

(UNOFFICIAL TRANSLATION)

*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 Securities and Exchange Commission  
No. Kor Thor. 9/2556  
Re: Segregation and Management of Client's Assets  
In Case of Intermediary Being under Receivership  
by Court Order**

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By virtue of Section 9 and Section 43 of the *Derivatives Act B.E.2546 (2003)*, and Section 14 and Section 111/1 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, 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, the Securities and Exchange Commission, with consultation of the Minister of Justice, hereby issues the following regulations:

**Clause 1** This Notification shall come into force from 1 November 2013.

**Clause 2** In this Notification:

**"intermediary"** means:

- (1) a derivative business operator in the category of derivative broker;
- (2) a securities company licensed to undertake securities business in the category of securities brokerage;
- (3) any other derivative business operator as additionally specified in the Notification of the Capital Market Supervisory Board in accordance with Section 41 of the *Derivatives Act B.E.2546 (2003)*, and any other securities company as additionally specified in the Notification of the Capital Market Supervisory Board in accordance with Section 111/1 of the *Securities and Exchange Act B.E. 2535 (1992)*.

**"client's asset"** means an asset deemed to be owned by a **client** as prescribed by the law on derivatives or the law on securities and exchange, as the case may be.

**"client"** means a **client** of an **intermediary** as prescribed by the law on derivatives or the law on securities and exchange, as the case may be.

**"clearing house"** means a clearing house for transactions related to derivatives, or a clearing house for transactions related to securities, as the case may be.

**"person with the proceeding power"** means an official receiver and the SEC Office.

**"client asset account"** means an account of a **client's assets** prepared by an **intermediary** in accordance with the law on derivatives or the law on securities and exchange, as the case may be, and the regulations issued by virtue of the said laws.

**Clause 3** This Notification shall govern the segregation and management of the assets of an *intermediary* under receivership by court order for the benefit of managing the clearing and settlement of derivatives or securities of *clients*, and for the management of *clients' assets* having no obligations with the *intermediary* and having been segregated clearly.

## Chapter 1 Scope of Proceeding

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**Clause 4** For the purpose of debt repayment in the capital market as a whole and for a *client* to receive assets proven by evidence to be the *client's assets* under possession of an *intermediary* under receivership by court order, the *person with the proceeding power* shall segregate and manage the *client's assets* without delay upon receivership by court order, in compliance with the following regulations:

- (1) The SEC Office shall proceed with the segregation and management of the *client's assets* by taking the following actions:
  - (a) collecting and allocating the *client's assets* to the *client*;
  - (b) transferring the *client asset account* and the *client's assets* to another *intermediary*;
  - (c) closing the derivative position of the *client* in cases where transferring to another *intermediary* cannot be done;
- (2) The official receiver shall take any action other than those prescribed in (1) for the purpose of managing the assets possessed by the *intermediary* under receivership in accordance with the *Bankruptcy Law*.

**Clause 5** In proceeding with the actions under Clause 4(1), the official receiver shall render assistance and support to enable the SEC Office to complete the actions thoroughly, and the SEC Office shall coordinate and notify the official receiver of the said actions before the official receiver shall proceed in accordance with Clause 4(2).

**Clause 6** In proceeding with the actions as prescribed in Clause 4 and Clause 5, the Legal Execution Department and the SEC Office may jointly issue guidelines in detail.

**Clause 7** In segregating and managing the *client's assets* in accordance with this Notification, the *person with the proceeding power* may authorize any person to take such actions as deemed appropriate.

For the authorization under the first paragraph, the *person with the proceeding power* shall monitor and supervise the person authorized to segregate and manage the *client's assets* in compliance with the authorizing terms, the governing laws and the regulations as prescribed in this Notification.

## Chapter 2

### Segregation and Management of Client's Assets

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**Clause 8** In segregating and managing the *client's assets* as prescribed under Clause 4(1), the SEC Office shall inspect and verify the *client's assets* by taking the following actions:

(1) inspecting the *client's assets* under possession of the *intermediary* and the obligations related to transactions of derivatives trading or securities trading, and segregating the *client's assets* from those of the *intermediary*;

(2) clearing or settling the assets with outstanding obligations to the following third parties:

(a) a person related to the transactions of derivatives trading or securities trading of the *client*, in which case the clearing and settlement shall be made to the *clearing house*;

(b) a person under over-the-counter derivatives trading or securities trading undertaken through or in the name of the *intermediary* for the benefit of the *clients*, in which case the clearing and settlement of the assets shall be made to the said person.

(3) returning the remaining *client's assets* to the *client* or transferring them to another *intermediary's* account, as the case may be, according to the *client's* expressed intention. In case of failure to return or transfer, the derivative position shall be closed and the remaining assets (if any) shall be returned to the *client*.

In proceeding with the actions under the first paragraph, if the SEC Office fails to contact the *client* or the *client* fails to retrieve the assets, the SEC Office shall proceed in accordance with the guidelines jointly issued with the Legal Execution Department as prescribed under Clause 6.

**Clause 9** In allocating *clients' assets* to return to the clients, the SEC Office shall give the first priority to the *clients* who have no interest related to the *intermediary* under receivership by court order.

After the segregation and management of assets as prescribed under Clause 8, if the remaining *clients' assets* are insufficient for allocating to the *clients* in full, the SEC Office shall distribute the allocation proportionately according to the *client asset accounts* prepared by the *intermediary*.

**Clause 10** In case of doubt whether or not the assets segregated and managed by the SEC Office are *clients' assets*, the SEC Office shall settle such assets with the official receiver who shall manage the assets possessed by the *intermediary* under receivership by court order in accordance with the *Bankruptcy Law*.

**Clause 11** The SEC Office shall complete the segregation and management of the *clients' assets* within sixty days as from the date when the *intermediary* becomes under receivership by court order. Upon completion of proceedings as prescribed in this Notification, the SEC Office shall notify the Legal Execution Department in writing regarding the proceedings and expenses (if any) for the purpose of managing the assets of the intermediary under receivership in accordance with the *Bankruptcy Law*, and for the payment of expenses to the SEC Office in accordance with Section 130 of the *Bankruptcy Act B.E.2483 (1940)* as deemed appropriate in due course.

Notified this 18<sup>th</sup> day of October 2013.

-signature-  
(Mr. Achporn Charuchinda)  
Chairman  
Securities and Exchange Commission