

UNOFFICIAL TRANSLATION

Codified up to No. 6

As of 12 April 2019

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. Sor Thor. 35/2557

**Re: Rules in Detail on Communication with and
Providing Services to Clients of Securities Companies
and Derivatives Intermediaries**

By virtue of Section 98(6) of the *Securities and Exchange Act B.E. 2535 (1992)* and Clause 5(1), in conjunction with Clause 12(3) and (12), Clause 14, Clause 30, Clause 37, Clause 38, Clause 43(3), and Clause 44 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, the Office of the Securities and Exchange Commission hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 January 2015, except the following Clauses:

(1) Clause 12(4), which is related to arrangement of agreement between clients and derivatives advisors on dispute resolution by an arbitrator on the SEC Office's list, shall come into force as from 1 January 2016;

(2) Clause 17, which is related to arrangement of agreement with clients on provision of brokerage services on listed securities, shall come into force as from 1 January 2016;

(3)³ *Repealed.*

(4)³ *Repealed.*

**Chapter 1
General Provisions**

Clause 2 In this Notification:

The term "***Notification on Standard Conduct of Business***" means the *Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556 Re: Standard Conduct of Business, Management Arrangement, Operating Systems and*

³ Repealed by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 3/2560 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.4)* dated 9 February 2017 (effective on 16 February 2017).

³ Repealed by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 3/2560 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.4)* dated 9 February 2017 (effective on 16 February 2017).

Providing Services to Clients of Securities Companies and Derivatives Intermediaries dated 6 September 2013.

Clause 3³ The regulations detailed in this Notification are stipulated for *intermediaries* to proceed in the same direction in compliance with the ***Notification on Standard Conduct of Business*** with respect to communication with and providing services to clients in the following matters:

- (1) operating system for communications and services shall comply with the regulations under Chapter 1/1;
- (2) compilation and assessment of client information shall comply with the regulations under Chapter 2;
- (3) engagement in agreements with clients prior to providing services shall comply with the regulations under Chapter 3;
- (4) provisions of investment analysis and consultation to clients shall comply with the regulations under Chapter 4;
- (5) submission of evidence to confirm clients' transactions shall comply with the regulations under Chapter 5;
- (6) provisions of communications and services related to any capital market product having high risk or complex characteristics shall comply with the regulations under Chapter 6;
- (7) receiving trading orders of capital market products outside the offices of *intermediaries* shall comply with the regulations under Chapter 7;
- (8) capital market product trading service with limited discretion according to clients' pre-determined investment scope shall comply with the regulations under Chapter 7/1.

Clause 4 In the case where there is a necessary and reasonable ground, the SEC Office may grant a waiver for an *intermediary* from complying with any rule under this Notification regarding communication with and providing services to clients on a case-by-case or temporary basis. In this regard, the SEC Office may also impose conditions on the *intermediary* obtaining such waiver.

Clause 5³ For communication with and providing services to clients, an *intermediary* shall provide or offer services suitable to each client carefully, especially with special care to one of the following clients:

- (1) any person who is sixty years old or older;
- (2) any person with limited knowledge on finance or no investment experience; and
- (3) any person with limitations on communication or decision-making or health impairments;

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 3/2560 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.4)* dated 9 February 2017 (effective 16 February 2017).

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 3/2560 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.4)* dated 9 February 2017 (effective on 16 February 2017).

If the clients under Paragraph 1(1) or (3) is financially literate or have made investment, the *intermediary* may provide or offer services suitable for such clients.

Chapter 1/1³

Operating System for Communication with and Providing Services to Clients

Clause 5/1 To communicate with and provide services to clients under Clause 12(3/1) and Clause 25/1 of the *Notification on Standard Conduct of Business*, an *intermediary* shall operate a system for communicating with and providing services to clients pursuant to the details in this Chapter.

Clause 5/2 The provisions in this Chapter shall not be applicable to the following clients:

- (1) institutional investor;
- (2) ultra-high net worth or high net worth investor having status as a juristic person with a statement of intent made in writing that he or she does not wish an *intermediary* to implement methods and procedures complying with the details in this Chapter;
- (3) investor or client who uses services related to capital market products which are over-the-counter derivatives.

