

**TRANSLATED VERSION**

As of October 2, 2013

*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. Tor Thor. 38/2556**

**Re: Rules on Managing Derivatives Investment by  
Registered Derivatives Investment  
Management Company**

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By virtue of Section 18 of the *Derivatives Act B.E. 2546 (2003)* which contains certain provisions relating to the 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 permit by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

**Clause 1** In this Notification:

(1) “*derivatives investment management company*” means any [juristic] person registered to undertake derivatives investment management;

(2) “*association*” means the self-regulatory association of a *derivatives investment management company* which has obtained an approval from the Securities and Exchange Commission;

(3) “*client*” means any person entrusting the *derivatives investment management company* to invest the assigned money in derivatives.

**Clause 2** For managing derivatives investment, a *derivatives investment management company* shall comply with the principles of the *Notification of the Securities and Exchange Commission concerning the Principles for Undertaking Securities and Derivatives Business*. In order to adhere to the principles, the *derivatives investment management company* shall comply with this Notification.

Where the rules, under this Notification or under other notifications including any regulations or guidelines issued by virtue of this Notification, have not been stipulated as a requirement for derivatives investment management, or have been stipulated such requirement but it is necessary to determine the implementation or make clarification, the *derivatives investment management company* shall operate their business, or implement or clarify such requirement according to the principles of *Notification of Securities and Exchange Commission concerning the Principles for Undertaking Securities and Derivatives Businesses*.

**Clause 3** 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 *derivatives investment management company* has already complied with the requirement under this Notification.

**Clause 4** A *derivatives investment management company* entrusted to manage *client*'s money shall invest in derivatives at full capacity for the best interest of *client* based on the principle of honesty and care.

**Clause 5** A *derivatives investment management company* shall supervise its personnel to comply with this Notification including the rules as specified by the *association* having obtained an approval from the SEC Office.

**Clause 6** A *derivatives investment management company* shall provide the operational system supporting [i] segregation of duty and responsibility in each sector, [ii] the supervision of the operation, [iii] risk management, [iv] selection and supervision of the qualified personnel corresponding with the discharge of the allocated responsibility, [v] measure of internal control for checking and balancing the operation for avoiding the conflict of interest transaction including [vi] [arranging and] keeping the evidentiary documentation [or information] of the operation for inspection.

**Clause 7** A *derivatives investment management company* shall not breach the conduct and professional standard as specified by the *association* in the material part affecting on the profession or in the part affecting the credibility of the professional as a whole.

**Clause 7/1** In managing a derivatives investment, a *derivatives investment management company* shall appoint a personnel, having knowledge, competency and business understanding relating to managing derivatives investment and regulated rules, for being the derivatives investment manager. In this regard, such person shall obtain an approval from the SEC Office as stipulated by the *Notification of the Capital Market Supervisory Board concerning Rules relating to Personnel in the Capital Market Business*.

**Clause 8** For soliciting an investor to invest in derivatives through derivatives investment management, a *derivatives investment management company*

shall:

- (1) propose the reasonable investment policy to the investor;
- (2) disclose sufficiently any information which is necessary for the investor to make a decision for investment in derivatives through derivatives investment management within reasonable period;
- (3) provide the assessment of suitability for investing in derivatives, in case the investor wish to be assessed such suitable investment.

The provisions regarding assessing suitability for investment in or entering into a transaction of capital market products as stipulated by *the Notification of the Capital Market Supervisory Board concerning Standard Conduct of Business, Management Arrangement, Systems, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries* shall be applicable to the assessment of suitability for investing in derivatives as prescribed in sub clause (3) of the first paragraph, *mutatis mutandis*.

In case the investor is a mutual fund under the law on securities and exchange<sup>1</sup> and its scheme has been specified explicitly the investment policy, the limitation of investment and other related issues, the ***derivatives investment management company*** would be exempted from complying with sub clause (1) and (2) of the first paragraph only if having obtained consent from the mutual fund.

**Clause 9** A contract for derivatives investment management shall meet the following criteria:

- (1) having explicit framework, scope and prohibited investment;
- (2) not having agreement arising conflict of interest between a ***client*** and a ***derivatives investment management company*** including its related person as specified by the Notification of the SEC Office unless having obtained consent from the ***client***;
- (3) explicitly determining the right of the ***client***, specifically the right for obtaining information relating to derivatives investment management;
- (4) having necessary information and warning for the ***client*** to acknowledge and understand derivatives investment management;
- (5) having agreement on the settlement of dispute by arbitration provided by the SEC Office as specified rules and procedures of the SEC Office Notification, in case

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<sup>1</sup> The *Securities and Exchange Act B.E. 2535 (1992)*.

the *client* has requested to resolve the civil dispute occurring from the derivatives business by such arbitration.

**Clause 10** A *derivatives investment management company* shall:

(1) evaluate the derivatives in accordance with rules as specified by an *association* having obtained an approval from the SEC Office. In case the *association* has not specified the rule of derivatives valuation, the calculation of derivatives valuation shall comply with the procedures as agreed with *clients*;

(2) evaluate performance of derivatives investment management in accordance with rules as by the *association* having obtained an approval from the SEC Office.

The *derivatives investment management company* shall disclose investment information, performance, rules and procedures for derivatives valuation and other information affecting the investment management to *clients*.

Regarding to having obtained an approval from the SEC Office as prescribed in [sub clause (2) of] the first paragraph, the SEC Office shall deliberate the source, internationality and comprehensiveness of such rules.

**Clause 11** The SEC Office is empowered to stipulate the type of derivatives unregulated, by the SEC Office, which a *derivatives investment management company* is permitted to invest for a *client*.

**Clause 12** The Notifications of the Office of the Securities and Exchange Commission as well as guidelines, orders and circular letters issued or instructed in virtue of such Notifications, or remaining effective as the result of the transitional provisions of the *Notification of the Capital Market Supervisory Board No. TorThor 83/2552 Re: Rules of Managing Derivatives Fund dated 3 August 2009* in part of derivatives investment management which are in effect prior to this Notification shall remain in force to the extent that they are neither inconsistent with nor contrary to the provisions of this Notification until the Notifications, guidelines, orders and circular letters issued or instructed by virtue of this Notification come into force.

**Clause 13** Any reference made in any other Notifications to the *Notification of the Capital Market Supervisory Board No. TorThor 83/2552 Re: Rules of Managing Derivatives Fund dated 3 August 2009* shall mean reference to this Notification.

**Clause 14** This Notification shall come into force as from 1 April 2014.

Notified this 2<sup>nd</sup> day of October 2013.

- Signature -

(Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

*Note:* The contents added in brackets [...] have been provided for clearer understanding in the English version only.