

TRANSLATED VERSION

As of August 31, 2012

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. TorNor. 42/2555

**Re: Rules, Conditions and Procedures for Establishment
and Management of Carbon Fund**

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 100, Section 109 and Section 117 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions relating 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 Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 16 September 2012.

Clause 2 In this Notification:

“**carbon fund**” means carbon fund in form of mutual fund.

“**mutual fund management company**” means any securities company licensed to undertake securities business in the category of mutual fund management.

“**non-retail investor**” means institutional and high net worth investors according to the *Notification of the Securities and Exchange Commission concerning Determination regarding Definitions of Institutional Investor and High Net Worth Investor*.

“**carbon credit**” means the unit indicating the amount of greenhouse gas reduced or absorbed or stored by a project or activity which is certified by an organization which issues reliable and recognized standards [of greenhouse gas emission reduction].

“**greenhouse gas reduction project**” means a project or activity entails **carbon credit**, including a project or activity under the process of development having been proposed to relating organization.

“**commitment**” means commitment between unitholders and a **mutual fund management company**.

“**fund supervisor**” means *supervisor of carbon fund*.

“*carbon credit agreement*” means a contract in which one party is obliged to deliver *carbon credit* to the other party who settles the transaction at any period in the future at the amount and price as specified in the contract.

“*closed-end fund*” means the *carbon fund* in the category of non-redeemable investment units.

“*open-end fund*” means the *carbon fund* in the category of redeemable investment units.

“*registered capital*” means capital raised by selling investment units of *carbon fund* and registered with the SEC Office.

“*scheme capital*” means registered amount of eligible capital with the SEC Office in order to offer for sale of investment units of the *carbon fund*.

¹“*association*” means an *Association relating to Securities Business*, having obtained an approval for establishment and registered [such establishment] with the SEC Office for the purpose of promoting and developing securities business in the category of investment [management].

Clause 3 This Notification shall be applicable to establishment and management of a *carbon fund* in the following matters:

(1) application for obtaining an approval and criteria for granting approval of establishing *carbon fund* under the regulations as prescribed in Part 1;

(2) regulations on administration and management of *carbon fund* as prescribed in Part 2;

(3) the SEC Office’s power to make an order, relating to undertaking a *mutual fund management company* or the *carbon fund*, under the regulations as prescribed in Part 3.

In addition to the requirements under this Notification, the *mutual fund management company* shall proceed to comply with other notifications which prescribe regulations relating to general principle of mutual fund management.

Clause 4 The SEC Office may announce a detailed guideline for the benefit of compliance with the requirements under this Notification. In case of having complied with such guideline, it shall be deemed that a *mutual fund management company* has already complied with the requirements under this Notification.

¹ This is the association under section 230 – 237 of the *Securities and Exchange Act B.E. 2535 (1992)*

Part 1

Application for Obtaining an Approval and Criteria for Granting Approval of Establishing of Carbon Fund

Clause 5 A *mutual fund management company* shall only establish a *carbon fund* for *non-retail investors* by complying with the regulations under this Part.

Chapter 1

Submission of an application for obtaining an approval for establishment of carbon fund

Clause 6 A *mutual fund management company* which wishes to obtain an approval for establishment of a *carbon fund* shall submit a written application together with evidentiary documentations as follows:

- (1) a *carbon fund* scheme;
- (2) a draft *commitment*;
- (3) a draft agreement for an appointment of a *fund supervisor*;
- (4) a draft prospectus.

The application submitted under the first paragraph shall be affixed by signature of authorized director(s) of the *mutual fund management company* for the purpose of certifying correct and complete information.

Clause 7 A *mutual fund management company* who submits an application for obtaining an approval for establishment of a *carbon fund* shall pay the application fee in accordance with the rate as prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Filing Registration Statement, Permission by Registration and All Applications for Obtaining Approval*.

Clause 8 The SEC Office would notify the result of the deliberation of the application within 45 days from the date which the SEC Office received the application and a complete set of evidentiary documentation.

Chapter 2

Rules for granting an approval for establishment of carbon fund

Clause 9 An approval for establishment of a *carbon fund* shall be granted on condition that the rules as specified in this Notification and the following additional rules are conformed:

(1) information, terms or conditions of contract demonstrated in the application and in evidentiary documentation shall be in accordance with the *Securities and Exchange Act B.E. 2535 (1992)* as well as the notifications, rules or orders issued by virtue of such law, and shall not have any statement that is either contrary to or inconsistent with such requirements;

(2) the applicant is not under a prohibition order to submit any application for approval to establish any mutual fund whether or not it is the *carbon fund* under this Notification.

