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Notification of the Capital Market Supervisory Board

No. TorThor/Nor/Khor. 37/2553

Re: Prohibited Characteristics of Personnel in Capital Market Industry

By virtue of the following Sections:

(1) Section 16/6 and Section 113 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 4) B.E. 2551 (2008), Section 100, Section 103(1), Section 114, Section 115, Section 116, and Section 117 of the Securities and Exchange Act B.E. 2535 (1992), and 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);

(2) Section 15, Section 18, Section 23(3), and the first paragraph of Section 24 of the Derivatives Act B.E. 2546 (2003) which contain 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, Section 44, Section 45, and Section 64 of the Constitution of the Kingdom of Thailand, so permits by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 The following notifications shall be repealed:

(1) The Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 57/2552 Re: Prohibited Characteristics of Personnel in Securities Business dated 3 August 2009;

(2) The Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 85/2552 Re: Prohibited Characteristics of Personnel in Derivatives Business dated 3 August 2009.

Clause 2 In this Notification:

(1) “person with power of management” shall have the same meaning as defined in the notification of the Capital Market Supervisory Board governing qualifications and prohibited characteristics of the directors and executives of securities business, or the notification of the Capital Market Supervisory Board governing qualifications and prohibited characteristics of the directors and executives of derivatives business operators, as the case may be;

(2) “personnel in capital market industry” means personnel in securities and derivatives businesses;

(3) “personnel in securities business” means any person who performs duties for the benefit of the securities company or who is related to securities business as follows:

(a) director, manager or any person who has power of management in a securities company;

(b) fund manager;

(c) property fund manager;

(d) investor contact;

(4) “personnel in derivatives business” means any person who performs duties for the benefit of the derivatives business operator or who is related to the derivatives business as follows:

(a) director, manager, or any person who has power of management in the derivatives business operator;

(b) derivatives investment manager;

(c) derivatives investor contact;

(5) “fund manager” means mutual fund manager and private fund manager;

(6) “property fund manager” means a person who makes decisions to invest or dispose of real estate or leasehold right of property funds;

(7) “investor contact” means any person who has duties to contact, solicit, advise or prepare a plan of trading or investment in securities for investors, and are divided into two categories: Category A Investor Contact who is also authorized to analyze value or suitability of trading or investing in securities and Category B Investor Contact who is not authorized to analyze value or suitability of trading or investing in securities;

(8) “derivatives investor contact” means any person who has duties to contact, solicit, advise or prepare a plan of trading or investment in derivatives for investors, and are divided into two categories: Category A Derivatives Investor Contact who is also authorized to analyze value or suitability of trading or investing in derivatives and Category B Derivatives Investor Contact who is not authorized to analyze value or suitability of trading or investing in derivatives;

(9) “financial institution” means an entity which undertakes the following businesses:

(a) commercial bank, finance business, credit foncier business;

(b) securities business;

(c) derivatives business;

(d) insurance business;

(e) government financial institution established under specific law;

Chapter 1

Possession of Prohibited Characteristics

Part 1

Prohibited Characteristics

Clause 3 Personnel in capital market industry shall not possess any prohibited characteristics as follows:

(1) having deficiency in legal competence or having been subject to any legal proceeding under the law governing capital market or having untrustworthy characteristics as specified by Clause 4 as the first category of prohibited characteristics;

(2) having any record of deceitful, fraudulent or dishonest management of assets as specified by Clause 5 as the second category of prohibited characteristics;

(3) having any improper behavior which, if considered on a reasonable ground, materially affected clients, investors, company or shareholders, or money market or capital market as a whole, in a manner as specified by Clause 6 as the third category of prohibited characteristics.

