

## 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 Guidelines

No. Nor Por. 1/2558

### Re: Guidelines for Determining Policies, Measures and Operating Systems concerning Acts That May Cause Conflicts of Interest with Clients

---

Pursuant to the *Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556 Re: Standard Conduct of Business, Management Arrangement, Operating Systems, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries* dated 6 September 2013 (*Notification No. Tor Thor. 35/2556*), and the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 14/2558 Re: Rules in Detail on the Protection and Management of Conflicts of Interest* dated 7 April 2015 (*Notification No. Sor Thor. 14/2558*), intermediaries shall provide policies, measures and operating systems to prevent and manage conflicts of interest, and shall supervise, monitor and inspect compliance with such policies, measures and operating systems, as well as review the adequacy of such matters on a regular basis.

For the interest of compliance with the above regulations by intermediaries, the SEC Office, by virtue of Clause 5 (3) in conjunction with Clause 17, Clause 18 of the *Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556 Re: Standard Conduct of Business, Management Arrangement, Operating Systems, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries* dated 6 September 2013, hereby prescribes the following guidelines:

**Clause 1** The guidelines concern the following matters:

(1) preparation of policies, measures and operating systems to prevent and manage conflicts of interest;

(2) supervision, monitoring and inspection of compliance with the policies, measures and operating systems under (1);

(3) review of adequacy of the particulars under (1).

In the case where an intermediary has fully complied with the guidelines under Paragraph 1, the SEC Office shall consider that the intermediary has complied with the *Notification No. Tor Thor. 35/2556* in the part related to the prevention and management of conflicts of interest, and the *Notification No. Sor Thor. 14/2558*. In this regard, if the intermediary proceeds inconsistently with the guidelines, the intermediary shall have the obligation to prove that such proceeding remains in accordance with the principles and provisions of the *Notification No. Tor Thor. 35/2556* in the part related the prevention and management of conflicts of interest, and the *Notification No. Sor Thor. 14/2558*.

**Clause 2** The guidelines under Paragraph 1 of Clause 1 contain details as prescribed in the Appendix attached herein. Such details concern the following matters:

(1) Division 1: Segregation of Work Units and Personnel with a Conflict of Interest or an Access to Inside Information through Duty Performance;

(2) Division 2: Internal Control Measures, Supervision and Inspection to Prevent Inside Information from Becoming Known between Work Units and Personnel;

(3) Division 3: Measures to Prevent and Manage Acts That May Create a Conflict of Interest;

3.1 receipt of benefits from business operation (soft / hard dollar);

3.2 execution of transactions for clients with connected persons:

3.2.1. use of reasonable prices for transactions between funds under management of the same management company (cross trade);

3.2.2. use of services of a broker which is a connected person of the management company.

(4) Division 4: Employees' Securities Trading

4.1 providing a list of securities to be monitored, inspected and restricted (WL: Watch List and RL: Restricted List);

4.2 monitoring employees' securities trading.

Notified this 7<sup>th</sup> day of April 2015.

- Signature -

(Mr. Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

**Division 1: Segregation of Work Units and Personnel with a Conflict of Interest or an Access to Inside Information through Duty Performance**

The intermediary has an effective and adequate management approach to prevent leakage of information between work units and personnel who have the opportunity to access inside information, including information related to securities issuers, trading information and investment plans of clients, by taking at least the following actions:

1.1 Segregation of work units and personnel (Chinese wall)

(1) segregate the work units and personnel which have the opportunity to access inside information from other units by virtue of work operation, especially the units which have the opportunity to take advantage of inside information. This includes units responsible for services such as investment banking, loans, investment advisory service, investment analysis, and units responsible for investing for clients, such as securities or derivatives trading, and fund investment management. These must be clearly separated from other units, especially asset management of intermediaries and securities trading.

In the case where the intermediary undertakes many types of business or is part of a group of businesses with multiple types of business operation, the intermediary shall provide a Chinese wall to prevent leakage of information between business types which may cause unfairness to clients or cause clients to lose a benefit that should have been received or not to receive the best interest.