Division 1

Characteristics of carbon fund

Clause 10 The establishment of a *carbon fund* would be granted an approval only when the relating documents of the *carbon fund* demonstrate the following characteristics of such fund:

(1) all unitholders are *non-retail investors*. In addition, there are terms and conditions that a *mutual fund management company* or the registrar of investment units could refuse to register a transfer of investment units in case the transferee is not a *non-retail investor*;

(2) the *carbon fund* shall be in the category of either non-redeemable investment units or redeemable investment units as clearly stated in the scheme. However, the *mutual fund management company* shall demonstrate that the redemption of investment unit would not affect the continuation of the fund thereof;

(3) denomination of the *carbon fund* which demonstrates its nature;

(4) investment units of the *carbon fund* shall have equal face values and in case there are many classes of investment units, it shall be in accordance with the rules as prescribed in Clause 11;

(5) the *carbon fund*'s policy is any kind of the following ones:

(a) mainly acquiring *carbon credit* or investing in an instrument issued by or engaging in a contract with any person who administrates *greenhouse gas reduction project*, and payment for redemption of investment units, investment return and dividends would be in cash or equivalent. For the purpose of reference in other clauses, the *carbon fund* of which policy is classified in this sub clause would be called "*general carbon investment fund*";

(b) mainly acquiring *carbon credit* and payment for redemption of investment units, investment return and dividends would be *carbon credit*, unless it is necessary to make partial payment in cash or equivalent due to insufficiency of *carbon credit* or in order to complete payment per an investment units. For the purpose of reference in other clauses, the *carbon fund* of which policy is classified in this sub clause would be called "*carbon credit investment fund*";

(6) in case the *carbon credit investment fund* engages in *carbon credit agreement* of which terms and conditions require to pay debt by installments, it is clearly demonstrated to ensure that the *carbon fund* shall not be affected if either one of the party fails to make debt payment;

(7) there shall be statement(s) in relation to investment of the *carbon fund* in compliance with Division 2 of this Chapter;

(8) there shall be statement(s) in supporting the undertaking of the *carbon fund* after establishment which comply with Division 3 of this Chapter and the *Notification of the Office of the Securities and Exchange Commission concerning Details of Carbon Fund Scheme* and the *Notification of the Capital Market Supervisory Board concerning Commitment between Carbon Fund Unitholders and Mutual Fund Management Company*;

(9) there shall be statement(s) that a *fund supervisor* has to perform at least the following duties:

(a) duties as stipulated by *the Securities and Exchange Act B.E. 2535 (1992)* and this Notification;

(b) duties as stipulated by the *Notification of the Capital Market Supervisory Board concerning Commitment between Unitholders of Carbon Fund and Mutual Fund Management Company*.

Clause 11 In case a *carbon fund* has classified its investment units into different classes, it shall comply with the requirements as follows:

- (1) similar class of investment units shall have equal rights and benefits;
- (2) each class of investment units may have different rights and benefits

only in the following matters:

- (a) the determination of benefits or investment returns to unitholders;
- (b) the collection of fees or expenses from unitholders;
- (c) the period for selling and redeeming investment units;
- (d) any other case as approved by the SEC Office. In this regard,

a *mutual fund management company* shall demonstrate that the classification of such investment units is possible and has taken into account the benefit of unitholders as a whole, and the effect possibly occurred with each class of unitholders.

Division 2

Requirements on investment of carbon fund

Clause 12 The carbon fund scheme shall exhibit:

- (1) any kind of main assets which a *carbon fund* would invest or hold.

In this regard, a *general carbon investment fund* shall be in compliance with Clause 13, Clause 14 and Clause 16, and the *carbon credit investment fund* shall be in compliance with Clause 15 and Clause 16;

- (2) any other assets which the *carbon fund* would invest or hold in compliance with Clause 17;

- (3) that prior to [i] investing in main assets issued or paid by the company engaging in *greenhouse gas reduction project* or [ii] being counterparty with such company, a *mutual fund management company* shall arrange due diligence of such project, especially if such project has not been certified by related regulator or has been certified but has not received *carbon credit*.