Clause 4 The followings shall be classified as the first category of prohibited characteristics:

(1) being a person who has been subject to the court's receiving order or declared by any court as an insolvent person; or

(2) being an incompetent or a quasi-incompetent person; or

(3) having been named in any criminal complaint filed by the SEC Office; or having been subject to any legal proceeding following the criminal complaint initiated by the SEC Office; or having been sentenced to imprisonment by the court's final judgment and it has not yet surpassed the three-year interval time after either the person completed the term of imprisonment or the suspension of sentence period was over, *provided that* the action taken hereto shall base upon the violation of the law on securities and exchange, the law on derivatives, or the law on trust for transactions in capital market as specified in the Appendix attached hereto; or

(4) being a person whose name has been declined to be listed or has been removed from the database of directors and executives of securities issuing company due to the possession of untrustworthy characteristics and not qualified to be directors or executives according to the Notification of the Securities and Exchange Commission governing determination of untrustworthy characteristics of company directors and executives.

Clause 5 The followings shall be classified as the second category of prohibited characteristics:

(1) having been named in any criminal complaint filed by a financial regulatory authority, whether in Thailand or in foreign countries, or subject to any legal proceeding following the criminal complaint initiated by such financial regulatory authority,

or having been sentenced to imprisonment by the court's final judgment and it has not yet surpassed the three-year interval time after either the person completed the term of imprisonment or the suspension of sentence period was over, *provided that* the action taken hereto shall base upon the commission of offences regarding deceitful, fraudulent or dishonest management of assets which has caused damage to either the financial institution with which the person was associated or the customers thereto; or

(2) having been sentenced to imprisonment by the court's final judgment and it has not yet surpassed the three-year interval time after either the person completed the term of imprisonment or the suspension of sentence period was over, *provided that* the action taken hereto shall base upon the commission of public offences regarding deceitful, fraudulent or dishonest management of assets; or

(3) having been subject to the court's order of asset seizure under the Counter Corruption Act, the Anti-Money Laundering Act or any other similar law and it has not yet surpassed the three-year interval time after the date on which the court issued such order; or

(4) having been considered by the financial regulatory authority or other agencies with legal authority, whether in Thailand or in foreign countries, as those who have prohibited characteristics and not qualified to be director, manager or person with power of management, or executive of financial institution, or personnel responsible for advising of financial services, management or receiving of client's money, *provided that* the action taken hereto shall base upon the commission of offences regarding deceitful, fraudulent or dishonest management of assets; or

(5) being taken action and unable to perform the duties as personnel in the capital markets industry in the following manners.

(a) being suspended or revoked an approval or having any characteristic causing termination of approval, or being taken similar action and unable to perform the duties as capital market personnel or director of derivatives exchange, or derivatives clearing house; and

(b) the action taken according to (a) due to the performance of duty as a staff holding a position that affects the appropriateness of the position under consideration; and

(c) the cause of the action taken according to (a) shall be base upon the commission of offences under the law on securities and exchange or the law on derivatives and the notifications issued thereunder, regarding deceitful, fraudulent or dishonest management of assets, failure to discharge the duty of care or duty of loyalty, or lacking of fiduciary duties of professionals.

Clause 6 The followings shall be classified as the third category of prohibited characteristics if there is a reasonable ground to believe that a person:

(1) has or used to have any behavior that, if considered on a reasonable ground, indicates failure to honestly and fairly perform duty in providing financial services, lacks professional accountability or due care, or aids or abets or used to aid or abet the others in connection with such behavior; or

(2) has or used to have any behavior that, if considered on a reasonable ground, indicates unfair practices or disadvantage to investors in securities or derivatives trading, or aids or abets or used to aid or abet the others in connection with such behavior; or

(3) has or used to have any behavior that, if considered on a reasonable ground, indicates disclosure or dissemination of false or misleading information or documents, or concealment of any material facts which should have been expressly disclosed to investors, shareholders, or relevant persons for making investment decisions, whether it be information or documents submitted or delivered to the SEC Office, the Capital Market Supervisory Board, the Securities and Exchange Commission, the financial supervisory authority, or the investors, or aids or abets or used to aid or abet the others in connection with such behavior; or

