

(UNOFFICIAL TRANSLATION)

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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. 43/2552

Re: Custody of Clients' Assets by Securities Companies

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 98(3) of the *Securities and Exchange Act B.E. 2535 (1992)* 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 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 This Notification shall come into force as from 1 September 2009.

Clause 2 The *Notification of the Capital Market Supervisory Board No. TorThor. 9/2551 Re: Custody of Clients' Assets by Securities Companies dated 16 May 2008* shall be repealed.

Clause 3 In this Notification:

(1) “*asset*” means:

- (a) cash;
- (b) securities;
- (c) other *assets*;

(d) any benefits accruing from the *assets* under (a) to (c), for example, right to dividend or interest, right to purchase capital increase shares and right to attend and vote at a meeting of securities holders, etc.

(2) “*margin account*” means an account which keeps records of lending of money to a client for purchasing securities or lending of securities to a client for short selling;

(3) “*cash account*” means an account which keeps records of securities

purchasing or selling transactions other than those recorded in a *margin account*;

(4) “*securities depository center*” means a *securities depository center* under the law on securities and exchange.

Chapter 1

General Provisions

Clause 4 Any securities company undertaking custody of clients’ *assets*, whether for the purpose of keeping, purchasing, selling, borrowing or lending of securities or for guarantee of purchasing, selling, borrowing or lending of securities or for any other purposes, shall comply with the rules prescribed herein.

The provisions in Paragraph 1 shall not be applicable to the following *assets* or persons:

(1) *assets* of a client which is a mutual fund, private fund or any other similar fund under management of a securities company in its position as securities business operator in the category of mutual fund or private fund management or under custody of a securities company in its position as fund supervisor or custodian;

(2) a financial institution which is governed by a main regulator and later obtains a license to undertake securities business, but not including a financial institution licensed to undertake securities borrowing and lending business which undertakes custody of clients’ *assets* in relation to securities borrowing and lending business;

(3) money paid for subscription of securities which a securities company receives from securities underwriting.

Clause 5 A securities company shall set up a work unit responsible for custody of clients’ *assets* which is independent from a work unit responsible for securities trading (front office) or giving advice on securities trading and shall put in place a good internal control system for custody of clients’ *assets*. At least, there shall be a separation of personnel responsible for preparing records of clients’ *assets* from those responsible for physical keeping of such *assets*, and each transfer of clients’ *assets* shall be approved by the company’s authorized person who shall be neither a person responsible for preparing records of clients’ *assets* nor a person responsible for physical keeping of such *assets*.

Clause 6 A securities company shall establish rules or practice guidelines for custody of clients' *assets* in accordance with the provisions under this Notification. Such rules and practice guidelines shall be in writing, indicating operating procedures and persons authorized to undertake custody of clients' *assets*. In this regard, the securities company shall strictly oversee that the undertaking of custody of clients' *assets* shall comply with such rules or practice guidelines.

The rules or practice guidelines under Paragraph 1 shall at least include the following matters:

- (1) receipt or delivery of clients' *assets*;
- (2) keeping of records of clients' *assets*;
- (3) management of information relating to clients' *assets*.

Clause 7 In undertaking custody of clients' *assets*, a securities company shall proceed as follows:

(1) give information and have its clients sign for acknowledgement of procedures for making a deposit or withdrawal of *assets* with or from the securities company, and methods for undertaking custody of clients' *assets* as well as fees charged for custody of such *assets* (if any).

In cases where the information under Paragraph 1 changes significantly, the securities company shall inform its clients of such change without delay;

(2) inform its clients that in cases where the securities company encounters financial problems, the clients' money under custody of the securities company shall not be protected under the Deposit Protection Agency Act;

(3)² provide a written contract or agreement on custody of clients' *assets*, which indicates the rights, duties and responsibilities of both parties. In any case, such contract or agreement shall not have any statement denying or limiting the securities company's responsibility to the clients' assets, and in case of loss of or damage to clients' *assets* resulted from omission of duties by the securities company, there shall be a statement requiring the securities company be responsible for such *assets* in full amount.

Clause 8 A securities company shall not appoint any person as its agent to undertake custody of clients' *assets* unless such appointment complies with the following rules:

² As amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 13/2555 Re: Custody of Clients' Assets by Securities Companies (No. 3) dated 28 February 2012.*

(1) a person to be appointed as the securities company's agent to undertake custody of clients' *assets* shall be:

- (a) a commercial bank;
- (b) a finance company;
- (c) a securities company;
- (d) a *securities depository center*;
- (e) a financial institution established under specific law.

(2) a contract on an appointment of an agent to undertake custody of clients' *assets* shall be made in writing. Such contract shall have a prohibition of an appointment of a sub-agent, and indicate terms and conditions relating to the responsibility of the agent and the person to be responsible for damage of clients' *assets* as well as a requirement of the agent's compliance with this Notification.

The securities company shall inform its client of the appointment of an agent to undertake custody of clients' *assets* without delay. In cases where the securities company appoints a person who has a relationship as a *parent company*, *subsidiary company* or *associate company* as an agent, the securities company shall inform its clients of such relationship as well.