Clause 5/3⁴ An *intermediary* shall ensure that the method and procedure for communicating with and providing services to clients have included the following details. In addition, such method and procedure shall be consistent with and suitable for each type of capital market products or services:

- (1) a procedure for preparing communication and providing services that involves the followings:
 - (a) selecting and assigning personnel having knowledge and understanding of each type of capital market products or services to be seller or service provider for clients;
 - (b) providing information regarding capital market products or services for the assigned personnel under (a) to study and acquire the understanding of the details thereof before presenting such products or services to clients;
 - (c) providing an instrument or media for personnel under (a) to clarify characteristics and risks of capital market products or services to clients, as deemed necessary.

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 3/2560 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.4)* dated 9 February 2017 (effective on 16 February 2017).

⁴ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 13/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.5)* dated 12 February 2019 (effective on 16 March 2019).

- (2) a procedure for communication and providing services, namely:
- (a) compiling and assessing information of clients to get to know clients and assess the suitability of their investments or transactions;
 - (b) presenting capital market products or services suitable for clients based on the results of the clients' suitability test and recommended asset allocation;
 - (c) distributing documents for communicating with and providing services to clients corresponding to each type of capital market products or services;
 - (d) providing sufficient information and explanation regarding risks of capital market products or services before clients make an investment decision or use the services, including the information related to any material event that may affect each type of capital market products or services (if any).
- (3) a procedure for verifying clients' authentication suitably and reliably to ensure that the investments or transactions related to capital market products have been executed by the clients or their assigned persons with whom the *intermediary* communicates and provides services;
- (4) a procedure for monitoring and inspecting communication and provision of services, namely:
- (a) monitoring and inspecting in compliance with the process stipulated under (1), (2) and (3) by the *intermediary*;
 - (b) rectifying or taking any action if the communication and provision of services is found to be inconsistent with the stipulated process;
 - (c) storing evidentiary documents indicating the work process under (a) and (b) in a manner easily retrievable.

Clause 5/4 An *intermediary* shall supervise communication and service providing procedures to be in compliance with the provisions stipulated in Clause 5/3.

In the case of repeated sale occurring with the communication and providing services of traditional capital market products, or capital market products traded on the Stock Exchange of Thailand or derivatives exchange, the *intermediary* may reduce details in methods and procedures of the communication and service providing procedures.

To reduce details in methods and procedures for the communication and service providing procedures under Paragraph 2, clients shall be informed of the information and risks of such changes to the capital market products (if any).

Chapter 2

Compilation and Assessment of Client Information

Clause 6 In compiling and assessing client information according to Clause 30 of the *Notification on Standard Conduct of Business*, an *intermediary* shall set out procedures and methods for such compilation and assessment thereof in writing, which shall at least contain details in compliance with the rules under Clause 7 or Clause 8, as the case may be.

Clause 7 In obtaining client information, an *intermediary* shall notify each client that the true, accurate, updated and complete information handed over to the

intermediary as requested would certainly affect provided services or advice to each client.

Clause 8 An *intermediary* shall consider the ability of clients in part of investment, debt repayment and pledging collateral, and confine a position limit for each client. In this regard, if there are other Notifications applicable to some intermediaries, which specifically stipulate a position limit of their clients, the *intermediaries* shall comply with those Notifications as well.

Clause 9 In revising and updating client information within a reasonable period of time under Clause 37 of the *Notification on Standard Conduct of Business*, an *intermediary* shall at least comply with the following rules:

(1) such revision and updating thereof shall be performed within the following periods of time:

(a) the information for the purpose of knowing and categorizing type of client shall be revised and updated within a period of time specified by the Association¹, with an approval of the SEC Office, except that the *intermediary* which is a financial institution shall perform such revision and updating within a period of time stipulated by the *Law on Financial Institution Business*²;

(b) the information for the purpose of assessing clients' suitability for investment in or entering into transactions of capital market products shall be revised and updated at least every two years;

(c) the information for consideration of clients' ability in part of investment, debt repayment and pledging collateral, as well as clients' ability to perform in respect of any servicing agreement shall be revised and updated at least every year.