(4) has or used to have any behavior that, if considered on a reasonable ground, indicates failure to discharge properly the duty to supervise a juristic person or a company under its management, or any personnel under its supervision (if any) in preventing from any act or refraining from acting in violation of the law on securities and exchange, the law on derivatives, or the law on trust for transactions in capital market, or the notification issued thereunder, which may affect the confidence in securities, derivatives or trust business in general, or cause damage to its reputation, position, business operation or its client; or

(5) has or used to have any behavior that, if considered on a reasonable ground, indicates lack of ethics or standards of conduct in connection with securities or derivatives business set by an association related to securities business, a derivative regulatory association or any other organizations in securities business or derivative business accepted by the SEC Office, or aids or abets or used to aid or abet the others in connection with such behavior.

Part 2

Effectiveness of the Possession of Prohibited Characteristics

Clause 7. In cases where the applicant for approval of capital market personnel possesses any prohibited characteristics prescribed under Part 1, the SEC Office shall refuse to grant an approval on the ground that such person possesses prohibited characteristics.

Clause 8. In cases where there appears later any fact that any capital market personnel who is director or manager of a securities company, director, manager or person with power of management of derivatives business operator possesses any prohibited characteristics prescribed under Part 1, the SEC Office shall:

(1) in case of the first category of prohibited characteristics and the second category of prohibited characteristics under Clause 5(1) to (3), the SEC Office shall revoke the approval;

(2) in case of the second category of prohibited characteristics under Clause 5(4) or (5), the SEC Office shall suspend or revoke the approval depending on the cause of the possession of such prohibited characteristics;

(3) in case of the third category of prohibited characteristics, the SEC Office may suspend or revoke the approval as deemed appropriate.

Clause 9. In cases where there appears later any fact that any capital market personnel who is director or manager of a financial institution licensed to undertake securities business established under other laws, or the person with power of management of securities company possess any prohibited characteristics prescribed under Part 1, such securities company or derivatives business operator shall bar those persons from serving the duties within the period of time as follows:

(1) the first category of prohibited characteristics shall be in effect from the date the court has issued an order or delivered the final judgment on the specified matter or since the date when the SEC Office has submitted a complaint to the criminal authority or since the date when the SEC Office notifies of the possession of untrustworthy characteristics, as the case may be, and remain so until such characteristic has ceased;

(2) the second category of prohibited characteristics shall be in effect from the date where there appears the fact according to Clause 5 and the SEC Office has notified, in writing, the person under consideration and the securities company or the derivatives business operator by which such person is appointed, of the possession of such characteristic, and remain so until such characteristic has ceased;

(3) the third category of prohibited characteristics shall be in effect from the date indicated in the SEC Office's letter notifying the person under consideration and the securities company or the derivatives business operator by which such person is appointed, of the possession of the characteristics under Clause 6, and remain so until the condition or the time period prescribed by the SEC Office has lapsed.

Clause 10 For any cases other than specified by Clause 8 and Clause 9, if there appears later any fact that any capital market personnel possess any prohibited characteristics according to Part 1, the effect shall be:

(1) the first category of prohibited characteristics; the approval shall be ended from the date when the court has issued an order or delivered the final judgment on the specified matter or since the date when the SEC Office has submitted a complaint to the criminal authority or since the date when the SEC Office notifies of the possession of untrustworthy characteristics, as the case may be;

(2) the second category of prohibited characteristics under Clause 5(1) to (3); the approval shall end from the date when there appears to the SEC Office such fact, and the SEC Office has notified, in writing, the person under consideration and the securities company or the derivatives business operators by which such person is appointed, of the possession of such characteristic;

(3) the second category of prohibited characteristics under Clause 5(4) or (5); the effectiveness shall be from the date when the SEC Office orders suspension or revocation of approval based upon the cause of the possession of such prohibited characteristics;

(4) the third category of prohibited characteristics; the effectiveness shall be from the date when the SEC Office orders suspension or revocation of approval as deemed appropriate.