The definitions of the terms "*parent company*," "*subsidiary company*" and "*associate company*" in Paragraph 2 shall be the same as the definitions of such terms in the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in Notifications concerning Issuance and Offering for Sale of Securities, mutatis mutandis*.

The segregation of clients' *assets* by the securities company in accordance with the methods specified under Clause 18(1) (a) or (2) (a) shall not be considered as an appointment of an agent to undertake custody of clients' *assets*.

Clause 9 A securities company shall not engage in any act which results in creating, altering, transferring, reserving or terminating a client's rights over *assets*, without or not complying with an order or consent given by the client or a person authorized by the client.

Clause 10 A securities company shall not use clients' *assets* for the benefit of another client, other persons, or itself, unless given a written order or consent from the client, on a case-by-case basis.

Clause 11 A securities company shall take necessary actions for its clients to obtain the rights and benefits arising from any securities or instruments owned by the clients which are under its custody from the issuers of such securities or instruments within an appropriate time.

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

Chapter 2

Record Keeping of Clients' Assets

Clause 12 A securities company shall prepare records of each client's *assets* under its custody in a separate account from any other asset account of the securities company and categorize as a *margin account* or a *cash account*, as the case may be.

The client's asset account under Paragraph 1 shall contain at least the following details:

- (1) date of receipt or disposal of *assets*;
- (2) amount and category of *assets*;
- (3) cause of receipt or disposal of *assets*.

In cases where the *assets* recorded in a client's account belong to a third party and are deposited as collateral for the benefit of such client, the securities company shall record the name of the third party who is the owner of the *assets* in the client's asset account as well.

Clause 13 A securities company shall keep accurate, complete and updated records of *assets* of clients. In case of making correction to any record, the securities company shall complete such correction within the same working day when the cause of correction is found and shall record the cause of each correction.

Clause 14 A securities company shall arrange for the counting of clients' *assets* which are kept by itself at least once a month to verify the records of clients' *assets* as prepared by the securities company.

For the clients' *assets* which are not kept by the securities company itself, the securities company shall put in place a system to retrieve updated information to verify the records of such *assets* reported by a third-party custodian in comparison to the records of clients' *assets* which are prepared by the securities company.

Clause 15³ A securities company shall send a report on a client's assets as of the last business day of each month to the client within the fifth business day of the following month, except the month where no transaction causes a movement or change in the client's assets under custody of such securities company or in cases under the second paragraph.

In cases where it appears that a client does not have any transaction which causes a movement or change in the client's assets for a consecutive period of one year or longer, the securities company shall send a report on the client's assets as of the last business day of the month when the one year period expires to the client at least once a year within the fifth business day of the following month, except the case where the client does not have any asset left under custody of the securities company and where the client's account is suspended from making transactions in compliance with the rules of such securities company.

For the benefit of providing reports on clients' assets, payment of interest shall not be deemed as a transaction causing a movement or change in clients' assets.

Clause 16 A securities company shall keep the information and documents relating to its custody of clients' *assets* for at least five years. Such information and documents shall be stored, during the first two years, in a manner that enables prompt access for review by the SEC Office upon request.

Chapter 3 Custody of Clients' Assets

Clause 17 A securities company shall segregate *assets* under its custody as *assets* of clients in not less than the following amount:

(1) Money: the amount of money required to be segregated each day shall not be less than the total amount of the net balance calculated at the end of the prior working day or at the end of the present working day from *cash accounts* and *margin accounts* of all clients after deducting money deposited as collateral for securities borrowing for making a short sale of each client at the rate agreed upon by the securities company and the client who borrows such securities. In cases where the securities company uses the total

³ As amended by the *Notification of the Capital Market Supervisory Board No. TorThor 23/2558 Re: Custody of Clients' Assets by Securities Companies (No. 4) dated 12 June 2015.*

net balance at the end of the present working day for calculation, the securities company shall continually use such method for calculation at all times, except in case of necessity where the securities company is unable to use such method, it may use the total net balance at the end of the prior working day for calculation. In such *case*, the securities company shall inform the necessity to the SEC Office without delay.

A securities company may deduct the following money from the *assets* segregated as *assets* of clients under the first paragraph:

(a) money paid by a client prior to the clearing date of securities purchase transactions;

(b) money paid by a client for securities purchase transactions which exceeds the due amount and the securities company has already returned the excess money to the client within five working days from the date of receipt of such money;

(c) money received from securities sale transactions on behalf of a client and the securities company has already issued a cheque for payment or delivering such money to the client within the clearing date;

(d) money received on behalf of a client which is dividend or interest on securities or instruments owned by the client and the securities company has already delivered all of such money to the client within five working days from the date of receipt of such money.

In cases where the client informs the securities company to keep the money under (b) (c) or (d) for the purpose of making transactions in the future, the securities company shall include such money in the net balance of the working day on which it is informed of the client's intention for the calculation of *assets* required to be segregated as *assets* of clients under the first paragraph.

(2) Securities: the amount of securities required to be segregated each day shall not be less than the total amount of securities recorded as *assets* of each client at the end of such working day;

(3) Other *assets*: the amount of other *assets* required to be segregated each day shall not be less than the total amount of other *assets* recorded as *assets* of each client at the end of such working day.

