

TRANSLATED VERSION

As of June 5, 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 Office of the Securities and Exchange Commission

No. SorThor. 13/2557

**Re: Rules in Detail relating to Maintenance of Ongoing
Capital Adequacy and Provisions in Case of
Intermediary Having Failed to Maintain
Such Capital**

By virtue of the first paragraph of sub Section (2) of Section 141 of the *Securities and Exchange Act B.E. 2535 (1992)* by having obtained an approval from the Capital Market Supervisory Board, the first paragraph of Section 109 of the *Securities and Exchange Act B.E. 2535 (1992)*, Section 19 and Section 50 of the *Derivatives Act B.E. 2546 (2003)*, Clause 5 and Clause 6 of the *Notification of the Securities and Exchange Commission No. KorThor. 4/2557 Re: Ongoing Capital Adequacy of Some specific Intermediaries dated 5 June 2014*, and Clause 1(3) of the *Notification of the Capital Market Supervisory Board No. TorThor. 59/2552 Re: Rules and Periods for Submitting Reports of Securities Company dated 3 August 2009*, the SEC Office hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 July 2014.

Clause 2 In this Notification:

“*intermediary*” means a securities company and a derivatives intermediary having duty to maintain ongoing capital adequacy in accordance with the *Notification concerning Maintenance of Ongoing Capital*.

“*Notification concerning Maintenance of Ongoing Capital*” means the *Notification of the Securities and Exchange Commission concerning Maintenance of Ongoing Capital Adequacy of Some Specific Intermediaries*.

“*Thai Bond Market Association*” means the Thai Bond Market Association which is licensed by and registered with the SEC Office.

“*financial institution*” means:

- (1) a commercial bank under the law on financial institution business;¹
- (2) a financial institution which is established under a specific law and treated as financial institution under the law on loan interest of financial institutions;²
- (3) Islamic Bank of Thailand.

“*mutual fund*” means:

- (1) mutual fund which is established and managed under the law on securities and exchange;³
- (2) foreign collective investment scheme pursuant to the *Notification of the Securities and Exchange Commission concerning Rules on Units of Foreign Collective Investment Scheme Exempted from the Provisions of Public Offering for Sale of Securities*.

Chapter 1

Assets Calculated as Ongoing Capital Adequacy

Division 1

Liquid Assets

Clause 3 Liquid assets allowed to be calculated for maintaining ongoing capital are the following non-obligated assets:

- (1) cash;
- (2) bank deposits with or certificates of deposit issued by *financial institution* redeemable without any restriction on time limit;
- (3) debt instruments of Thai public agency as follows:
 - (a) treasury bill;
 - (b) government bond;
 - (c) bond issued by the Bank of Thailand;

¹ law on financial institution business means *The Financial Institution Business Act B.E. 2551 (2007)*.

² law on loan interest of financial institution means *The Interest on Loan of Financial Institutions Act B.E. 2523 (1980)*.

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

(d) bond, bill of exchange or promissory note issued, ordered, accepted, having aval granted or guaranteed by the Ministry of Finance or the Financial Institution Development Fund.

In case the remaining term of the debt instruments under the first paragraph is longer than 10 years, an average trading of such debt instruments shall be every 2 weeks and an average turnover rate during the past 3 months shall not be less than 6.25% of the outstanding amount according to the most recent list of the debt instruments announced by the ***Thai Bond Market Association***;

(4) foreign debt instruments having types and characteristics similar to the debt instruments of the Thai public agency under sub clause (3), which are issued, ordered, accepted, granted aval or guaranteed by foreign governments or supranational organizations;

(5) debt instruments in the categories of bill of exchange, promissory note, or bond, excluding structured bond and bond with obligation of holders, which are issued, ordered, accepted, granted aval or guaranteed by state-owned enterprises or private sectors.

In case the remaining term of the debt instruments under the first paragraph is longer than 3 months, an average trading of such debt instruments shall be every 2 weeks and an average turnover rate during the past 3 months shall not be less than 6.25% of the outstanding amount according to the most recent list of the debt instruments announced by the ***Thai Bond Market Association***;

(6) shares which are listed on the Stock Exchange of Thailand and a constituent in SET100 Index;

(7) investment units of money market ***mutual funds***;

(8) investment units of ***mutual funds*** which have a redemption period not longer than 90 days and have investment policies to invest in any of the following assets not less than 80% of the net asset value of the ***mutual funds***;

(a) one or many of the liquid assets under sub clause (1) to (7).

