

(UNOFFICIAL TRANSLATION)

Codified up to No.6

As of 1 August 2017

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. 25/2556

**Re: Outsourcing Operational Function relating to
Business Operation to Third Party**

By virtue of Section 16/6 and Section 113 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, Paragraph 2 of Section 100, Section 114, Section 115, Section 116 and Section 117 of the *Securities and Exchange Act B.E. 2535 (1992)* and Paragraph 2 of Section 133 of the *Securities and Exchange Act B.E. 2535(1992)*, as amended by the *Securities and Exchange Act (No. 2) B.E. 2542 (1999)* and Section 18 of the *Derivatives Act B.E. 2546 (2003)* which contain 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, Section 44, Section 45 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, and sub clause (6) of Paragraph 1 under Clause 16 of the *Ministerial Regulation concerning Granting Permission of Securities Business B.E. 2551 (2008)*, as amended by the *Ministerial Regulation concerning Granting Permission of Securities Business (No. 3) B.E. 2555 (2012)*, and Paragraph 1 of Clause 5 of the *Ministerial Regulation concerning Granting Permission of Securities Business in the Category of Financing B.E. 2555 (2012)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 16 June 2013.

Clause 2 In this Notification:

“*intermediary*” means a securities company or derivatives intermediary, excluding venture capital fund management company, inter-dealer brokerage company and registered derivatives intermediary.

“*affiliated company*” means a company having any of the following characteristics:

(1) a company relating to an *intermediary* by shareholding structure, either directly or indirectly, more than fifty percent of all issued shares;

(2) a company relating to the *intermediary* by having *control* between each other;

(3) a company and the *intermediary* have mutual *control* by any person.

“*control*” means control as determined by the definition of “control” under Section 89/1 of the *Securities and Exchange Act B.E. 2535 (1992)*.

“*financial business*” means commercial bank, finance company, credit foncier, securities company, derivatives intermediary or life insurance company whether established under Thai or Foreign law.

“**payment information management for securities trading**”⁵ means services relating to collecting, organizing and analyzing information concerning securities trading payment of clients in one or many of the following ways:

(1) being a contact point for data processing of securities trading;
 (2) sending and receiving payment information of **intermediary** for money transferring between customers and **intermediary**;

(3) sending transfer instruction to banks as an agent for **intermediary**.

“**fund**” means mutual fund, private fund and provident fund.

“**executive**” means executive under the *Notification of the Capital Market Supervisory Board concerning Qualifications and Other Prohibited Characteristics of Directors and Executives of Securities Company* or the *Notification of the Capital Market Supervisory Board concerning Qualifications and Prohibited Characteristics of Directors and Executives of Derivatives Intermediary*, as the case may be.

“**support system provider**”⁴ means a person approved to be a support system provider under the *notification concerning support system provider*.

“**support system**”⁴ means support system related to investment unit trading and fund management as defined in the *notification concerning support system provider*.

“**the notification concerning support system provider**”⁴ means the *Notification of the Securities and Exchange Commission concerning Application for Support System Provider Offering Service Related to Investment Unit Trading and Fund Management*.

Clause 3 This Notification shall be applicable to the outsourcing of operational function of an **intermediary** to third parties in order to increase flexibility and efficiency of business operation of the **intermediary**. In this regard, the appointment of third parties, such as other **intermediaries**, financial institutions or **affiliated companies** in the group of **financial business** who have readiness in personnel and operating system relating to the outsourced activities, for providing services shall be within the scope of work and under the rules as prescribed in this Notification.

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

Clause 5 In outsourcing operational function to a third party, an **intermediary** shall comply with the following rules:

(1) the outsourcing of operational function to another **intermediary** shall be conformed to Chapter 1;

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 47/2560 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.6)* dated 1 August 2017 (effective on 1 September 2017).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 56/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.5)* dated 21 December 2016 (effective on 16 January 2017).