Clause 13 In case of *general carbon investment fund*, a carbon fund scheme shall have statements that a *carbon fund* would invest in or possess main assets which have any of the following characteristics:

- (1) *carbon credit*;
- (2) carbon credit derivatives;

(3) *carbon credit agreement* of which counterparty engages in *greenhouse gas reduction project*;

(4) the following securities or instruments issued or paid by the company which engages in *greenhouse gas reduction project*:

- (a) shares;
- (b) share warrants;
- (c) transfer subscription rights (TSR);
- (d) bills of exchange;
- (e) promissory notes;
- (f) bonds;
- (g) bond warrants.

Clause 14 The carbon fund scheme shall not have statements allowing a *carbon fund* to send representative to co-manage the business of juristic person whose shares are held by the *carbon fund*, except for fund scheme of *general carbon investment fund* which has long-term investment in shares of the company engaging in *greenhouse gas reduction project*.

Clause 15 In case of *carbon credit investment fund*, a carbon fund scheme shall have statements that a *carbon fund* would invest or possess main assets which have any of the following characteristics:

- (1) *carbon credit*;
- (2) carbon credit derivatives;
- (3) carbon credit derivatives of which counterparty engages in *greenhouse gas reduction project*.

Clause 16 In determining proportion of investment in main assets of a *carbon fund*, a *mutual fund management company* shall arrange for the carbon fund scheme to have the following substances:

(1) the *carbon fund* would invest or possess main assets in each fiscal year on average no less than 85% of the total asset value of the *carbon fund* but may not maintain such value of investment during the following periods:

- (a) first fiscal year of the *carbon fund*;
- (b) last fiscal year when the *carbon fund* reaches maturity;
- (c) fiscal year for which the SEC Office grants a waiver in case the failure to maintain such proportion is caused by *force majeure*;

(2) in case the *carbon fund* invests in securities or instruments issued by or having payment order of listed company, on Stock Exchange of Thailand, engaging in *greenhouse gas reduction project* as part of its business, the *mutual fund management company* would invest or possess such assets not exceeding the following rates:

- (a) 30% of the net asset value of the *carbon fund* by considering all securities and instruments together;
- (b) 15% of the net asset value of the *carbon fund* by considering only securities and instruments issued by each of issuer or any payer.

(3) in case the *carbon fund* will invest in main asset issued or paid by a company engaging in *greenhouse gas reduction project*, or be counterparty with such company, if such project has not been certified by related authorized person, the highest eligible investment rate of such main asset shall clearly be specified;

(4) in case the *carbon fund* will invest in other assets as prescribed in Clause 17, if the purpose of such investment is for liquidity management before spending according to the operational plan of *greenhouse gas reduction project*, the value of such investment may be included in the calculation of value of investment in main assets.

Clause 17 In case a *carbon fund* will invest in other assets, the scope of such investment shall be specified in the carbon fund scheme and shall be one or many of the following assets:

- (1) government bond;
- (2) treasury bill;
- (3) bond issued by state enterprise or juristic person established under specific law, and guaranteed by the Ministry of Finance for the principal and interest in full amount unconditionally;
- (4) deposit in bank or the Secondary Mortgage Corporation (SMC);
- (5) certificate of deposit issued by bank or finance company. Nevertheless, in case of certificate of deposit embedded derivatives, it shall be approved by the SEC Office prior to making an investment;
- (6) bill of exchange or promissory note that bank, finance company, credit foncier company or the Financial Institutions Development Fund is issuer, guarantor, giver of aval, endorser with recourse, or guarantor. Nevertheless, in case of bill of exchange or promissory note embedded derivatives, it shall be approved by the SEC Office prior to making an investment;

(7) investment units or investment unit warrants issued by fixed income mutual fund or other mutual funds having policy to invest in debt instruments or deposit;

(8) investment units issued by any other *carbon fund*;

(9) investment units issued by foreign mutual fund under the following conditions:

(a) being investment units issued by foreign mutual fund under the supervision of securities and exchange regulator which is ordinary member of the International Organization of Securities Commissions (IOSCO), or being investment units issued by foreign mutual fund traded on securities exchange which is a member of the World Federation of Exchanges (WFE) and;

(b) such foreign mutual fund having policy to invest in assets in the same category and type of assets that mutual fund [established under the *Securities and Exchange Act B.E. 2535 (1992)*] is eligible to invest in or possess.

(10) derivatives only for the purpose of hedging.