(2) in cases where a client gives notice of any change in information or a fact appears to an *intermediary* that any material information of clients is inaccurate or inexact, such information shall be revised and updated immediately;

(3) in cases where any client cannot be contacted for the purpose of revising and updating the client's information under subclause (1), such information shall be revised and updated at the first available opportunity;

(4)¹ in cases where a client's trading account is suspended in accordance with the criteria of the *intermediary*, such information shall be revised and updated completely before cancellation of the suspension thereof;

¹ The Association means:

(1) an association relating to a securities business, of which objectives is for promoting and developing securities business, having obtained an approval to establish and having registered [such establishment] with the SEC Office; [or]

(2) an association relating to supervision of derivatives intermediaries, of which objectives is for promoting and supervising derivatives intermediaries, having obtained an approval [for establishment] from the Securities and Exchange Commission.

² The *Law on Financial Institution Business* means the *Financial Institution Business Act B.E. 2551 (2008)*.

¹ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 34/2558 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.2)* dated 12 June 2015 (effective on 16 July 2015).

(5)⁴ In cases where the value, method or procedure for executing transactions, making payments or providing payment services to clients or the ultimate beneficiary changes materially or inappropriately, or there is a reasonable ground to suspect the reliability, accuracy or completeness of the information or documents given by a client, the *intermediary* shall review and update such information without delay by taking the following actions:

- (a) gather and recheck information in addition to the normal course of operation;
- (b) seek information on the source of income used for executing the client's transactions;
- (c) arrange for the client or the ultimate beneficiary to identify oneself to the official of the *intermediary*;
- (d) assess the efficiency of the Know-Your-Client and Due Diligence measures imposed on financial institution clients which open an account or make transactions with the *intermediary* for several persons who use services of such financial institutions or several levels through an omnibus account;
- (e) monitor the clients' execution of transactions closely.

While reviewing and revising the clients' information under Paragraph 1(3) is in process, the *intermediary* shall provide services to the clients with regard to accepting sale orders or clearing the outstanding positions of capital market products in the clients' accounts only, unless the *intermediary* is prohibited from accepting the sale orders or clearing the positions for the clients by other law.

Chapter 3 Engagement in Agreements with Clients prior to Providing Services

Division 1 General Provisions

Clause 10 In cases where an *intermediary* is required to make an agreement with a client before providing services, whether in the form of an application to open a trading account, a contract or any other agreement, in accordance with Clause 44 of the *Notification on Standard Conduct of Business*, the *intermediary* shall arrange such agreement in compliance with the regulations prescribed under this Chapter.

Clause 11 An *intermediary* shall set out procedures and methods for making agreements with clients in writing.

⁴ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 13/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No. 5)* dated 12 February 2019 (effective on 16 March 2019).

Clause 12 The following *intermediaries* shall make an agreement in writing with their clients for dispute resolution by the SEC Office's provided arbitration as requested by any client at the time of making [servicing] contract or agreement:

- (1) derivatives agents;
- (2) derivatives dealers, unless the clients are institutional investors under Section 3 of the *Derivatives Act B.E. 2546 (2003)* and the *Notification of the Securities and Exchange Commission Re: Determination of Additional Determination of Types of Juristic Person Classified as Institutional Investor*;
- (3) derivatives **fund managers**; and
- (4) derivatives advisors.

Division 1/1⁴
**Specific Regulations on Providing Services of
 Derivatives Dealer**

Clause 12/1 An *intermediary* shall shall arrange a procedure for ensuring that a client can access the information and risks related to derivatives trading by preparing documents disclosing at least the following information and risks:

- (1) details of the types, characteristics, structures, products or variables and terms of the derivatives;
- (2) benefits or returns to be received by the client from entering into a derivatives contract, potential earnings or loss, including details of the method for calculating such earnings and loss, such benefits or returns;
- (3) risks arising from entering into derivatives contracts, risk factors and scope of damage in the worst case scenerio of the client;
- (4) channel for taking action upon occurance of dispute between the client and the *intermediary* related to derivatives trading.

The provisions under Paragraph 1 shall not apply to the following clients:

- (1) derivaitves *intermediaries* under Thai or foreign law;
- (2) clients other than (1) who express to the *intermediary* an intention in writing not to receive such information.