(2) the outsourcing of operational function to service providers shall be conformed to Chapter 2;

(3) the outsourcing of operational function other than sub clause (1) or (2) is permissible when the *intermediary* deems necessary to the extent that it is not:

(a) an appointment of third party to be an agent or a broker of a securities company under Section 100 of the *Securities and Exchange Act B.E. 2535 (1992)*; or

(b) an appointment of third party to be a service provider in any matter which has already been subject to specific regulations under other Notifications.

Chapter 1 Outsourcing Operational Function to Another Intermediary

Clause 6 An *intermediary* may outsource operational function to another *intermediary* as necessary for operating business efficiently on the condition that such outsourcing shall not have a result as if the *intermediary* does not operate the business. Additionally, the *intermediary* shall be in accordance with the following rules and conditions:

(1) there shall be management of risks arising from outsourcing thereof;

(2) there shall be a preventive measure to ensure business continuity in case another *intermediary* fails to proceed outsourced function;

(3) the function which may be outsourced to another *intermediary* shall not be a specific matter or a matter specified by law or regulation to be operated by the *intermediary* itself or shall not be the function subject to specific provisions under other Notifications;

(4) in case the outsourced function is related to investment of a *fund*, the *intermediary* shall proceed in accordance with the following rules:

(a) the investment function shall be outsourced to a securities company in the category of private fund management or a derivatives intermediary in the category of derivatives investment management, as the case may be. In this regard, the details of such outsourcing shall be specified clearly in the details of the *fund* scheme, or a client who is a provident fund or a private fund shall have prior granted a written approval [for such outsourcing], as the case may be;

(b) there shall be a report on supervision of another *intermediary* and reveal the report in the annual compliance report;

(5)¹ in case the outsourced function is related to derivatives investment, the *intermediary* shall outsource such function to a derivatives intermediary in the category of derivatives investment management and shall obtain a prior consent from the client, who uses the service from the *intermediary*.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 41/2556 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.2)* dated 2 October 2013 (effective on 1 April 2014).

Chapter 2
Outsourcing Operational Function to
Service Providers

Clause 7 An *intermediary* may outsource operational function to a service provider in accordance with the following rules:

- (1) types of function and characteristics of eligible service provider shall be subject to Division 1;
- (2) the *intermediary* shall obtain an approval from the SEC Office as prescribed in rules under Division 2 except where the provision in any Clause of this Chapter permits to do so;
- (3) the *intermediary* shall comply with Division 3.

Division 1
Types of Function and Characteristics of
Eligible Service Provider

Clause 8⁴ The types of function which an *intermediary* may outsource to a service provider under this Chapter are as follows except the cases under Paragraph 2:

- (1) management of client's right and benefit;
- (2) risk management only if the outsource operator is an *affiliated company*;
- (3) internal audit only if the outsource operator is an *affiliated company* or audit firm;
- (4) compliance function only if the outsource operator is an *affiliated company*;
- (5) information technology management and implementation;
- (6) management of client's information regarding only collecting, organizing and analyzing the information. In this respect, if such work is related to the accounts and finances of clients, the operator shall be *affiliated company* or auditing firm;
- (7) client registration;
- (8) back office operation after trading of securities or derivatives;
- (9) back office operation of investment management of *funds* only if the outsource operator is an *affiliated company* or financial institution;
- (10) investing abroad for *funds* only if it is necessarily for operating business efficiently on the condition that such outsourcing shall not have a result as if the *intermediary* does not operate the business. Additionally, the operator shall be in accordance with the rules in Clause 11 and shall comply with the following conditions:
 - (a) details of such outsourcing shall be specified clearly in the details of the *fund* scheme, or a client who is a provident fund or a private fund shall have prior granted a written approval [for such outsourcing], as the case may be;
 - (b) there shall be management of risks arising from outsourcing thereof;
 - (c) there shall be a report on supervision of another operator and

⁴ Amended by the Notification of the Capital Market Supervisory Board No. TorThor. 56/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.5) dated 21 December, 2016 (effective on 16 January, 2017).

reveal in the annual compliance report;

(11) other functions with similar characteristics to the above functions under sub clause (1) to (9).

