

**TRANSLATED VERSION**

codified up to No.3 as of January 31, 2014

*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. KorNor. 11/2552**

**Re: Rules, Conditions, and Procedures for Borrowing in the name of Mutual Funds and Creating Encumbrance on Assets of Mutual Funds**

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By virtue of Section 14 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 126(5) of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 3) 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 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission hereby issues the following regulations:

**Clause 1** The following Notifications shall be repealed:

(1) *Notification of the Securities and Exchange Commission No. KorNor. 30/2547 Re: Rules, Conditions and Procedures for Establishment and Management of Funds dated 10 June 2004;*

(2) *Notification of the Securities and Exchange Commission No. KorNor. 14/2548 Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 2) dated 21 January 2005;*

(3) *Notification of the Securities and Exchange Commission No. KorNor. 54/2548 Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 3) dated 28 October 2005;*

(4) *Notification of the Securities and Exchange Commission No. KorNor. 1/2550 Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 4) dated 24 April 2007;*

(5) *Notification of the Securities and Exchange Commission No. KorNor. 9/2551 Re: Rules, Conditions and Procedures for Establishment and Management of Funds (No. 5) dated 16 July 2008.*

**Clause 2** In this Notification:

(1) “**mutual fund management company**” means a securities company licensed to undertake securities business in the category of mutual fund management;

(2) “**open-end fund**” means a mutual fund in the category of redeemable investment unit;

(3) “**repurchase agreement**” means a sale of securities or debt instruments with an agreement to repurchase such securities or debt instruments on the date specified in the agreement;

(4) “**property fund**” means a property mutual fund established by a **mutual fund management company** with the purpose of using proceeds from the sale of investment units to invest in real estate or leasehold interest and seek benefits from such property.

**Clause 3** In case a *mutual fund management company* is necessary to temporarily manage the liquidity of an *open-end fund*, the *mutual fund management company* may borrow money or enter into a *repurchase agreement* only when:

- (1) the counterparty is an institution;
- (2) the reimbursement term is short;
- (3) the borrowing or the transaction ratio shall be made appropriately for the purpose of temporary liquidity management; and
- (4) the *repurchase agreement* shall be in the standard format as recognized by the SEC Office.

In this regard, the conditions under the first paragraph shall be complied with the detail of rule, condition, and procedure in the Notification as stipulated by the SEC Office.

**Clause 4** In managing a *property fund*, a *mutual fund management company* may borrow money, whether with or without depositing collateral, only when it is clearly stated in the mutual fund scheme and prospectus. In addition, a *mutual fund management company* shall comply with the following rules:

- (1) the borrowing shall be made specifically for the following purposes:
  - (a) to renovate the real estate which is owned or leased by the mutual fund to be in a good condition and ready for seeking economic benefits;
  - (b) to expand or additional construct buildings on existing land which is owned or leased by the mutual fund in order to seek economic benefits for the mutual fund;
  - (c) to make additional investment in real estate or leasehold interest;
- (2) the borrowing shall be made by taking into account the best interest of unitholders. In case the borrowing is made for renovation of leased real estate under sub clause (1)(a), or for expansion or construction of additional buildings on existing leased land under sub clause (1)(b), the *mutual fund management company* shall take into account the remaining lease term as specified in the lease agreement;
- (3) the borrowed amount shall not exceed 10% of the net asset value of the *property fund*. In case the borrowed amount later exceeds such percentage without making additional borrowing, the *mutual fund management company* may remain such ratio but shall not make any additional borrowing until the borrowed amount becomes lower than 10% of the net asset value of the mutual fund;
- (4) in case of borrowing for making additional investment in real estate or leasehold interest under sub clause (1)(c), the *mutual fund management company* shall comply with the following additional rules:
  - (a) the *mutual fund management company* has specified the borrowing in the mutual fund scheme and prospectus before January 1, 2014 unless the *mutual fund management company* has specified such borrowing in an application submitted, before January 1, 2014 for obtaining an approval to establish and manage the mutual fund scheme or an approval for increasing registered capital and latterly having obtained the approval from the SEC Office;

(b) the *mutual fund management company* shall make a borrowing agreement as well as withdraw and invest all of the borrowed money in the real estate or leasehold interest within June 30, 2014 unless, in case total amount of investment composes of borrowed money and fundraising by newly issued units, the period for investment shall be any of the following periods, whichever is longer:

1. within June 30, 2014;
2. within 6 months from the date obtained an approval from the SEC Office for increasing registered capital or obtained an approval for establishing or managing mutual fund, as the case may be.

**Clause 5** A *mutual fund management company* shall create encumbrances on a mutual fund's assets by short selling of securities only by complying with the Notification of the Capital Market Supervisory Board which allows the *mutual fund management company* to enter into a transaction of securities short sale for the benefits of the mutual fund.

**Clause 6** In addition to the rules under Clause 3, Clause 4, and Clause 5, the SEC Office, with the approval of the Securities and Exchange Commission has power to prescribe any particulars relating to borrowing or creating encumbrances in the name of the mutual fund for the purpose of borrowing or creating encumbrances prudently and in accordance with the fund's investment policy, objective, and the nature of investors, without inappropriately causing risk to the mutual fund's status.

**Clause 7** All Notifications of the Office of the Securities and Exchange Commission, orders and circular letters issued under or prescribing guidelines for compliance with the *Notification of the Securities and Exchange Commission No. KorNor. 33/2546 Re: Rules, Conditions, and Procedures for Exemption on Borrowing of Money or Creating of Encumbrance of Mutual Funds dated 27 October 2003* which are in effect prior to June 1, 2004 shall remain in full force to the extent that they are neither inconsistent with nor contrary to the provisions of this Notification until Notifications, orders and circular letters issued under or prescribing guidelines for compliance with this Notification come into force.

**Clause 8** All Notifications of the Office of the Securities and Exchange Commission, orders and circular letters issued under or prescribing guidelines for compliance with the Notification of the Securities and Exchange Commission repealed under Clause 1 of this Notification which are in effect prior to the effective date of this Notification shall remain in full force to the extent that they are neither inconsistent with nor contrary to the provisions of this Notification until notifications, orders and circular letters issued under or prescribing guidelines for compliance with this Notification come into force.

**Clause 9** Any reference made in any other Notifications to the Notification of the Securities and Exchange Commission repealed under Clause 1 of this Notification shall mean reference to this Notification.

**Clause 10** This Notification shall come into force as from 16 August 2009.

Notified this 20<sup>th</sup> day of July 2009.

-Signature-  
(Vijit Supinit)  
Chairman  
Securities and Exchange Commission