Division 3

Requirements on undertaking carbon fund after establishment

Clause 18 A carbon fund scheme or a *commitment* shall have statements [or terms, as the case may be,] for undertaking a *carbon fund* after establishment in accordance with the rules as follows:

(1) the increasing *registered capital* or *scheme capital* shall be in conforming to Clause 19;

(2) the reduction of *registered capital* of *closed-end fund* shall be in conforming to Clause 20;

(3) the payment for redemption of investment units, average investment repayment and dividend shall be in conforming to Clause 21 and Clause 22;

(4) the expenses of the *carbon fund* shall be in conforming to Clause 23;

(5) the dissolution of the *carbon fund* shall be in conforming to Clause 24;

(6) the issuance of certificate of investment units or evidence demonstrating right in investment units shall be in conforming to Clause 25.

Clause 19 In increasing *registered capital* and *scheme capital* of a *carbon fund*, a *mutual fund management company* shall arrange for carbon fund scheme to have statements in accordance with the rules as follows:

(1) an increase in *registered capital* and *scheme capital* of the *carbon fund* shall not either contradict or be inconsistent with the carbon fund scheme or the *Securities and Exchange Act B.E. 2535 (1992)* as well as notifications, rules or orders issued by virtue of such law;

(2) an increase in *registered capital* shall comply with the requirements as follows:

(a) having received unitholders' resolution except the following funds:

1. *open-end fund*;
2. *closed-end fund* which has clearly specified increase in *registered capital* in the carbon fund scheme prior to the initial offering for sale of investment units.

(b) amount of *registered capital* to be increased shall not exceed the amount of *scheme capital* of the *carbon fund*, unless the SEC Office has already registered enlarged *scheme capital* in support of such additionally *registered capital*.

(3) an increase in *scheme capital*, the *mutual fund management company* may proceed by submitting an requisition for enlargement of *scheme capital* with the SEC Office.

Clause 20 In reducing *registered capital* of a *carbon fund*, a *mutual fund management company* shall arrange for the carbon fund scheme to have statements in accordance with the rules as follows:

(1) reduction of *registered capital* may proceed under any of the following conditions:

(a) where having clearly specified in the carbon fund scheme;

(b) any other case besides sub clause (a), where unitholders have the resolution to reduce the *registered capital*, for instance, in case the *carbon fund* has remaining surplus of liquidity after disposing main assets and does not have remaining accumulated profit;

(2) being a reduction of the amount of investment units or face (nominal) value, and average returning to unitholders whose name is in the register book as at the date on which the register is closed for transfer of investment units. In this regard, the return shall be averaged in accordance with Clause 21.

Clause 21 A *mutual fund management company* shall arrange for the carbon fund scheme to have statements relating to payment for redemption of investment units, average investment repayment and dividend in compliance with Clause 10(5) and additional rules as follows:

- (1) dividend shall be paid from accumulated profit only;
- (2) in case of *carbon credit investment fund*, the *mutual fund management company* shall arrange for the carbon fund scheme to have statements which clearly demonstrate procedure and limitation of payment for redemption of investment units, average investment repayment and dividend.

Clause 22 In case unitholders do not exercise the right to receive dividend within the prescription period under the *Civil and Commercial Code*, a *commitment* shall specify the prohibition clause against a *mutual fund management company* for using of the unpaid dividend with any purpose other than the benefit of a *carbon fund*.

Clause 23 A carbon fund scheme shall have clear statements relating to collection of fees, any other compensations or expenses paid from a *carbon fund* or unitholders. In this regard, the expense that is the burden of the *carbon fund* shall be necessary, appropriate and relating to the relevant management of the *carbon fund* only.

Clause 24 In dissolving a *carbon fund*, a *mutual fund management company* shall arrange for the carbon fund scheme to have statements demonstrating that the *mutual fund management company* shall dissolve the *carbon fund* when there appears circumstances as specified by the carbon fund scheme and:

- (1) when the number of unitholders becomes lower than 10 persons unless it is granted a waiver from the SEC Office;
- (2) when assets of the *carbon fund* have been disposed and the *mutual fund management company* is unable to proceed for having the aggregate value of assets of the *carbon fund* in accordance with the investment rules as prescribed in Clause 16 within 1 year as from the date of disposal of such assets;
- (3) when the SEC Office orders to revoke approval for establishment of the *carbon fund*.

Clause 25 A *mutual fund management company* shall arrange for a *commitment* to have terms demonstrating that, [i] in case unitholders request the *mutual fund management company* to issue certificate of investment units or evidence representing rights in investment units, the *mutual fund management company* would issue the present certificate or evidence with necessary and adequate information for unitholders to use as evidence for asserting their rights and [ii] in case there is restriction of rights of unitholders, such restriction would be reminded clearly.