Clause 11. In cases where the SEC Office declines to grant an approval, on its own discretion, under Clause 7, or prohibits to perform the duties, suspends or revokes an approval under Clause 8(2) and (3), or Clause 9(3), or Clause 10(3) and (4), as the case may be, the SEC Office shall be empowered to carry out one or more of the following acts instead of, or in addition to, the actions that have been taken:

(1) to determine a period of time or the condition for consideration of application for approval or prohibiting such persons from performing their duties for a subsequent period, provided that the prescribed period for considering prohibited characteristics, on a case-by-case basis, shall not exceed ten years;

(2) to determine a period of time for suspension of approval, in which case such person can continue to perform the duties of capital market personnel after the lapse of the said period without submission of application, provided that the prescribed period shall not exceed the remaining approval period,

(3) in cases where the behavior constituting the third category of prohibited characteristics is not so serious and occurred more than the previous ten years as from the date when such fact appears to the SEC Office, the SEC Office may not use such prohibited characteristic to decline to grant an approval, suspend or revoke an approval or prohibit from performing duties. In this case, the SEC Office may, upon its discretion, demote the action to be taken to reprimanding inappropriate conduct.

Chapter 2

Consideration of the Third Category Prohibited Characteristics

Part 1

Factors for Consideration

Clause 12. In considering the seriousness of behaviors constituting the third category of prohibited characteristics or undertaking under Clause 11, the SEC Office shall take into consideration the following factors:

(1) involvement role and behaviors of the person under consideration;

(2) sanction already imposed on such person;

(3) impact on or damage to the clients, investors, company or shareholders as a whole, the money market or the capital market as a whole, or benefits related to the facts or behaviors under consideration;

(4) any step taken thereafter for the best interest of the clients, investors, company or shareholders as a whole, the money market or the capital market as a whole, whether to rectify, remedy or prevent recurrence of similar facts or behaviors;

(5) any behavior of the person under consideration which is cooperative or obstructive to duty performance of the SEC Office;

(6) any other records or behaviors in the past which indicate inappropriateness to serve as capital market personnel or director of derivatives exchange, or derivatives clearing house.

Part 2
Committee

Clause 13. The SEC Office, with the approval of the Capital Market Supervisory Board, shall appoint a committee to perform duty in considering facts and evidence and rendering opinions to the SEC Office on consideration to prohibit duty performance, suspend or revoke an approval if any capital market personnel possess the third category of prohibited characteristics, or give opinions to the SEC Office on any matters related to compliance with this Notification as well as set penalty measures as a guideline for the SEC Office.

The Committee under the first paragraph shall comprise no more than five experts in the money market or the capital market who shall not be Secretary-General or staff of the SEC Office. Among them, there shall be at least one expert who is a representative of investors and one securities or derivatives trading expert. In addition, there shall be two experts appointed from the qualified persons nominated by the associations related to securities businesses or derivatives business operator supervision.

The Committee shall elect one member as chairman and the SEC Office shall appoint one of its staff as secretary.

Any Committee member having any material interest in the matter under consideration in such a way that may affect his ability to express independent opinion shall declare such interest and shall not participate in the consideration of such matter.

Part 3
Procedure for Consideration

Clause 14. For clarity and to ensure that the SEC Office's discretion has been reviewed as appropriate, the SEC Office shall prohibit any person from performing duties, or suspend or revoke the approval of capital market personnel due to the possession of prohibited characteristics under the third category only when at least the following actions have been taken:

(1) giving an opportunity for the person under consideration to explain his facts;

(2) presenting facts and explanation provided by the person under consideration (if any) for the Committee's consideration and rendering opinion, and if requested by the Committee, arranging for further explanation by the person under consideration;

Proceeding other than those specified in the first paragraph shall be governed by the Administrative Procedure Act B.E. 2539 (1996).

