

(UNOFFICIAL TRANSLATION)

Codified up to No. 4

As of 8 December 2016.

Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.

Notification of the Capital Market Supervisory Board

No. TorThor. 84/2552

Re: Custody of Assets of Clients by Licensed Derivatives Brokers

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.

²A contract or an agreement in Paragraph 1 shall not have any statement that are in the manner of denying or limiting *derivatives broker*'s responsibility on *assets of clients*, and in the case where the assets of the clients is lost or defected due to the omission of a *derivatives broker*'s duty, there shall be a statement requiring *derivatives broker* to be responsible for such assets in full amount.

² Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 14/2555 Re: Custody of Assets of Clients by Licensed Derivatives Brokers (No. 3) dated 28 February 2012.*

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 7³ A *derivatives broker* may invest or deposit a client's cash if complying with the following rules:

(1) depositing with a commercial bank or other banks established under specific law or investing in certificates of deposit issued by such bank with time to maturity not exceeding one year in accordance with the following rules and conditions:

(a) deposit taker or issuer of certificate of deposit has been assigned investment grade credit rating according to Paragraph 2 of clause 7/2, or the Government, or the Ministry of Finance has guaranteed the principal and interest in full amount;

(b) in case of deposits or time certificate of deposit, such deposits or certificate of deposit shall not have any restriction on redemption before maturity.

(2) investing in treasury bills, Thai Government Bonds, state enterprise bonds which are unconditionally guaranteed by the Ministry of Finance for full repayment of principal and interest, and Bank of Thailand bonds. Such instruments shall have time to maturity not exceeding one year and shall not have any restriction on selling or transferring before maturity;

(3) investing in debt instrument avaled in full amount or unconditionally guaranteed by the Ministry of Finance for full repayment of principal and interest, provided that time to maturity of such instrument shall not exceed one year and shall not have any restriction on selling or transferring before maturity;

(4) investing in bill of exchange or promissory note that ordered payment or issued by a commercial bank or other banks established under specific law or securities

³ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 48/2559 Re: Custody of Assets of Clients by Licensed Derivatives Brokers (No. 4) dated 8 December 2016.*

company licensed to undertake business in the category of securities finance business. In this respect, the time to maturity of such bill of exchange or promissory note shall not exceed ninety days, shall not have any restriction on selling, transferring, or redemption before maturity, and shall have credit rating according to clause 7/2;

(5) investing in investment unit of money market fund which has unit repurchasing policy on a daily basis.

(6) investing in repurchase transaction of the securities under (2) or (3) in accordance with the following rules and conditions:

(a) having a counterparty which is an institutional investor under Section 3 and the *Notification of the Securities and Exchange Commission concerning Additional Determination of Type of Juristic Person Classified as Institutional Investors*;

(b) using standardized agreement recognized by the SEC Office;

(c) having repayment period of the transaction not exceeding ninety days;

(d) value of securities received from repurchase transaction as of the commencing date of agreement is reasonably higher than purchase price of the securities provided that the difference shall be calculated from discount rate of purchased securities (initial margin) specified by taking into account risk factors associated with the counterparty and purchased securities;

(e) calling for placement of additional money or securities from the counterparty when the value of securities received from repurchase transaction becomes less than the purchase price x (1 + initial margin);

(f) not reselling or transferring the securities received from repurchase transaction except for reselling or transferring made under the requirements of the repurchase transaction.

In proceeding to comply with Paragraph 1, **derivatives broker** shall clearly specify in such deposit account or investment that the undertaking by **derivatives broker** is for client's benefit.

In the case where the **derivatives broker** deposits or invests in **assets** under Paragraph 1(1) or (4) but later the credit rating is changed, if the **derivatives broker** is unable to comply with terms specified in clause 7/2, the company shall proceed and complete its amendment at the earliest occasion, provided that it shall take into account the best interests of its client. Nevertheless, the amendment process should take less than 30 days as of the changing date.

In the case where the **derivatives broker** deposits or invests the segregated asset of client with financial institution having relationship as its parent company, subsidiary company, or associate company, the **derivatives broker** shall receive consent given in writing from the client prior to the foregoing process.

The definition of "parent company", "subsidiary company", or "associate company" under Paragraph 4 shall *mutatis mutandis* be similar to the definition of such terms in the *Notification of the Securities and Exchange Commission Re: Determination of Definitions in Notifications relating to Issuance and Offer for Sale of Securities* by virtue of *Securities and Exchange Act B.E. 2535 (1992)*.

Clause 7/1² A **derivatives broker** shall calculate value of instrument or securities in which it uses clients' money to deposit or invest under clause 7 at least on every working days provided that the price used shall reflect current market value of each type of

² Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 14/2555 Re: Custody of Assets of Clients by Licensed Derivatives Brokers (No. 3) dated 28 February 2012*.

instrument or securities.

Clause 7/2³ Bill of exchange or promissory note that the *derivatives broker* will invest under Paragraph 1(4) of clause 7 shall rank the highest in short-term issue rating or the three highest in long-term issue rating.

In the case where bill of exchange or promissory note under Paragraph 1 having no short-term issue rating or in case of depositing or investing in certificate of deposit under Paragraph 1(1) of clause 7, the *derivatives broker* shall use rating of issuer of certificate of deposit, maker of promissory note, drawer of bill of exchange or deposit taker (issuer rating) as the case may be. In this regard, the ranking shall be in accordance with rules specified in Paragraph 1.

If the issuer of certificate of deposit, maker of promissory note, drawer of bill of exchange or deposit taker under Paragraph 2 is a bank established under specific law, the issuer rating under Paragraph 2 shall include support credit rating assessed by the credit rating agency from the possibility for the bank to receive financial support from the Government, if in need.

Clause 7/3³ To select credit rating information under clause 7/2, *derivatives broker* shall comply with the following rules:

(1) shall make consideration of credit rating information selection with responsibility and caution (fiduciary duties) and shall not make credit rating information selection which may cause *assets of clients* to be in a condition of low liquidity and high risk (cherry picking);

(2) shall use the latest issuance of credit rating information made by the reliable credit rating agencies approved by the SEC Office in pursuant to the *Notification of the Office of the Securities and Exchange Commission concerning Credit Rating Agencies Approved to Issue Credit Rating for Instruments Subject to Rules Concerning Issuance and Offer for Sale and Investment of Funds*;

(3) shall assess credit risk of deposit taker, issuer of certificate of deposit, drawer of bill of exchange, maker of promissory note as the case may be as a supplement for the usage of credit rating assessed by credit rating agencies;

(4) shall regularly revise the suitability of the credit rating selected, specifically, in the case where credit rating assessed by other credit rating agencies is changed.

Derivatives broker shall make and keep explanation of reasons supporting the selection of credit rating for inspection made by the SEC Office.

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.

³ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 48/2559 Re: Custody of Assets of Clients by Licensed Derivatives Brokers (No. 4) dated 8 December 2016*.

³ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 48/2559 Re: Custody of Assets of Clients by Licensed Derivatives Brokers (No. 4) dated 8 December 2016*.

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. KorThor. 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 3rd day of August 2009.

- Signature -
(Mr. Vijit Supinit)
Chairman
Securities and Exchange Commission

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*.