In this regard, the intermediary must take measures to prevent over-the-wall cases such as an across-unit temporary transfer whereby the transferred employee shall be deemed an employee of the destination unit and shall comply with the Chinese wall measures thereof throughout the transfer period and until the inside information which may have been known from work operation has been disclosed to the public.

(2) provide space or areas for use by specific units in accordance with (1) which are independent of other units, with a system to control and monitor the access to such areas according to the importance of each agency. Access in cases such as investment banking, investment analysis, securities or derivatives trading for clients, fund investment management must require an identification card and password. There must be an access control system as well as rules prohibiting disclosure and lending of passwords between employees.

1.2. Management and restriction of the use of inside information

(1) establish guidelines for units that may receive inside information in order to limit the use of inside information to only that which is necessary for the operation ("need-to-know" basis) by specifying that the information divulged during performance of duties to contact, provide services or manage investment for clients is confidential. The employees and related units must keep such information secure and undisclosed to any unrelated person, and must not use the information for their own interest or that of other persons;

(2) designate the persons who are allowed to access inside information ("access person") as well as control and monitor communication including the use of inside information by the access persons more closely than others by requiring such access persons to strictly follow the rules and regulations of the management company.

Examples of access persons are fund managers, dealers, securities analysts, IT administrators who have access to inside information which is undisclosed publicly, compliance officers, internal auditors, certified auditors, and advisors. Such access persons

may also be in the positions of directors, executives or personnel, or a person who has been borrowed from other departments or companies within the business group or a person outsourced by the management company.

### 1.3 Inside information safekeeping including in electronic systems

Having an effective system to prevent other units and personnel who are not related from knowing or accessing information under each other's responsibilities:

(1) In case of documents, provide storage in a safe location, such as stored in a cabinet or room under lock and key and with a person who strictly controls and records requests for the use of such documents. And in cases of making copies or printing the documents from the computer system, there must be control to prevent information leakage through such actions, such as destroying copies of inside information documents that are no longer in use;

(2) In case of electronic data, provide a computer password to prevent access by persons unrelated to the matter, a log file of access, retrieval and revision, and storage of the log file in accordance with the relevant Notifications of the Office of the Securities and Exchange Commission.

## **Division 2: Internal Control Measures, Supervision and Inspection to Prevent Inside Information from Becoming Known between Work Units and Personnel**

### 2.1 Supervision and inspection

(1) review and evaluate the effectiveness of the Chinese wall system periodically and provide reports of detected deficiencies to the Board of Directors of the company<sup>1</sup> for the consideration of appropriate revision in due course;

(2) define the policies, code of conduct and practices for employees in writing, in particular the prevention of the exploitation of inside information such as forbidding employees (including those who function as nominees) to use inside information in ways that exploit investors and the duty of the employees to ensure that there are no violations of such policies, code of conduct and practices, as well as defining appropriate penalties in the event of a breach.

The term "employee" herein includes the directors, executives, and employees as well as the persons who are temporarily hired by the intermediary;

(3) regularly review and improve such policies, code of conduct and practices, by at least once a year, to accommodate any risk of leakage of information, which may be increasing. In case inappropriate practices are detected continuously or frequently, additional control measures must be provided;

(4) update the list of access persons every time there is a job relocation or change of position;

(5) provide communication with employees for the benefit of acknowledgment and strict adherence by having all employees read and sign an acknowledgment of the policies, code of conduct and practices from the first day of operation. Afterwards, let employees sign an acknowledgment every time a change is made to such policies, code of conduct and practices;

(6) provide new employees with training to clearly understand the policies, code of conduct and practices on the prevention of the exploitation of inside information of funds by presenting past situations and guidelines to be followed or prohibited actions. And raise the awareness and ethics of all employees to see the importance of helping to prevent the use of inside information for undue benefit;

(7) provide channels where employees can report suspicious activities in violation of the law or such policies, code of conduct and practices without having to reveal their own names. Such matters must be investigated without delay;