Clause 15. The SEC Office may not undertake the act specified under the first paragraph of Clause 14 in the following cases:

(1) the case has been considered by another agency where the person under consideration has explained his facts and such case has been considered and on which a collective opinion of a group of experts in the capital market industry or any other related agencies has been passed sufficiently, or

(2) the Committee has already set clear and sufficient guidelines for considering cases with similar facts to the case under consideration.

Chapter 3
Responsibilities of Securities Company and
Derivatives Business Operator

Clause 16. The securities company or the derivatives business operator shall notify the SEC Office, in writing, within seven days from the date on which the following characteristics of the capital market personnel of such securities company or derivatives business operator become known or there is a reason to become known:

(1) the possession of the prohibited characteristics under Section 103 of the Securities and Exchange Act B.E. 2535 (1992) or Section 23 of the Derivatives Act B.E. 2546 (2003);

(2) the possession of the first or the second category of the prohibited characteristics hereunder, but excluding the presence of the prohibited characteristics due to the SEC Office's undertaking.

Clause 17. Following the SEC Office's order to revoke an approval, the securities company or the derivatives business operator shall undertake any steps to remove such director, manager or person with power of management having the prohibited characteristics under Section 103 of the Securities and Exchange Act B.E. 2535 (1992) or Section 23 of the Derivatives Act B.E. 2546 (2003) from being director, manager or person with power of management of the securities company or the derivatives business operator within a necessary and justified period of time without delay.

Chapter 4

Transitional Provisions and Effective Date of the Notification

Clause 18. In cases where the Committee instituted under the Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 57/2552 Re: Prohibited Characteristics of Personnel in Securities Business dated 3 August 2009 or the Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 85/2552 Re: Prohibited Characteristics of Personnel in Derivatives Business dated 3 August 2009 has accepted any facts and has rendered opinion on actions against the capital market personnel prior to the effective date of this Notification, such Committee shall continue the consideration process until completion according to this Notification.

Clause 19. 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 Capital Market Supervisory Board No. TorThor/Nor/Khor. 57/2552 Re: Prohibited Characteristics of Personnel in Securities Business dated 3 August 2009 or the Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 85/2552 Re: Prohibited Characteristics of Personnel in Derivatives Business dated 3 August 2009 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 20. Any reference made in any other notifications to the Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 57/2552 Re: Prohibited Characteristics of Personnel in Securities Business dated 3 August 2009 or the Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 85/2552 Re: Prohibited Characteristics of Personnel in Derivatives Business dated 3 August 2009 shall mean reference to this Notification.

Clause 21. This Notification shall come into force as from 1 October 2010.

Notified this 15th Day of September 2010.

- Signature -

(Thirachai Phuvanatanubala)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

Remark: The rationale for issuing this Notification is to revise the characteristics determined as prohibited characteristics to be more appropriate and consistent with the prescription of

untrustworthy characteristics of directors or executives of securities issuing companies while keeping certain prohibited characteristics the same.

APPENDIX

Offenses under Clause 4(3)	Securities and Exchange Act B.E. 2535 (1992)	Derivatives Act B.E. 2546 (2003)	Trust for Transactions in Capital Market Act B.E. 2550 (2007)
Unfair practices related to trading of securities or derivatives.	Sections 238 to Section 243	Section 92 to Section 100	-
Dishonest acts or causing of damage to creditors or the public.	Section 306 to Section 311, Section 314 to Section 315	Section 145 to Section 147, Section 149 to Section 150	Section 85 to Section 87, Section 89 to Section 90
Intentional disclosure of material information or concealment of material facts that should have been disclosed, in any documents to the public or the SEC Office, the CMSB or the SEC.	Section 312	Section 148	Section 88
Unauthorized undertaking of securities business, derivatives business or trustee business liable to be considered as deception or defrauding the public.	Section 289 in conjunction with Section 90	Section 125 in conjunction with Section 16	Section 77 in conjunction with Section 54