Division 4

Authority of the SEC Office relating to approval for establishment of carbon fund

Clause 26 In deliberating the application, the SEC Office is empowered to notify a *mutual fund management company* in writing to clarify [any fact], rectify [any information] or submit additional evidentiary documentations within the period as stipulated by the Notification of the SEC Office.

In case the *mutual fund management company* fails to proceed in accordance with mandate as stipulated by the SEC Office under the first paragraph, it shall be deemed that the *mutual fund management company* no longer wishes to solicit approval for establishment of a *carbon fund* unless the *mutual fund management company* demonstrates that failure to comply with such mandate is due to *force majeure*, or necessary and appropriate causes.

Clause 27 In case there is any certain fact appeared to the SEC Office leading to the following reasonable suspicions, the SEC Office may not grant an approval for establishment of a *carbon fund*:

(1) the proposed *carbon fund* has characteristic or form in compliance with the rules or conditions under this Notification, but there appears certain fact that the intention or substance for establishment of such *carbon fund* is to avoid provisions under the *Securities and Exchange Act B.E. 2535 (1992)* or this Notification;

(2) the establishment of the *carbon fund* may contradict public or state policy relating to capital market development;

(3) the establishment of the *carbon fund* may affect the credibility of Thai capital market as a whole;

(4) [making] establishment of the *carbon fund* may cause damage to investors or [proceeding to establish the *carbon fund*] may cause investors not to receive fair treatment, or correct and adequate information for making investment decision.

Clause 28 In case there appears any of the following circumstances, the SEC Office may render a waiver of both requirements and conditions under this Notification for applying establishment of a *carbon fund*:

(1) having certain facts which lead to the consideration that the rule or condition to be exempted is immaterial for consideration of application in such case, and the benefit to be received [from compliance with requirement] is not worth for the cost of complying with such rule or condition;

(2) a *mutual fund management company* having limitation under other laws which causes inability to comply with the rule or condition to be waived;

(3) the *mutual fund management company* having other measures which are sufficient and would be able to substitute for compliance with rule or condition to be waived.

For rendering a waiver under the first paragraph, the SEC Office shall mainly consider the effect of appropriateness and sufficiency of information for making investment decision, and measures for investor protection. In this regard, the SEC Office may specify conditions for the *mutual fund management company* to comply.

Clause 29 In case the document or information received from a *mutual fund management company* is incomplete or ambiguous, or in case it is necessary or any other case where will affect to the interest of investors or making investment decision, the SEC Office may order the *mutual fund management company* to prepare and submit additional document or information relating to a *carbon fund* as deemed appropriate.

Chapter 3

Conditions to be undertaken after the approval for establishment of carbon fund

Clause 30 A *mutual fund management company* which has been granted an approval for establishment of a *carbon fund* shall undertake the followings:

(1) arranging to have a *commitment*, the carbon fund scheme, agreement for appointment of a *fund supervisor* and prospectus that has substance not different from the draft having been filed with the SEC Office and most recently amended;

(2) in offering for sale of investment units of the *carbon fund*, the *mutual fund management company* shall prepare prospectus which has complete, correct, sufficient information and does not cause any misleading. In addition, the *mutual fund management company* shall comply with the requirements as follows:

(a) submitting prospectus to the SEC Office via Mutual Fund Report and Prospectus System (MRAP) prior to offer for sale of investment units;

(b) submitting or distributing prospectus to investors who is an interested in investing in investment units, and there shall be an appropriate period for investors to study information in prospectus prior to making decision to invest in investment units;

(c) in case there is any amendment of information in prospectus, the *mutual fund management company* shall make the prospectus contain current information and be submitted to the SEC Office within 60 days as from the date of amendment thereof.

(3) arranging the *commitment* and the carbon fund scheme being in consistency with the *Securities and Exchange Act B.E. 2535 (1992)* as well as notifications, rules and orders issued by virtue of such law, and in case the requirement in the *commitment* or the carbon fund scheme contradicts or is inconsistent with requirements in such law, notifications, rules or orders, the *mutual fund management company* shall rectify without delay;

(4) the amendment to the *commitment* or the carbon fund scheme shall not either contradict or be inconsistent with this Notification, and in case this Notification has additional amendment, the *mutual fund management company* shall make the *commitment* and the carbon fund scheme are in conforming to such amended Notification.