(8) conduct random inspection in order to ensure that employees strictly comply with the policies, code of conduct and practices by investigating adequately and sufficiently in accordance with the risk of non-compliance such as:

(8.1) conduct random inspection of security systems and access to operating rooms or work areas and the computers of access persons as well as inside information stored in computer systems or in file cabinets or rooms in order to verify whether it was accessed by an unauthorized person;

(8.2) conduct random inspection of information about the access persons' contacts and conversations to verify whether there are suspicious conversations or messages being communicated in order to disclose inside information to persons unauthorized to know such information;

(8.3) conduct random inspection of the log file of the use of information by access persons during periods when inside information may be used such as performing

---

<sup>1</sup> The Board may assign a sub-committee to handle a specific issue separately.

analysis or transactions for clients, in order to find information leakage or abnormalities which may result in the loss of clients' benefits.

(8.4) conduct random inspection of clients' trading which are too frequent (churning.) The intermediary must set a threshold / flag signaling a suspicion of churning. When trading is over or approaching the threshold / flag, the reasonableness of trading with such characteristics must be investigated, which may be beneficial to the employees themselves or connected persons and hinder the best interest of the clients.

(9) prepare procedures for investigation in order to detect the fact in case of suspicious circumstances where inside information may have been used. If the use of inside information is indeed discovered, an immediate report must be made to the SEC Office as well as collecting the evidence in such matter for audit by the SEC Office.

2.2. Communication control of access persons of the management company responsible for considering or making investment decisions for clients, securities dealing for clients and securities or derivatives analysis and investment consulting for clients.

(1) set up communication control of such access persons by designating channels where communication with others both inside and outside is permitted, such as by landline, Email, Messaging, and E-fax;

(2) set up a system which can record and store contact and communication information through the channel under (1) throughout the duration of the contact and communication, by storing such information in accordance with the regulations specified in the relevant Notifications of the Office of the Securities and Exchange Commission, with surveillance to prevent the alteration or deletion of such archives;

(3) prohibit access persons from personally controlling the recording of the communication in Subclause (2);

(4) supervise in order to prohibit the use of any other communication devices, apart from the permitted ones, of which the intermediary cannot record the contact and communication information such as personal mobile telephone. Moreover, require the access persons to provide all their landline and mobile telephone numbers (both registered and unregistered) which have been activated as well as every time a number is added or deactivated, in order to keep checking as necessary. In addition, supervise and prohibit access to programs or other communication channels through computers of which the intermediary cannot provide a system for recording contact and communication information such as Facebook, Twitter, Weblog, Podcasting, Instant messaging and Social network.

### **Division 3: Measures to Prevent and Manage Acts That May Create a Conflict of Interest**

#### 3.1 Receiving benefits from business operation (soft / hard dollar):

(1) benefit may be received only in case it is beneficial to the client. The intermediary must clearly state the terms and conditions for receiving benefit in order to let the client know and consider whether the benefit received is for the benefit of the client and by how much;

(2) The terms and conditions for receiving benefits under Subclause (1) are stated in the contract set up with the client. In the case of mutual funds, they are to be specified in the mutual fund scheme. In addition, it must be stated that the intermediary cannot receive benefit for the intermediary's own benefit because it is prohibited by law and is not to be done by profession. An exception is made for the benefit the intermediary or the intermediary's employees customarily receive during certain festivals according to the practice of the intermediary within the company. Clients can refer to this practice in (specify);

(3) Receiving benefits from the business operation for the intermediary's own benefit is strictly prohibited. The intent of such strict prohibition is to allow intermediaries to use their professional expertise to select products or services for their clients by considering the clients' benefits with impartiality and without any benefit gained by the intermediary in the selection process. However, since benefits with certain characteristics are normal during festivities as traditional custom, without any characteristics which are relevant to the decisions about products or services that will be offered to clients, such as gifts prepared by the giver for general distribution on behalf of the company (corporate gifts): calendars, diaries, note books, note paper or seminars to educate the general public without cost of attendance. Such benefits may be given to the intermediary directly or to the intermediary's employees. In such a case, the SEC Office shall not consider it to be a violation of the prohibition from receiving benefit for the intermediary's own benefit if the intermediary has demonstrated clarity in receiving benefits with such characteristics without hidden benefits in violation of the aforementioned intent. In addition, the SEC Office has determined guidelines about receiving benefits which match the festivities' traditional custom by clearly identifying the items or values which is permitted to receive. There should be a limit to its value keeping it not too high, which may prevent it from breaching the above intention, by communicating such guidelines with employees within the company as well as documented as evidence for the SEC Office to review.