In this regard, in case of investment in the liquid assets under sub clause (2) (4) and (5), such liquid assets shall also have credit rating in accordance with the rules as prescribed in Clause 6 as well;

(b) investment units under sub clause (a).

In case the redemption period under sub clause (8) of the first paragraph exceeds 60 days, only half of the investment units value shall be calculated.

Clause 4 The investment in or holding of the liquid assets under Clause 3 shall not [i] have the purpose of short-term resell, or [ii] make benefit from short-term price movement or realizing short-term arbitrage profits .

Clause 5 The liquid assets under Clause 3(3), (4) and (5) shall also have the following characteristics:

- (1) being debt instruments registered with the *Thai Bond Market Association*;
- (2) paying returns in fixed or floating interest rate;
- (3) in case debt instruments are accepted, granted aval, endorsed or guaranteed, they shall be [i] general acceptance, [ii] full aval, [iii] endorsement with recourse and without annulment or limitation provision on the liability of the endorser, or [iv] guarantee of the principal and interest in full unconditionally, as the case may be.

Clause 6 The credit rating of liquid assets under clause 3(2), (4) and (5) shall be the rating of the issue of debt instruments. For those assets unrated, the following credit ratings could be considered instead for making a decision to invest in such asset:

- (1) credit rating of the issuer or the *financial institution* which is cash depository, and in case such issuer or *financial institution* is a bank established under a specific law, it also includes support rating as well;
- (2) credit rating of the acceptor, the aval grantor, the endorser or the guarantor of the debt instruments.

The credit ratings under the first paragraph shall be in the level of an investment grade and rated by the credit rating agencies approved by the SEC Office.

Division 2
Insurance policy

Clause 7 Insurance policy eligible for calculating the maintainance of ongoing capital shall be in compliance with the following rules:

(1) it shall be professional indemnity insurance which covers damage arising from undertaking business of an *intermediary* or the personnel acting on behalf of such *intermediary*;

(2) the *intermediary* can use the insurance policy [under sub clause (1)] only if it is required to maintain ongoing capital according to the value which is a result of the calculation from income of related business. In this regard, the amount of insurance coverage can be calculated only the exceeding part or the value resulted from the calculation of expenses as to related business;

(3) the only half of the insured amount can be calculated for maintaining ongoing capital, except in case the insurance policy covers damage as from the first day of business operation, the full insured amount can be used for calculation.

Chapter 2
Calculation and Report for Maintenance of Ongoing Capital

Clause 8 An *intermediary* shall calculate the value of ongoing capital, in order to monitor compliance with the *Notification concerning Maintenance of Ongoing Capital*, twice a year on the last business day of June and December.

Clause 9 An *intermediary* shall calculate the value of the liquid assets or the insured amount eligible for maintaining ongoing capital on the last business day of each quarter, except in case there is a ground that may cause the change of value of such liquid assets or insurance policy, the *intermediary* shall re-calculate the value of the liquid assets or the insured amount thereof in accordance with the rules and within the period as follows:

(1) the value of the liquid assets or the insured amount shall be calculated on the business day when a material circumstance has occurred and may impact on the value thereof;

(2) the value of the liquid assets or the insured amount shall be calculated on the business day when such assets or policy has been disposed, distributed, transferred or redeemed;

(3) the calculation of the value of liquid assets shall be done at the end of every business day in case the shares [under clause 3(6)] are part of or as liquid assets;

(4) the calculation of the value of liquid assets shall be done at the end of every business day when the net asset value (NAV) of investment units is disclosed in case the investment units of mutual fund, investing in shares irrespective of direct or indirect investment, are part of or as liquid assets.

Clause 10 An *intermediary* shall submit the report of the maintenance of ongoing capital to the SEC Office by using both Form Tor.Por. 4, Form Tor.Por. 5 or Form Tor.Por. 6 as the case may be, and description of report, attached to this Notification, in accordance with the rules and within the periods as follows:

(1) for the maintenance of the ongoing capital as from January to June of each year, the report shall be submitted within the 7th day of July of that year;

(2) for the maintenance of the ongoing capital as from July to December of each year, the report shall be submitted within the 7th day of January of the following year.