Chapter 4

Termination of approval for establishment of carbon fund

Clause 31 In case a *mutual fund management company* does not initiate the offer for sale of investment units within 2 years as from the date of obtaining approval for establishment of a *carbon fund* from the SEC Office, such approval shall be deemed terminated.

Clause 32 If the prospectus has been specified that a *mutual fund management company* could terminate establishment of a *carbon fund* which is in the process of initial offering of investment units, the *mutual fund management company* may discontinue sale of investment units and shall report cessation thereof to the SEC Office

within 7 days as from the date of discontinuing sale of such investment units.

The approval for establishment of the *carbon fund* shall be deemed terminated on the date when the *mutual fund management company* has submitted the report under the first paragraph to the SEC Office.

The *mutual fund management company* shall return money paid for subscription of investment units and any proportionate interest arising from the money (if any) to subscribers within 14 days as from the date when the approval for establishment of the *carbon fund* is deemed terminated under the second paragraph. In addition, if the *mutual fund management company* fails to return the money and interest within such specified period because of any circumstances for which the *mutual fund management company* shall be responsible, the *mutual fund management company* shall pay interest at the rate no less than 7.5% per annum as from the first day after elapsed 14 days until the date when the *mutual fund management company* has returned the full amount of the subscription.

Clause 33 After offering period of investment units, if there appears that investment units have been distributed to less than 10 investors, the SEC Office shall decline to register as a recognized *carbon fund*. In this regard, the approval for establishment of the *carbon fund* is terminated.

A *mutual fund management company* shall notify the SEC Office of the case under the first paragraph within 15 days as from the closing date of offering period of such investment units and the *mutual fund management company* shall return money paid for subscription of investment units and any proportionate interest arising from the money (if any) to subscribers within 14 days as from the date of such closing date. In this regard, if the *mutual fund management company* fails to return money and interest within such specified period owing to any circumstances for which the *mutual fund management company* shall be responsible, the *mutual fund management company* shall pay interest at the rate no less than 7.5% per annum as from the first date after elapsed 14 days until the date when the *mutual fund management company* has returned the full amount of the subscription.

[As a result of being inapplicable to any case, the third paragraph would not be translated.]

Clause 34 The SEC Office may revoke approval for establishment of a *carbon fund* if there appears the following occurrences:

- (1) having additional amendment to the carbon fund scheme or *commitment* that contradicts or is inconsistent with the requirements under this Notification;
- (2) having invested in main assets which is not compliance with investment policy as prescribed in the carbon fund scheme which causes material impact on the undertaking of the carbon fund, or being in contradiction with the objective to establish the *carbon fund*;
- (3) having failed to comply with the regulations as prescribed in Part 1;
- (4) having managed the *carbon fund* in violation of or non-compliance with the regulations as prescribed in Part 2.

Clause 35 In exercising discretion to order under Clause 34, the SEC Office shall take into consideration the following factors:

- (1) [the seriousness as to] demeanors of a *mutual fund management company* that are grounds to be considered;
- (2) amending or any other taking action which is beneficial to unitholders so as to rectify, remedy or prevent repetition of the same behavior;
- (3) any other demeanor of the *mutual fund management company* for collaboration or obstruction in the due exercise of the SEC Office's function;
- (4) inappropriate background or demeanor of the *mutual fund management company* in the past.

Clause 36 When the approval for establishment of a *carbon fund* is revoked, if the offer for sale of investment units has been completed, but the *carbon fund* has not been registered as a recognized *carbon fund*, a *mutual fund management company* shall return money paid for subscription of investment units and any interest arising from the money to subscribers. In this regard, the provisions under the second paragraph (...) ^{**} of Clause 33 shall apply, *mutatis mutandis*, but in case the *carbon fund* has been registered, the *mutual fund management company* shall proceed to terminate the *carbon fund* immediately.

^{**} The translation is skipped by the reason of being inapplicable to any case similar to third paragraph of Clause 33

Part 2
Regulations on Administration and
Management of Carbon Fund

Clause 37 In administering and managing a *carbon fund*, a *mutual fund management company* shall comply with the carbon fund scheme and *commitment* including additional regulations as specified by this Part.

Clause 38 In case of increase in *registered capital* or *scheme capital* of a *carbon fund* and reduction of the *registered capital*, a *mutual fund management company* shall submit an application for additional amendment to registered particulars with the SEC Office in accordance with the regulations under the *Notification of the Capital Market Supervisory Board concerning Registration of Pool of Assets as Mutual Fund and Additional Amendment to Registered Particulars*.