Clause 18⁴ The following undertakings shall be deemed as segregating clients' *assets* under Clause 17:

(1) Money:

⁴ As amended by the *Notification of the Capital Market Supervisory Board No. TorThor 47/2559 Re: Custody of Clients' Assets by Securities Companies (No. 5) dated 8 December 2016.*

(a) segregating by:

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:

1.1 deposit taker or issuer of certificate of deposit has been assigned investment grade credit rating according to Paragraph 2 of Clause 18/2, or the Government, or the Ministry of Finance has guaranteed the principal and interest in full amount.

1.2 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 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 18/2;

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:

6.1 having a counterparty which is an institutional investor under Section 3 of the *Derivatives Act B.E. 2546 (2003)* and the *Notification of the Securities and Exchange Commission concerning Additional Determination of Type of Juristic Person Classified as Institutional Investors*;

6.2 using standardized agreement recognized by the SEC Office;

6.3 having repayment period of the transaction not exceeding ninety days;

6.4 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;

6.5 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 $\times (1 + \text{initial margin})$;

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

(b) segregating under self-safekeeping which shall be done in the manner that can clearly identify without suspicion that such amount of money belongs to the client;

(2) Securities:

(a) segregating by depositing with a *securities depository center* or the Bank of Thailand by clearly indicate that such securities are deposited by securities company for the client's benefit;

(b) segregating under self-safekeeping which shall be done in the manner that can clearly identify without suspicion that such securities belong to the client;

(3) Other *assets* shall be segregated in the manner that can clearly identify without suspicion that such other *assets* belong to the client.

In proceeding to comply with Paragraph 1(1) (a) securities company shall clearly specify in such deposit account or investment that the undertaking by securities company is for client's benefit.

In the case where the securities company deposits or invests in *assets* under Paragraph 1(1) (a) 1. or 4. but later the credit rating is changed, if the company is unable to comply with terms specified in clause 18/2, 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 *assets* of clients under Paragraph 1(1) (2) and (3) are those for purchase or sale of securities in foreign country, the securities company shall segregate such *assets* in the manner that can clearly identify without suspicion that such

assets belong to the client or clearly identify that any undertaking related to such *assets* is the undertaking by securities company for the client's benefit.

Clause 18/1² Securities company shall calculate value of instrument or securities in which it uses clients' money to invest under Clause 18(1) (a) at least on every working days provided that the price used shall reflect current market value of each type of instrument or securities.

Clause 18/2⁴ Bill of exchange or promissory note that the securities company will invest under Paragraph 1(1) (a) 4. of clause 18 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) (a) 1. of clause 18, the securities company 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 the first paragraph.

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 18/3⁴ To select credit rating information under 18/2, securities company 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 As added by the *Notification of the Capital Market Supervisory Board No. TorThor. 13/2555 Re: Custody of Clients' Assets by Securities Companies (No. 3) dated 28 February 2012.*

⁴ As added by the *Notification of the Capital Market Supervisory Board No. TorThor. 47/2559 Re: Custody of Clients' Assets by Securities Companies (No. 5) dated 8 December 2016.*

⁴ As added by the *Notification of the Capital Market Supervisory Board No. TorThor. 47/2559 Re: Custody of Clients' Assets by Securities Companies (No. 5) dated 8 December 2016.*

(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.

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

Clause 19 A securities company may agree with a client on the rate of return which the securities company will calculate from the amount of money segregated as *assets* of clients under this Notification. However, such rate of return shall not be higher than the rate which the securities company actually gains from making deposit or investment in promissory notes or other means of investment.

Clause 20 A securities company shall not use the client's money segregated under Clause 18 as collateral for debt repayment for the benefit of other persons or itself.

Clause 21 Subject to Clause 18(1) (a), a securities company shall not take money segregated as clients' *assets* to deposit or make investment with a financial institution which has a relationship as *parent company*, *subsidiary company* or *associate company*, unless explicitly given consent by the client.

The definition of "*parent company*", "*subsidiary company*" and "*associate company*" in Paragraph 1 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*.

Clause 22 In cases where a securities company undertakes physical keeping of clients' *assets* by itself, whether in its own premises or another person's, such premises shall be secure. In case of using another person's premises, the securities company shall inform such person explicitly that the *assets* belong to the client.

Chapter 4

Transitional Provisions

Clause 23 All orders and circulars issued under or prescribing guidelines for compliance with the *Notification of the Securities and Exchange Commission No. KorThor. 4/2543 Re: Custody of Clients' Assets by Securities Companies dated 4 January 2000* 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 orders and circulars issued under or prescribing guidelines for compliance with this Notification come into force.

Clause 24 Any reference made in any other notifications to the *Notification of Securities and Exchange Commission No. Kor.Thor. 4/2543 Re: Custody of Clients' Assets by Securities Companies dated 4 January 2000* shall mean reference to this Notification.

Notified this 3rd day of August 2009.

- Signature -

(Mr. Vijit Supinit)

Chairman

Securities and Exchange Commission