Division 2
**Specific Regulations on Providing Services of
 Derivatives Agent**

⁴ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 13/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No. 5)* dated 12 February 2019 (effective on 16 March 2019).

Clause 13 For the purpose of preventing and ceasing unfair acts or improper investments or transactions, an *intermediary* shall include the following conditions in the agreement with a client for providing services as derivatives agent:

(1) the client agrees to notify and provide the following information, and clarify such information in detail [i] to the *intermediary*, the derivatives exchange, the derivatives clearing house or the SEC Office upon request or [ii] according to the rules as specified by the exchange, the clearing house or the SEC Office:

(a) identifiable information manifesting the client and all persons who are the beneficiaries of derivatives contracts, both directly and indirectly;

(b) the purposes of derivatives trading;

(c) [derivatives] trading information of the client and information on trading of the underlying asset by the client;

(d) the information specified under (a), (b) and (c) of direct or indirect individual account of an omnibus account to the extent that the client knows or should have known as a result of holding such omnibus account.

(2) the client gives consent to the *intermediary* for temporarily suspending services as derivatives agent, closing a trading account, limiting positions or trading volume, closing out the positions or performing any other act relating to derivatives trading of the client, as the case may be, in order to comply with the order of the derivatives exchange, the derivatives clearing house or the SEC Office in cases where it appears the following facts:

(a) derivatives trading by the client has or may have an impact on the orderly trading of the derivatives exchange, or has caused or may cause the trading price to deviate from normal market conditions;

(b) the client's derivatives trading is inappropriate or may contravene the *Law on Derivatives*³;

(c) the client fails to notify, provide information or prepare clarification under subclause (1), or provides false or materially misleading information.

Clause 14 In case of providing services to a non-institutional investor, before opening a derivatives trading account or before trading derivatives for the client, an *intermediary* shall arrange a process ensuring that the client is aware of risks relating to trading derivatives by at least preparing risk disclosure statement which contains the minimum of particulars and material contents as contained in the guideline for risk disclosure statement attached to this Notification.

In disclosing risks relating to trading derivatives under Paragraph 1, an *intermediary* shall sign on the risk disclosure statement to certify that the risks relating to trading derivatives have been clarified to the client, and shall arrange the client to sign on such statement to certify that the intermediary has clarified the risks thereof to the client already.

For the purpose of Paragraph 1, the term, "*institutional investor*" means an institutional investor under Section 3 of the *Derivatives Act B.E. 2546 (2003)* and the *Notification of Securities and Exchange Commission Re: Additional Determination of Types of Juristic Persons as Institutional Investor*.

³ The *Law on Derivatives* means the *Derivatives Act B.E. 2546 (2003)*.

Clause 15 In cases where a client wishes to trade derivatives which have specific risks different from those disclosed in the risk disclosure statement under Clause 14 and the *intermediary* has never disclosed such specific risks, the *intermediary* shall inform the client of such specific risks and other material information which may affect the trading of derivatives before trading derivatives for the client.

The provisions in Paragraph 2 of Clause 14 shall apply to disclosure of specific risks under this Clause, *mutatis mutandis*.

Division 3 Specific Regulations on Providing Services as Broker of Listed Securities

Clause 16 In this Division,
“*listed securities*” means securities which have been listed or approved to be traded on the Stock Exchange of Thailand.

Clause 17 For the purpose of preventing or ceasing unfair acts or improper investments or transactions, an *intermediary* shall include the following conditions in the agreement with a client for providing services as broker of *listed securities*:

(1) the client agrees to notify and provide the following information, and clarify such information in detail [i] to the *intermediary*, the Stock Exchange of Thailand, the Securities Depository, the securities registrar, the clearing house or the SEC Office upon request, or [ii] according to the rules as specified by those organizations:

(a) identifiable information manifesting the client and all persons who are the beneficiaries of *listed securities* trading, both directly and indirectly;
(b) the purposes of securities trading;
(c) the [securities] trading information of the client;
(d) the information specified under (a), (b) and (c) of direct or indirect individual account of an omnibus account to the extent that the client knows or should have known as a result of holding such omnibus account.