Clause 39 In reducing *registered capital* of a *carbon fund*, besides complying with Clause 38, a *mutual fund management company* shall provide information relating to reduction of the *registered capital* on its website and annual report of the *carbon fund* for the examination by investors. In this regard, such information shall have at least the following details:

- (1) grounds for reducing *registered capital*;
- (2) *registered capital* both total amount and per investment units that is reduced each time;
- (3) closing date of the register and the date of reimbursement of *carbon credit* or investment return, as the case may be, to unitholders.

Clause 40 In soliciting unitholders' resolution, a *mutual fund management company* shall demonstrate sufficient information for investors to make decision which includes opinion of the *mutual fund management company* and a *fund supervisor* on the item of agenda and impact that unitholders may be affected when resolution on such matter is reached.

The *mutual fund management company* shall disclose the information under the first paragraph in calling notice of shareholders' meeting or letter seeking resolution of unitholders.

Clause 41 For paying dividend of *general carbon investment fund*, a *mutual fund management company* shall [immediately and publicly] announce the dividend payment, the closing date of the unitholder register for entitlement of dividend, and the dividend rate. In addition, the *mutual fund management company* shall:

(1) undertake through any method to inform unitholders as for dividend payment and the relevant information, the closing date of the unitholder register, and the dividend yield thereof;

(2) send notice about payment of dividend to the *fund supervisor*, unitholders whose names are in the register book, and unitholders in type of bearers when requested.

Clause 42 A *mutual fund management company* shall calculate the asset value, the net asset value and the value of an investment unit, which are in accordance with international standards, reflection of fair value and comparable performance of a *carbon fund*. In addition, the *mutual fund management company* shall comply with the following regulations:

(1) in case the *carbon fund* invests in or possesses *carbon credit*, carbon credit derivatives, and purchase agreement of *carbon credit* of which counterparty is a company engaging in *greenhouse gas reduction project*, the valuation of those investments shall refer to the generally accepted and publicly disclosed price;

(2) in case the *carbon fund* invests in or possesses securities or instrument of which issuer or payer is a company engaging in *greenhouse gas reduction project*, or any other assets, the valuation of those assets shall be under the *Announcement of Association concerning Rules and Procedures for Determining Fair Value of Investment so as to Calculate Asset Value of Mutual Fund, mutatis mutandis*.

Clause 43 In case of *general carbon investment fund*, a *mutual fund management company* shall calculate and disclose the asset value, net asset value and value of an investment unit within the specified periods as follows:

(1) calculating the asset value, net asset value and value of an investment unit on the following dates, and disclosing such values within the next working day:

(a) the date of selling or redemption of investment units;

(b) the closing date of the register book of unitholders for dividend payment;

(c) the business day prior to the date of selling investment units to increase *registered capital*;

(d) the closing date of the register book of unitholders to reduce *registered capital*.

(2) calculating the asset value, net asset value and value of an investment unit on the ending date of fiscal year of a *carbon fund* and disclosing such values at the same time when the annual report of the *carbon fund* is submitted [to unitholders and the SEC Office].

The asset value, net asset value and value of an investment unit shall be certified by the *fund supervisor* before being disclosed under the first paragraph.

Clause 44 A *mutual fund management company* shall prepare and submit annual report of a *carbon fund* to unitholders and the SEC Office within 4 months as from the ending date of fiscal year of the *carbon fund*.

The annual report under the first paragraph shall have information of the *carbon fund* as specified by this Notification and under the rules relating to preparation of annual report of the *carbon fund* under the *Notification of the Office of the Securities and Exchange Commission No. SorKhor/Nor. 23/2552 Re: Rules, Conditions and Procedures for Management of Mutual Funds dated 28 July 2009, mutatis mutandis*.

Clause 45 The preparation of financial statements of a *carbon fund* shall comply with the following criteria:

(1) being prepared in accordance with the accounting standards that the Federation of Accounting Professions has specified for execution of each type of transaction;

(2) being audited by auditor who is on the approved list of the SEC Office.

Clause 46 In case a *carbon fund* invests in main assets of which issuers, payers or counterparties are companies engaging in *greenhouse gas reduction project*, if project or activity which will generate *carbon credit* for such companies have not been certified by related regulator or have been certified but have not received *carbon credit*, a *mutual fund management company* shall prepare progress report of such project or activity and submit such report to unitholders and the SEC Office at the same time when the annual report of the *carbon fund* is submitted.