#### 3.2 Transactions with connected persons for clients

3.2.1 use of reasonable prices for transactions between *funds* under the management of the same management company (cross-trade)

(1) use of reasonable prices in the following manners:

(1.1) are commonly accepted reference prices;

(1.2) are prices not previously known (ex-ante / forward prices);

(1.3) with equal treatment of all funds and

(1.4) is in accordance with the principle of consistency. The

management companies should consistently determine the procedures in selecting such reference prices, and change the criteria in choosing such reference prices only when there is evidence to believe that the price based on existing criteria is not a reasonable price.

(2) reasonable prices include the following:

(2.1) Market price can be chosen between the price at the end of the day or at the time of the transaction as follows:

- price at the end of the day means:

(A) the price as quoted on the exchange which can be selected between 1) closing price or 2) average price calculated by the exchange;

(B) the prices published on the ThaiBMA, including the prices offered by the Market Yield Web Page (executed price and quoted price) and Model Yield Web Page;

(C) If there are no prices under (A) and (B), use the average price of the maximum offer to purchase and the minimum bid.

- price at the time of transaction<sup>2</sup> means the price that occurs in the exchange on the day of the transaction which can be chosen from 1) the price of the most recent real trading or 2) the average price of the most recent real trading calculated by the exchange.

If there is no price under 1) and 2), use 3) the average price of the price of the maximum offer to purchase and the minimum bid at the time of the transaction.

(2.2) in the absence of a market price under Subclause (2.1), the price that occurs on the day of the transaction can be selected as follows:

1) the price of the offer to purchase or offer for sale quoted by the dealer; or

2) the average price of the offer to purchase and offer for sale of the dealer.

The management company must seek the approval of the mutual fund supervisor or the consent of the client or the Board of Directors of the provident fund (as the case may be), in writing and prior to entering into transaction as well.

3.2.2 Use of services by a brokerage company which is a connected person of the management company.

In case the management company will use the services of a brokerage company which is a connected person for the fund or in the evaluation of the benefit from the person providing the service for the fund, the management company shall require relevant employees to consider the capabilities of the brokerage company or such service provider in the following areas, comparing them to other brokerage companies or service providers before deciding to use the services of a brokerage company which is a connected person or any other person providing services for the benefit of the fund:

(1) efficiency of a system for the delivery of trading orders, confirmation of the results of trading orders as well as clearing and settlement which will yield the best benefit for the fund (best dealing and execution);

(2) efficiency of a system for receiving and transmitting information and news which are essential and relevant information for investment, and are officially published on the organized secondary market;

(3) quality of research or investment analysis of such companies;

(4) effectiveness of system in maintaining confidentiality about the fund's investment.

---

<sup>2</sup> Management company shall have a work system or documents ready for the SEC Office's inspection, for example, time stamp.



#### **Division 4: Employees' Securities Trading**

4.1 Providing a list of securities to be monitored and transactions to be restricted (WL: Watch List and RL: Restricted List);

(1) the intermediary shall provide a list of securities of which the intermediary is in the process of preparing the analysis report, providing investment banking services, such as acting as underwriter, financial advisor for preparation of tender offer, shareholders' advisor to provide an opinion concerning tender offer, financial advisor in the issuing and offering of securities or while the client still has a pending order or in the process of trading for clients. This is for the purpose of monitoring the investment for the intermediary's and employees' assets where there may be conflicts of interest with clients.

