

*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. 38/2553**

**Re: Rules for Custody of Customer Assets and  
Essential Details of Custody Agreement**

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By virtue of Clause 2 and Clause 4 of the *Notification of the Capital Market Supervisory Board No. TorThor. 84/2552 Re: Custody of Assets of Clients by Licensed Derivatives Brokers dated 3 August 2009*, the Office of the Securities and Exchange Commission hereby issues the following regulations:

**Clause 1** In this Notification:

(1) “*derivatives broker*” means a person licensed to undertake the derivatives business in the category of derivatives brokerage.

(2) “*derivatives exchange*” means the *derivatives exchange* which has been licensed from the SEC Commission and shall include a juristic person incorporated under a foreign law who can provide the service of *derivatives exchange* under the law of that country and is under the supervision of the official authority or the derivatives regulatory authority;

(3) “*derivatives clearing house*” means the *derivatives clearing house* which has been licensed by the SEC Commission;

(4) “*central securities depository*” means the *central securities depository* under the law concerning securities and exchange.

**Clause 2** This Notification shall apply to the custody of clients’ assets which the *derivatives broker* has received or held as a result of providing the derivatives brokerage to the clients in the *derivatives exchange*.

**Chapter 1**

**Operating System and Control of Operating System**

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**Division 1**

**Operating System in Custody of Clients’ Assets**

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**Clause 3** The *derivatives broker* shall put in place a work unit responsible for the custody of clients’ assets which is independent from the work unit responsible for derivatives trading or giving advices on derivatives, an adequate internal control system in the custody of clients’ assets, and shall undertake the following acts at a minimum:

(1) to segregate the person who is in charge of preparing the particulars of clients’ assets from the person who is in charge of the custody of assets; and

(2) to require that any disposal and transfer of clients' assets and amendment to the particular of clients' assets shall be approved by the relevant authorized persons who shall not be the person who prepares the particular of clients' assets or the person who is in charge of the custody of clients' assets.

**Clause 4** The *derivatives broker* shall prescribe the regulation or operating procedure in the custody of clients' assets in consistence with the provisions of the *Law concerning Derivatives*, the *Notification of the Capital Market Supervisory Board concerning Custody of Assets of Clients by Licensed Derivatives Brokers* and the provisions of this Notification. The regulation or operating procedure shall be made in writing and the management procedure and the persons who have the authority and duties in the custody of clients' assets shall be indicated.

The regulation or operating procedure under the first paragraph shall include the following matters:

- (1) receiving or delivering the clients' assets;
- (2) recording the particulars of clients' assets;
- (3) managing information relating to the clients' assets

## **Division 2**

### **Procedure in the Custody of Clients' Assets**

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**Clause 5** In the custody of clients' assets, the *derivatives broker* shall undertake the following acts:

(1) inform the clients of the procedure in depositing or withdrawing clients' assets with or from the *derivatives broker*, as well as the procedure of the *derivatives broker* in the custody of clients' assets to ensure that the clients understand and sign for acceptance of the same;

In the case of any material change to the information under the first paragraph, the *derivatives broker shall* inform the client of such change without delay.

(2) disclose to the clients that in the case that the *derivatives broker* encounters any financial difficulty, the funds of the clients in the custody of the *derivatives broker* shall not be protected under the law concerning the deposit protection agency.

## **Division 3**

### **Material Provisions of Custodian Agreements**

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**Clause 6** The contract or agreement for the custody of clients' assets shall contain one of the following particulars and material provisions:

- (1) authority, duties, and responsibilities of the *derivatives broker*;
- (2) rates and method of payments of the fee in the custody of clients' assets (if any);
- (3) provision relating to interests or benefits arising out of the clients' assets.

**Division 4**  
**Maintenance of Information and Documentation**

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**Clause 7** The *derivatives broker* shall maintain the information and documentation relevant to the custody of clients' assets for a period of not less than five years, and for the first two years such information and documentation shall be maintained in such a manner that it shall be readily available for immediate request or inspection by the SEC Office.

**Chapter 2**  
**Preparation of Accounts of Clients' Assets**

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**Clause 8** The *derivatives broker* shall prepare the accounts of every item of assets of each client and segregate those accounts from the accounts of the assets of the *derivatives broker*.

The accounts of clients' assets under the first paragraph shall contain the following particulars at a minimum:

- (1) the dates of receipt or disposal of assets;
- (2) the amounts and types of assets;
- (3) the reasons for the receipt of or the disposal of assets.