Clause 9⁴ The clause is repealed by the by the Notification of the Capital Market Supervisory Board No. TorThor. 56/2559.

Division 2
The Third Party Permitted to be a Service Provider
for Outsourced Function

Clause 10⁵ An *intermediary* could outsource the function under Clause 8 to the following third party without submitting an application for obtaining the approval under Clause 12:

(1) a financial institution, or the *intermediary*'s *affiliated company* whose business is *financial business*, which is under supervision of any one of the following entities:

(a) the SEC Office or the Bank of Thailand;

(b) a regulatory agency which is a member of the International Organization of Securities Commissions (IOSCO) and has already signed as a signatory A of the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (MMOU), or a regulatory agency on securities or derivatives which has already signed memorandum of understanding (MOU) with the SEC Office, which the MOU contains the mutual assistance not less than as specified in the MMOU, and such regulatory agency has the legal power to render the assistance thereof to the SEC Office in accordance with the MOU. In this regard, the protection of interest of investors under supervision of the jurisdiction wherein such regulatory agency is located shall not be less than the regulations of the SEC Office;

(c) a central bank which is a member of the Bank for International Settlement (BIS).

(2) an audit firm, whose auditors are recognized by the SEC Office to be an auditor in the capital market under the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Auditors in Capital Market*, only for providing service under Paragraph 1 of clause 8 (3) or (6) only functions relating to the accounts and finance of clients;

(3) the Stock Exchange of Thailand, or a limited company or a public limited company established by the Stock Exchange of Thailand which holds its shares not less than seventy-five percent of the total issued shares;

(4) *support system provider* specifically to only those who have granted approval under the *notification concerning support system provider*;

(5) service provider managing payment information for securities trading approved by the SEC office on conditions, rules and procedures specified by the Office;

⁴ Repealed by the *Notification of the Capital Market Supervisory Board No. TorThor. 56/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.5)* dated 21 December 2016 (effective on 16 January 2017).

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 47/2560 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.6)* dated 1 August 2017 (effective on 1 September 2017).

(6) a juristic person other than those persons under sub clauses (1), (2), (3),(4) or (5) which has at least 5-year experience in the field of function to be operated for the *intermediary*. In this regard, the counting of such experience may continuously extend from the experience in other businesses if the juristic person is related or has a relationship with other businesses in any of the following manners:

- (a) most of the directors and *executives* of such juristic person are the same group of people who are the directors and *executives* of other businesses;
- (b) the juristic person is created from the merger of other businesses or the restructuring of other businesses;
- (c) the juristic person has acquired other businesses;
- (d) the juristic person is related or has a relationship with other businesses in such a manner that the experience of the other businesses may apply to the business operation of such juristic person.

Clause 11 An *intermediary* could assign investment service to a foreign person [located abroad] to make an investment in a foreign jurisdiction for a *fund* under management of the *intermediary* without submitting an application for approval under Clause 12 if such person meets the following criteria:

- (1) being capable of operating investment management business legally under the law of the jurisdiction where such foreign person operates business;
- (2) being under the supervision of the regulatory agency under Clause 10(1)(b);
- (3) being a person recognized by the SEC Office.

Clause 12⁴ Except as provided in Clause 10 and Clause 11, an *intermediary* who wishes to outsource operational function under Clause 8(1) to (9) and (11) to a service provider shall obtain an approval from the SEC Office prior to such outsourcing, and the *intermediary* shall submit an application for approval to the SEC Office according to the form provided on the website of the SEC Office together with relevant evidentiary documentation. In this regard, the SEC Office shall deliberate the application within 30 days as from the date of receiving complete and accurate application and the evidentiary documentation as prescribed in the Licensing Manual for the Public.