Clause 11 An *intermediary* shall prepare and keep the documents relating to the maintenance of ongoing capital at the office of the *intermediary* which allows retrievability for viewing or inspection by the SEC Office upon request.

Chapter 3
Provisions in Case of Intermediary Having
Failed to Maintain Ongoing Capital

Clause 12 In this Chapter:

“*investment units*” means investment units of *mutual fund*, trust certificate of a trust having characteristics similar to *mutual fund*, or other securities specified by the Securities and Exchange Commission as securities having characteristics similar to investment units.

Clause 13 An *intermediary* who fails to maintain ongoing capital in accordance with the *Notification concerning Maintenance of Ongoing Capital* shall:

(1) notify in writing concerning the failure thereof and the cause of such failure to the SEC Office within 2 business days as from the day when the *intermediary* is aware or should be aware of the failure;

(2) submit the correction plan to the SEC Office within 10 days as from the day when the *intermediary* is aware or should be aware of such failure, unless the ongoing capital is amended in accordance with the *Notification concerning Maintenance of Ongoing Capital* for at least 5 business days consecutively before the period for submission of the correction plan will expire;

(3) proceed according to the correction plan submitted to the SEC Office under sub clause (2) in order to regain the maintenance of ongoing capital in accordance with the *Notification concerning Maintenance of Ongoing Capital* within 30 days as from the day of failure to maintain ongoing capital, unless a waiver is rendered by the SEC Office on account of necessary and appropriate cause;

(4) notify in writing concerning the result of proceeding [under sub clause (3)] to the SEC Office within 2 business days as from the day when the *intermediary* regains the maintenance of ongoing capital according to the correction plan as submitted to the SEC Office under sub clause (2).

Clause 14 During the period when an *intermediary* is unable to maintain ongoing capital in accordance with the *Notification concerning Maintenance of Ongoing Capital* or during the process of complying with Clause 13(3) until the *intermediary* would be able to maintain ongoing capital in accordance with such Notification, the intermediary shall not:

- (1) provide services to new clients;
- (2) extend the period for providing services to the existing clients in case the *intermediary* is an investment advisor or a derivatives advisor;
- (3) engage in any other transaction that may increase risk to the financial status, the operation or the performance under the agreement with clients, as prescribed by the SEC Office.

Clause 15 In case an *intermediary* fails to regain the maintenance of ongoing capital within the periods under Clause 13(3) or has value of eligible assets [the liquid assets and the insured amount] as zero for more than 5 business days consecutively, the *intermediary* shall proceed as follows:

(1) suspend the operation of business relating to ongoing capital requirement until [i] the adequacy of ongoing capital is maintained under the *Notification concerning Maintenance of Ongoing Capital* and [ii] obtaining an approval from the SEC Office;

(2) in case of a securities company in the category of brokerage, dealing or underwriting limited to *investment units* which holds client assets in custody, it shall proceed as follows:

(a) provide the name of each client to be registered as the unitholder:

(b) transfer the trading account of clients, as notified by them, to either one of the following securities company to provide services instead:

1. the securities company in the category of mutual fund management which establishes and manages such *mutual fund*;

2. the securities company in the category of brokerage, dealing or underwriting which provides services of *investment units* trading.

(c) comply with sub clause (a) and (b) within 5 business days as from the day when the maintenance of ongoing capital was unable to regain within the periods as specified in Clause 13(3), or as from the day when the ongoing capital has amount at zero for more than 5 business days consecutively, unless the SEC Office has rendered

a waiver on account of necessary and appropriate cause. In this regard, the *intermediary* shall be responsible for any expense incurred from the aforesaid proceeding.

(3) notify in writing to clients without delay for the business suspension under sub clause (1) or the proceeding under sub clause (2);

(4) perform or omit to perform any other act as prescribed by the SEC Office so that the *intermediary* would be able to regain maintenance of ongoing capital in accordance with the *Notification concerning Maintenance of Ongoing Capital*.

Notified this 5th day of June 2014.

- Signature -
(Vorapol Socratyanurak)
Secretary-General
Office of the Securities and Exchange Commission

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