In the case that any assets recorded in an account of clients' assets belongs to a third party placed as security for trading derivatives of that particular client, the *derivatives broker* shall record the name of the third party who is the owner of such assets in that account of clients' assets.

**Clause 9** The *derivatives broker* shall record and update the particulars in the account of clients' assets accurately and completely. In the case of any recording for amending certain particulars, the *derivatives brokers* shall do so by stating the business day on which the cause for such amendment is found, and the reason for amending such particulars shall be recorded for every amendment.

**Clause 10** The *derivatives broker* shall arrange for the inspection and counting of the portion of clients' assets under the custody of the *derivatives broker* at least once a month in order to verify against the particulars in the account of clients' assets prepared by the *derivatives broker*.

With respect to the portion of clients' assets which is not under the custody of the *derivatives broker*, the *derivatives broker* shall put in place a system in which updated information can be retrieved in order to verify the particulars of assets in the report of the third party with whom the clients' assets are deposited against the particulars in the account of clients' assets prepared by the *derivatives broker*.

**Chapter 3**  
**Segregation of Clients' Assets from Assets of Derivatives Brokers**

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**Division 1**  
**Amount of Assets to be Segregated as Clients' Assets**

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**Clause 11** The *derivatives broker* shall segregate the assets under its custody in accordance with the following specified amount as the clients' assets

(1) for the assets in cash: the amount of cash to be segregated by the *derivatives broker* each day shall not be less than the sum of the net cash balance recorded by the *derivatives broker* as the clients' assets of a particular client as at the end of the preceding business day or the end of the current business day. In the case that the *derivatives broker* chooses to use the sum of the net cash balance as at the end of the current business day as the basis for calculation, the *derivatives broker* shall always use the sum of the net cash balance as at the end of the current business day as the basis for calculation. With the exception of the case in which the *derivatives broker* is unable to continue using the sum of the net cash balance as at the end of the current business day as the basis for calculation due to the occurrence of certain circumstances, whereby the *derivatives broker* shall use the sum of the net cash balance as at the end of the preceding business day as the basis for calculation during such period, provided that the *derivatives broker* shall immediately inform the SEC Office of the reason of such necessity.

(2) for the assets of the type of securities: the amount of securities to be segregated by the *derivatives broker* each day shall not be less than the sum of the securities transactions recorded by the *derivatives broker* as the clients' assets of a particular client as at the end of that particular business day.

(3) for other assets: the amount of other assets to be segregated by the *derivatives broker* each day shall not be less than the sum of other assets recorded by the *derivatives broker* as the clients' assets of a particular client as at the end of that particular business day.

**Clause 12** The *derivatives broker* may deduct the following amounts from the assets to be segregated as the clients' assets under Clause 11(1):

(1) the amount paid by a client for debt repayment relating to or due to derivatives purchase transactions which exceeds the amount payable by the client and the *derivatives broker* having refunded such excess amount to the client within five business days from the date of receipt of that amount;

(2) the amount that the *derivatives broker* received for or on behalf of a client due to derivatives purchase transactions of the client and the *derivatives broker* having remitted such amount to the client on the date on which the *derivatives brokers* received such amount;

(3) the amount that the *derivatives broker* received for or on behalf of a client as dividends or interest on the securities or instruments owned by the client and the *derivatives broker* having refunded such amount to the client within five business days from date on which the *derivatives broker* received such amount;

In the case that the client informs its intention for the *derivatives broker* to keep such amounts under (1) – (3) in the interest of entering into future transactions, the *derivatives broker* shall include such amounts in the balance of the business day on which it is informed of the client's intention for the calculation of assets to be segregated as clients' assets under Clause 11(1).

## Division 2 Segregation of Clients' Assets

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**Clause 13** In the case that the *derivatives broker* has undertaken the following acts, it shall be deemed that such acts constitute the segregation of clients' assets under Clause 11:

(1) in the case that the clients' assets is cash:

(a)<sup>2</sup> cash shall be segregated by depositing it with a commercial bank or other banks established under specific law or investing it in securities or instruments in accordance with the criteria prescribed in the *Notification of the Capital Market Supervisory Board concerning Custody of Assets of Clients by Licensed Derivatives Brokers*;

(b) cash shall be segregated by placing it at the *derivatives clearing house* in accordance with the criteria specified by the *derivatives clearing house*;

(c) the *derivatives broker* may keep the cash itself, provided that such cash shall be segregated in such a manner that it shall be specifically identified as the clients' assets without any reasonable doubt;

(2) in the case that the clients' assets are securities:

(a) securities shall be segregated by depositing them with the *central securities depository* or the Bank of Thailand and it must be expressly specified that such deposit of securities is undertaken by the *derivatives broker* in the interest of the client.

