment shall have the following characteristics:

(1) Such mutual fund shall not be:

(a) a feeder fund with a policy to invest in or hold, on average in an accounting period, not less than 80 percent of its net asset value, investment units of another mutual fund;

(b) a mutual fund that invests in foreign countries without a policy to reduce or fully hedge foreign exchange risk;

(2) Such mutual fund shall not invest in or hold derivatives and structured notes except in case of derivatives for hedging purpose according to the notification of the Office of the Securities and Exchange Commission governing investment and holding of assets for funds;

(3) There shall be no classification of investment units;

(4) Terms on payment of return to unitholders (if any) shall be straightforward, simple, and shall not vary according to any formulas or other conditions;

(5) Procedures for management of funds as specified in the mutual fund scheme comply with the prescribed guidelines for such fund without any characteristics for which prior approval or waiver from the SEC Office is required.

Clause 16. It shall be deemed that the approval of mutual fund establishment according to Clause 13 has been granted if:

(1) the application and supporting documents according to Clause 13 are complete as specified;

(2) the management company has paid the application fee as determined in the notification of the Office of the Securities and Exchange Commission Concerning Determination of Fees for Filing, Registration and Other Applications.

Clause 16/1 The management company is not allowed to amend the details of the mutual fund scheme before the registration of a pool of assets as mutual fund.

Clause 16/2 Should it appear to the SEC Office that the application for an automatic approval of mutual fund establishment does not comply with the rules and conditions prescribed herein, or that the true objective or substance of the establishment of the mutual fund under consideration is to avoid compliance with provisions under the law on securities and exchange, the approval for establishment of such fund shall be deemed terminated on the date specified by the SEC Office, unless a waiver has been granted by the SEC Office on any of the following grounds:

(1) the mutual fund is eligible to obtain an approval if the management company submits a normal application for mutual fund establishment; or

(2) the management company has amended the fund's features to be in compliance with Clause 15;

In requesting for a waiver according to the first paragraph, the management company shall:

(1) submit a request for waiver in writing and pay a fee for requesting a waiver at a rate specified in the notification of the Office of the Securities and Exchange Commission Concerning Determination of Fees for Filing, Registration, and Other Applications;

(2) pay the difference between the fees for normal application and automatic approval application in accordance with the notification of the Office of the Securities and Exchange Commission Concerning Determination of Fees for Filing, Registration, and Other Applications;

The management company is not allowed to charge the fee under the second paragraph (1) and the difference of fees under the second paragraph (2) from the fund.

Clause 16/3. Following the termination of the automatic approval as prescribed by Clause 16/2, the management company shall proceed as follows:

(1) If the investment units have already been offered but the mutual fund has not been registered, the management company shall refund the followings to subscribers within fifteen days as from the date when the management company is notified of the termination of the fund by the SEC Office.

(a) subscription amount;

(b) benefits arising from the proceeds under (a);

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(c) interests arising from the proceeds under (a) at the rate of not less than seven and a half percent per annum from the date when the management company is notified of the termination until the date when the company repays the subscription amount in full.

(2) In case such mutual fund has already been registered, the management company shall immediately proceed to dissolve the mutual fund when the company is notified of the termination from the SEC Office. If, after the liquidation, the amount of money distributed to the unitholders is less than the sum of the followings, the management company is required to pay the difference to the unitholders within fifteen days from the completion date of the liquidation.

(a) money paid for the purchase of investment units;

(b) interests arising from the proceeds under (a) at the rate of not less than seven and a half percent per annum from the date of purchase until the date when the liquidator returns the money to the unitholders.

Clause 16/4. Should it appear to the SEC Office that the management company submits the application for an automatic approval of mutual fund establishment in violation or fails to comply with the prescribed rules, the SEC Office may take any one or more of the following actions:

(1) order a temporary suspension to the submission of a new application for normal or automatic approval of mutual fund establishment by such management company for a period deemed appropriate by the SEC Office but not exceeding one year from the date when such facts become apparent;

(2) order such management company to refrain from offering investment units of the fund of which an approval has been granted but has not been initially offered within a period deemed appropriate by the SEC Office;

(3) disseminate the SEC Office's order according to (1) or (2) to the public or have such information available for public access, or both;

In addition to the proceedings under the first paragraph, actions may be taken against the directors and executives of the management company pursuant to the notification of the Capital Market Supervisory Board governing qualifications and other prohibited characteristics of directors and executives of securities companies.

Clause 16/5. In exercising discretion according to Clause 16/4, the SEC shall consider the following factors:

(1) actions of the management company in respect of mutual fund establishment and management;

(2) impacts or damage to investors caused by the actions of the management company;

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(3) improvement or other undertakings for the benefits of the investors to rectify, remedy, or prevent repetition of such actions;

(4) other actions of the management company which benefit or impede the operation of the SEC Office;

(5) any other records of inappropriate behaviors or actions of the management company in the past.