Clause 13 An *intermediary* who submits an application for approval under Clause 12 shall be granted an approval on the condition that a service provider has the qualifications and does not possess any prohibited characteristics as follows:

- (1) having readiness and sufficiency on personnel and operating system to ensure that the operational function of the *intermediary* shall remain in accordance with the rules regarding outsourced function as prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office, including the operational guidance specified by the *intermediary* to comply with such rules, and in any case there shall be at least sufficient and efficient operating systems as follows:
 - (a) risk management system;
 - (b) internal control system;
 - (c) information security system to prevent unauthorized and unrelated persons from accessing or amending information as well as from ascertaining non-public

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 56/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.5)* dated 21 December 2016 (effective on 16 January 2017).

information between the service provider's unit and its personnel;

(d) contingency management system which specifies procedures and a person in charge in each case clearly.

(2) there is no reasonable grounds to believe that the financial status may cause damage or having any circumstance which indicates an ongoing financial problem;

(3) there is no reasonable grounds to believe that there is a defect or inappropriateness relating to the control and proper operation of the business.

Division 3 Compulsory Conditions

Clause 14 An *intermediary* shall notify the details on the scope of function outsourced to a service provider under Clause 10 to the SEC Office in advance within 15 days prior to such outsourcing.

Clause 15 An *intermediary* shall have a policy, measure and guideline for outsourcing operational function to a service provider in accordance with the following rules. In this regard, the *intermediary* shall act and ensure that its personnel shall comply with such policy, measure and guideline as well:

(1) there shall be a written outsourcing policy having been approved by the board of directors of the *intermediary* or the committee assigned by the board of directors thereof. Additionally, such policy shall have minimum details as prescribed in Clause 18;

(2) there shall be a measure to ensure continuity of business operation in case the service provider fails to proceed with the outsourced function;

(3) there shall be a preventive measure on relevant conflicts of interest;

(4) the selection of service provider shall be considered prudentially as a professional.

Clause 16³ An *intermediary* shall arrange to have a written contract which contains at least material information in the following matters:

(1) duties and responsibilities of a service provider which include one of the following details:

(a) liability to the *intermediary* as a result of acts or omission to act intentionally or negligently [causing damage to the *intermediary*];

(b) measures and arrangements for business continuity of service provider which shall include the outsourced function;

(c) service provider shall be in accordance with the rules regarding outsourced function as prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office, including the operational guidance specified by the *intermediary* to comply with such rules.

(2) consent of the service provider for the SEC Office to inspect the operation of the service provider, retrieve for viewing or examine relevant evidentiary documentation;

(3) causes, conditions and procedures for terminating the contract or

³ Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 45/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.4)* dated 21 October 2016 (effective on 1 July 2018).

suspending performance [under such contract];

(4) remuneration and charged expenses.

In the case where service provider subcontracts the outsourced function to another party, the *intermediary* shall arrange to have a written contract which contains details specified in Paragraph 1(1) at every level of subcontracting

Clause 17 In case the contract under Clause 16 has an *affiliated company* of an *intermediary* being counterparty with a service provider for the benefit of the *intermediary*, the *intermediary* shall ensure that such contract entitle the *intermediary* to the rights as though the *intermediary* enters into such contract itself, and the *intermediary* shall at least:

(1) arrange for the *affiliated company* to have criteria for selecting service provider in accordance with the policy specified by the *intermediary* under Clause 18(2);

(2) arrange for the *affiliated company* to specify material information in the contract in accordance with Clause 16 and to add clauses with the following material information therein:

(a) the *intermediary* is the third-party beneficiary of such contract;

(b) the *intermediary* has the right of claim over the service provider as specified in the contract;

(c)³ repealed by the by the Notification of the Capital Market Supervisory Board No. TorThor. 45/2559

(3) the contract shall be examined for accuracy in accordance with sub clause (2) and a copy thereof shall be maintained in accordance with Clause 19(3).