(b) securities shall be segregated by placing them with the *derivatives clearing house* in accordance with the criteria specified by the *derivatives clearing house*;

(c) the *derivatives broker* may keep the securities itself, provided that such securities shall be segregated in such a manner that they shall be specifically identified as the clients' assets without any reasonable doubt;

(3) in the case that the clients' assets are other assets, the other assets shall be segregated in such a manner that such other assets shall be specifically identified as the clients' assets without any reasonable doubt.

In the case that the clients' assets under the first paragraph are for the trading of derivatives contracts abroad, the *derivatives broker* must segregate such assets in such a manner that they shall be specifically identified as the clients' assets without any reasonable doubt or it must be expressly specified that such undertakings with respect to such assets are carried out by the *derivatives broker* in the interest of the client.

## Division 3 Security of Clients' Assets

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**Clause 14** In the case that the *derivatives broker* keeps the clients' assets in its own custody, whether in its own facility or in the facility of others, the facility must be secure and safe. In the case that a facility of a third person is used, such third party shall be expressly informed by the *derivatives broker* that the assets deposited are the clients' assets.

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<sup>2</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. SorThor. 38/2553 Re: Rules for Custody of Customer Assets and Essential Details of Custody Agreement (No. 3)* dated 8 December 2016 (effective on 16 January 2017).

## Chapter 4 Report of Custody of Clients' Assets

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**Clause 15**<sup>1</sup> The derivatives broker shall prepare a report of the assets and derivatives positions of its client as of the last business day of each month and deliver such report to each client within the fifth business day of the following month, except the month where no transaction causes a movement or change in the assets or the derivatives positions of the client under custody of such derivatives broker or in cases under Paragraph 2.

In cases where it appears that the client does not have any transaction which causes a movement or change in the assets and derivatives positions of its client for a consecutive period of one year or longer, the derivatives broker shall send a report of the assets and derivatives positions of its client as of the last business day of the month when the one year period expires to the client at least once a year within the fifth business day of the following month, except the case where the client does not have any asset or derivatives positions left under custody of the derivatives broker and where the client's account is suspended from making transactions in compliance with the rules of such derivatives broker.

For the benefit of providing the report of the assets and derivatives positions of its client, payment of interest shall not be deemed as a transaction causing a movement or change in the assets and derivatives positions of its client.

Upon the client's request, the derivatives broker shall prepare and deliver the report of assets and derivatives positions of the client as requested without delay.

**Clause 16** The report of assets and derivatives positions of the client under Clause 15 shall contain the following particulars at a minimum:

- (1) Types of clients' assets
- (2) Balance of value or amount of each type of assets and the outstanding derivatives positions carried forwarded from the report of assets and derivatives positions of the client for the preceding period;
- (3) Transactions which result in any change and the value or amount of assets or derivatives positions of the client that have changed;
- (4) Net balance of each type of assets and the derivatives positions of the clients which have changed;
- (5) Value or net balance of each type of assets and the outstanding derivatives positions.

## Chapter 5 Transitional Provisions

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**Clause 17** All orders and circulars which are issued under, or which prescribe the practice guidelines under, the *Notification of the Securities and Exchange Commission No. SorThor. 3/2549 Re: Rules for Custody of Customer Assets and Essential Details of Custody Agreement dated 8 February 2006* which have been in effect prior to the effective date of this Notification shall remain in full force and effect to the extent that they are not inconsistent with nor contrary to the provisions of this Notification until the orders and circulars which are issued under or prescribe the practice guidelines under this

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<sup>1</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. SorThor. 38/2553 Re: Rules for Custody of Customer Assets and Essential Details of Custody Agreement (No. 2)* dated 12 June 2015 (effective on 16 July 2015).

Notification come into force.

**Clause 18** Any reference made in any other notification to the *Notification of the Securities and Exchange Commission No. SorThor. 3/2549 Re: Rules for Custody of Customer Assets and Essential Details of Custody Agreement dated 8 February 2006* shall mean reference to this Notification.

**Chapter 6**  
**Effective Date of Notification**

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**Clause 19** This Notification shall come into force as from 1 October 2010.

Notified this 15<sup>th</sup> day of September 2010.

(Mr. Thirachai Phuvanatanubala)  
Secretary-General  
Office of the Securities and Exchange Commission