### Sub-division 3

#### Undertakings Following Approval of Mutual Fund Establishment

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Clause 16/6. The management company which has been granted an approval from the SEC Office to establish a mutual fund shall arrange to have a commitment between unitholders and the company, an agreement for appointment of mutual fund supervisor, a prospectus of which the material content is not different from the draft commitment, the draft appointment agreement and the draft prospectus submitted to the SEC Office.

### Division 2/1

#### Classification of Investment Units

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Clause 16/7. The management company may classify investment units of a mutual fund into different classes provided that the company prescribes rights and benefits of investment units in the same class equally. In this regard, the company shall classify investment units into classes based on:

(1) fees and expenses chargeable to unitholders;

(2) offering or redemption period;

(3) rights to dividend;

(4) return on investment that unitholders shall receive from investment in investment units;

(5) other criteria as approved by the SEC Office. In obtaining approval, the management company must be able to demonstrate that such classification of investment units is practicable and is determined after taking into consideration the benefits of all unitholders and the impacts to the unitholders of each class.

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Clause 16/8. The management company shall prescribe the classification of investments units pursuant to clause 16/7 in the scheme prior to the initial offering of investments units whereby at least the following details shall be specified:

- (1) classes of investment units;
- (2) rights and benefits of unitholders in each class including the procedures for calculation and allocation of the benefits in detail (if any);
- (3) request for resolution from unitholders in each class;
- (4) limitation in claiming for benefits from investment units of each class (if any);
- (5) allocation of income, expenses, and profit and loss arising from investing in or holding of securities or other assets to unitholders in each class (if any);
- (6) fees and expenses chargeable to unitholders in each class (if any). In this regard, such fees and expenses shall be charged corresponding to the characteristics of investment units in each class;
- (7) calculation method and announcement of the net asset value and the value of investment units in each class, as well as the rights and interests of each class of investment unit in the net asset value (if any).

#### Division 2/2

#### Amendment to Information Submitted to the SEC Office in Respect of Approval of Mutual Fund Establishment

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Clause 16/9. Subject to Clause 16/1, amendment to the details of the mutual fund scheme of which the management company has submitted to the SEC Office for approval according to Division 2 of this Chapter shall be made prior to the initial offering.

The management company shall pay the fee for the scheme amendment under the first paragraph at a rate specified in the notification of the Office of the Securities and Exchange Commission Concerning Determination of Fees for Filing, Registration, and Other Applications. In this regard, the management company is not allowed to collect such fee from the mutual fund.

Clause 16/10. The SEC Office may not accept the request for scheme amendment according to Clause 16/9 if the amendment requested is material and may affect the key features of the approved mutual fund. In case the management company intends to set up a mutual fund with features as requested in the amendment, such management company shall submit a new application.”

**Clause 2.** The provision under Clause 19 of the Notification of the Office of the Securities and Exchange Commission No. SorNor. 22/2552 Re: Establishment of



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Mutual Funds and Execution of Agreements for Management of Private Funds dated 28 July 2009 shall be repealed and replaced with the following provision:

“Clause 19. The management company shall carry out the offering of investment units within two years from the approval date of mutual fund establishment, and shall comply with the conditions in the prospectus. During the period of the initial offering, the company may offer such investment units in excess of the scheme capital provided that such excess does not exceed fifteen percent of the scheme capital, if the company has clearly indicated such intention in the mutual fund scheme, and such proceeds from excess offering of investment units shall be deemed scheme capital.”

**Clause 3.** The application for establishment in the form of shelf registration submitted to the SEC Office prior to the effective date of this Notification shall comply with the terms of the Notification of the Office of the Securities and Exchange Commission No. SorNor. 22/2552 Re: Establishment of Mutual Funds and Execution of Agreements for Management of Private Funds dated 28 July 2009 which has been in effect prior to the effective date of this Notification. In this regard, the provision under Clause 12 of the Notification of the Office of the Securities and Exchange Commission No. SorNor. 22/2552 Re: Establishment of Mutual Funds and Execution of Agreements for Management of Private Funds dated 28 July 2009 as amended by this Notification shall apply to the approval for establishment in the form of shelf registration *mutatis mutandis*.

**Clause 4.** This Notification shall come into force as from 16 June 2010.

Notified this 13<sup>th</sup> day of May 2010.

-Signature-

(Mr. Thirachai Phuvanatanarubala)

Secretary-General

Office of the Securities and Exchange Commission

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**Remark:** The reasons for issuing this Notification are: (1) to clarify and simplify the structure of the provisions with respect to the establishment of mutual funds, (2) to repeal the application for approval in the form of shelf registration and replace it with the automatic approval application which aims to facilitate the planning of establishment and offering for sale of mutual funds, (3) to set the rules for mutual fund scheme amendment and (4) to extend the period for carrying out the initial offering after the approval for establishment has been granted.