(2) the intermediary shall assign independent units such as compliance units to oversee the compilation of the WL/RL with rules on the listing and delisting of securities or derivatives from such lists including rules for monitoring transactions related to securities or derivatives on the WL and the restriction of transactions related to securities or derivatives on the RL, as well as publishing the list of securities on WL/RL lists in compliance with the following guidelines:

##### (2.1) Watch List (WL)

(A) the intermediary lists on the WL when the intermediary receives or has the opportunity to receive inside information about the issuer. Examples include when an intermediary has entered into an agreement or contract for employment to provide financial services or is in the process of dealing for such agreement or contract with the issuer (eg. acting as financial advisor, underwriter, securities selling agent, etc.), while the relationship between the intermediary and the issuer has not yet been disclosed to the public or in the event that the issuer is the target business of which the intermediary's client plans to acquire securities in order to take over. Or, the management company is in the process of negotiating the amount of special compensation received from a debt issuer who has defaulted on debt to the fund, for which the matter remains confidential;

(B) the intermediary delists the business listing from WL when the financial services related to the securities in such list are publicly disclosed and such securities has already been transferred to the RL or when it is deemed unnecessary to track the transaction of such securities;

(C) the intermediary monitors transactions to prohibit employees who are responsible or know the information about the financial services related to the securities on the WL from trading such securities for their own account. The names of securities listed on the WL should not be disclosed to employees and unrelated persons which will inform them of the financial services related to such publicly undisclosed securities. However, the intermediary must monitor the trading of securities on this list, whether by employees or companies as well as audit other business operations such as preparing reports of securities research and giving advice to clients, in order to prevent the use of inside information for the benefit of securities trading;

(D) the intermediary limits the dissemination of the names of securities on the WL only to persons who are directly related.

##### (2.2) Restricted List (RL)

(A) the intermediary lists securities in the RL when the issuer's securities have the following characteristics:

1. the issuer's securities were on the WL, but later the financial services related to such securities were disclosed to the public;
2. the issuer's securities do not have the characteristics

described in 1, but the securities company receives or has the opportunity to receive inside information about such issuer. And if the securities company deals in such securities, it may be considered inappropriate;

3. in the case where the management company is in the process of preparing the dividend payments to unit holders of a mutual fund listed on exchange, which is still confidential;

4. in the case where the portfolio of the management company and portfolios of fund clients include investment in other fund's investment units under the same management. And subsequently, the securities in which such fund invested a significant amount defaults on obligations, and such information has not been generally disclosed.

(B) the intermediary has withdrawn the name of the securities from the RL when the relationship between the securities company and the issuer ceases or when the securities company has no opportunity to use inside information for trading purposes;

(C) the intermediary restricts transactions related to the securities on the RL, at least by the following, unless it is deemed permissible on a case-by-case basis:

1. prohibit trading in such securities, except in case the intermediary, as securities dealer, trades with clients according to the clients' wishes and not by the solicitation of the intermediary;

2. prohibit employees from trading the securities for their own accounts;

3. prohibit persuading clients to trade in such securities;

4. prohibit recommending or changing recommendations in research reports about such securities.

In this regard, the intermediary must monitor to ensure compliance with the above restrictions. And in case such transactions are deemed permissible, care must also be taken to prevent the use of inside information for the benefit of trading securities.

(D) dissemination of the list of securities on the RL should be limited to only within the company.

Incidentally, the details of the WL/RL should contain at least the name of the securities, date of listing, the reason for listing and the names of employees who are dealing with providing financial services related to such securities, and responsible for reporting on the listing or delisting of securities from such lists.

#### 4.2 Monitoring of employees' securities trading

The intermediary must take measures to ensure that employees comply with rules on employees' securities trading (This includes policies, practices and procedures within the company, governmental regulations and orders and rules of the association and the SRO.), taking into account the risk that employees may not comply with the rules. In case of high risk, the intermediary must enhance measures to keep track of whether or not employees behave in a noncompliant manner. And if noncompliance with the rules is found, there must be penalties and additional control measures prescribed in order to prevent future occurrences.