Clause 18 The policy for outsourcing operational function to a service provider under Clause 15(1) shall specify the details and be in compliance with the following rules:

(1) scope and nature of function to be outsourced;

(2) criteria for selecting a service provider which have details in the following matters:

(a) financial status which shall be specified in such a way that the screening and selection of a service provider would be done without any ground to believe that its financial status may cause damage or any circumstance indicates an ongoing financial problem;

(b) capability and readiness for operational function which shall be specified in such a way that it is possible for screening and selecting a service provider who has sufficient and efficient work system;

(c) expertise, experience and business reputations;

(d) readiness of the service provider in case of providing services for many *intermediaries*;

(e) record of complaints or litigation in matters relating to the function to be outsourced;

(f) relationship with directors or *executives* of an *intermediary*.

(3) criteria on review and change of service provider;

(4) guideline in case the service provider would subcontract the outsourced function to another party which shall include the following matters:

(a) the subcontractor shall be the person under Clause 10 or Clause 11 or

³ Repealed by the *Notification of the Capital Market Supervisory Board No. TorThor. 45/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.4)* dated 21 October 2016 (effective on 1 July, 2017).

other persons who obtain an approval from the SEC office under Clause 12;

(b) there shall be a procedure for seeking an approval from the board of directors of the *intermediary* or the committee assigned by the board of directors thereof before proceeding with such subcontracting.

(5) appropriate guideline for risk assessment according to the degree of importance of the outsourced function;

(6) information security system of a service provider for protecting the information of the *intermediary* and the clients;

(7) measures for supervising a service provider to comply with the regulations relevant to outsourced function as stipulated by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office, including the rules and guidelines specified by the *intermediary* in accordance with such regulations.

In this regard, such measures shall at least ensure that a service provider shall not have any characteristic which may cause any ground to believe that there is a defect or inappropriateness in control and proper operation of business.

Clause 19 An *intermediary* shall supervise a service provider at least in the following matters:

(1) the appropriateness of the policy and operation of the service provider shall be monitored and reviewed regularly, at least an immediate review shall be done when any circumstance occurs which may affect the qualifications or prohibited characteristics of the service provider or may cause violation of the regulations as prescribed in this Notification. Additionally, in case the service provider has lacked qualifications, possessed prohibited characteristics or been no longer suitable to be a service provider, an immediate change of service provider is required;

(2) a complete and updated summary report of the operational function outsourced to the service provider shall be prepared and submitted to the chief executive officer of the *intermediary*;

(3) a complete and updated evidentiary documentation of the operational function outsourced to the service provider shall be maintained in such a manner of ready retrieval for promptly viewing and inspecting by the SEC Office;

(4) it shall be accommodated to the SEC Office for inspecting the operation of the service provider upon request.

Clause 19/1⁵ Clause 18(7) and 19 shall not apply to the following cases:

(1) *Intermediary* that outsource its function to **support system provider** specifically the function that is approved under **notification concerning support system provider**;

(2) *Intermediary* that outsource its function to service provider managing payment information for securities trading.

Clause 20 In case there is a certain fact appeared to the SEC Office that an *intermediary* violates or fails to comply with the regulations under this Notification, or a service provider fails to maintain the qualifications or possesses the prohibited characteristics as prescribed under this Notification, or such person is not suitable to be the service provider, the SEC Office shall [i] notify the *intermediary* to amend, act or omit to act in any way

⁵ Amended by the Notification of the Capital Market Supervisory Board No. TorThor. 47/2560 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No.6) dated 1 August 2017 (Effective on 1 September 2017).

in order to comply with this Notification, or [ii] suspend the outsourcing to the service provider.

Chapter 3
Transitional Provisions

Clause 21 The operational function outsourced to a service provider in the similar manners as specified in this Notification which an *intermediary* has legally done before this Notification comes into force shall be deemed that the outsourced function thereof is lawful action under this Notification.

In case the outsourcing policy or contract fails to be conforming to the regulations under this Notification, the *intermediary* shall amend such policy or contract in order to be in accordance with this Notification at the first opportunity but not later than 2 years as from the effective date of this Notification.

Notified this 17th day of May 2013.

- signature-
(Mr. Vorapol Socratyanurak)
Secretary-General
Capital Market Supervisory Board

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