The progress report under the first paragraph shall have at least the following information:

(1) the comparison between progress of the project or activity and its action plan;

(2) in case the progress of project or activity has not proceeded according to the action plan, the guideline for rectification and impact that the *carbon fund* has received or may receive shall be specified.

Clause 47 When there appears any circumstances or changes [i] that may have material impact on the value of assets in which the *carbon fund* invests or possesses, or [ii] as specified by the SEC Office, a *mutual fund management company* shall report such circumstances or changes as well as reasons of the appearance thereof to the SEC Office without delay.

Clause 48 A *carbon fund management company* shall have personnel who has obtained an approval from the SEC Office to perform duties as:

(1) a carbon fund manager for making investment decision or disposing assets of the *carbon fund*;

(2) an investment consultant in order to sell or offer investment units to investors.

Clause 49 A *mutual fund management company* shall supervise and examine compliance of its personnel under the law on securities and exchange² and regulations issued by virtue of such law, including standards of conduct specified by the *association* and approved by the SEC Office.

Clause 50 A *mutual fund management company* would be able to appoint other person to [i] manage investment in other assets for a *carbon fund*, and [ii] be back office operator. In this regard, the *mutual fund management company* shall comply with the following rules:

(1) selecting an appropriate person to perform duty as assigned with ensuring that such person would perform the duty with prudence and due care providing that such assigned person shall be a person who is licensed to undertake securities business in the category of private fund management or derivatives business in the category of derivatives fund operator, as the case may be. In case of investment management in foreign country, the assigned person shall be a person [i] who is licensed to undertake such business from securities and exchange supervisory regulator which is a member of the International

² law on securities and exchange means the *Securities and Exchange Act B.E. 2535 (1992)*

Organization of Securities Commissions (IOSCO) and [ii] acknowledged by the SEC Office;

(2) supervising and examining the undertaking of the assigned person sufficiently in order to ensure that such person has complied with the law on securities and exchange³ and relating rules including standard conduct of business as stipulated by the Securities and Exchange Commission, the Capital Market Supervisory Board, and the SEC Office, as well as the *association* with an approval from the SEC Office.

Clause 51 A *mutual fund management company* shall facilitate a *fund supervisor* or a person who is appointed by the *fund supervisor* so that those persons would be able to perform their duties efficiently.

Clause 52 When there appears the case as prescribed by Clause 24 or any other case causes dissolution of a *carbon fund*, a *mutual fund management company* shall report to the SEC Office and a *fund supervisor* without delay.

Clause 53 The dissolution of a *carbon fund* owing to maturity of scheme or any other reason which is scheduled in advance, a *mutual fund management company* shall act as follows:

- (1) notify the SEC Office and a *fund supervisor* in writing at least 5 business days prior to the date of the dissolution;
- (2) perform through any method, for instance, announcement on local daily newspaper, to inform investors about such cause of dissolution at least 5 business days prior to the date of the dissolution.

Part 3

Authority of the SEC Office Relating to Undertaking Mutual Fund Management Company or Carbon Fund

Clause 54 In order to manage a *carbon fund* in accordance with policy or supervisory rules which is effective at that time or for the benefit of investor protection, in case there appears any of the following facts, the SEC Office is empowered to order a *mutual fund management company* to act or omit to act as the SEC Office deems appropriate within specified period:

- (1) facts under Clause 27(1), (2), (3) or (4);

³ law on securities and exchange means the *Securities and Exchange Act B.E 2535 (1992)*

(2) undertaking of the *carbon fund* is inconsistent with the carbon fund scheme approved by the SEC Office;

The authority to order under the first paragraph shall include orders in the following matters:

- (1) clarifying or disclosing additional information;
- (2) rectifying characteristic of the *carbon fund*;
- (3) suspending offer for sale of additional investment units until the clarification or rectification is completed.

Clause 55 The SEC Office is empowered to promulgate the type or characteristic of expenses which a *mutual fund management company* is not permitted to deduct from a *carbon fund*.

Clause 56 The SEC Office is empowered to render waiver for compliance with the following rules to a *mutual fund management company* only when the *mutual fund management company* is able to demonstrate that it is necessary and appropriate circumstances:

- (1) maintaining investment value of a *carbon fund* as prescribed in Clause 16;
- (2) dissolving the *carbon fund* because of having less than 10 unitholders under Clause 24(1).

Notified this 31st day of August 2012.

-signature-

(Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

Note: please note that the contents added in brackets [...] have only been provided in the English version for clearer understanding