(2) the client gives consent to the *intermediary* for temporarily suspending services as broker of *listed securities*, closing a trading account, limiting trading volume, or performing any other act relating to *listed securities* trading of the client in order to comply with the order of the Stock Exchange of Thailand, the Securities Depository, the securities registrar, the clearing house or the SEC Office in cases where it appears the following facts:

(a) *listed securities* trading by the client has or may have an impact on the orderly trading of *listed securities*, or has caused or may cause the trading price of the *listed securities* to deviate from normal market conditions;

(b) the client’s *listed securities* trading behavior is inappropriate or may contravene the *Law on Securities and Exchange*⁴;

⁴ The *Law on Securities and Exchange* means the *Securities and Exchange Act B.E. 2535 (1992)*.

(c) the client fails to notify, provide information or prepare clarification under subclause (1), or provides false or materially misleading information.

Division 4
Specific Regulations on
Securities Borrowing and Lending

Clause 18 In cases where an *intermediary* is a representative of a securities borrower or lender, the *intermediary* shall prepare an agreement on the appointment of representative in writing.

Clause 19 An *intermediary* shall arrange a securities borrowing and lending agreement which contains the descriptions and essences as specified under Clause 20 or Clause 21, as the case may be.

Clause 20 A securities borrowing and lending agreement shall be made in writing and shall have at least the following descriptions and essences except the cases under Clause 21:

(1) terms regarding the securities to be lent out and collateral shall include the following details:

(a) the lender has to transfer the securities without preferential right or any encumbrance of others to the borrower, and the borrower has to pledge asset as collateral to the lender in order to guarantee the borrower's performance of obligation. Additionally, the lender has to return the collateral to the borrower when the borrower returns the securities to the lender;

(b) in returning the securities lent and the securities or debt instruments used as collateral, the counterparties has to use fungible asset for such returning;

(c) in cases where a letter of credit or a letter of guarantee issued by a financial institution is used as collateral given to the securities lender, the returning collateral could be canceling or decreasing the limit of the letter of credit or letter of guarantee, as the case may be.

(2) terms regarding [i] change in the amount or value of the securities or [ii] returning collateral, especially when the following circumstances affecting the benefits of the borrower or the lender happened before the expiration of the agreement:

(a) having additional shares by rights offering;

(b) change in par value resulting in an increase or decrease in the number of shares;

(c) redemption of securities;

(d) amalgamation, merger or takeover by making a tender offer;

(e) distribution of share dividends;

(f) conversion of securities; or

(g) any other circumstance.

(3) terms regarding restitution for compensation similar to the aforementioned circumstances to counterparty which have relevant details, for example, dividend and interest which the lender or the borrower would receive if the securities or collateral, as the case may be, were held by them. In this regard, such term shall also

specify the amount of the restitution not less than the incurred benefits unless agreed otherwise by the parties;

(4) terms regarding events of default or acceleration clause which have the details on the rights, obligations and liabilities of the parties and clear performance where there is either a breach of contract or a triggered condition of acceleration clause.

In cases where the lender is an institutional investor under Section 3 of the *Derivatives Act B.E. 2546 (2003)* and the *Notification of the Securities and Exchange Commission concerning Additional Determination of Types of Juristic Person Classified as Institutional Investor*, the lender and the borrower may agree on terms and conditions regarding collaterals different from the above rules.

Clause 21 A securities borrowing and lending agreement for a short selling through a margin account shall comply with the requirements stipulated by the Stock Exchange of Thailand and approved by the SEC Office.

Chapter 4

Provision on Investment Analysis and Consultation

Clause 22 In providing investment analysis or consultation to clients under Clause 38 of the *Notification on Standard Conduct of Business*, an *intermediary*'s personnel who perform such functions and the disclosure of information concerning certain products in the capital market to its clients shall comply with this Chapter.

Clause 23 An *intermediary* shall monitor and supervise its personnel, who are responsible for providing investment analysis, consultation or planning to clients, to perform their duties within the specified scope as approved by the SEC Office under the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel in the Capital Market Business*.

Clause 24 In cases where an *intermediary* being a distribution channel of any government bond or bond guaranteed for principal and interest by the Ministry of Finance and redeemed by holders with specific or minimum price determined as of the issuing date does not provide personnel approved by the SEC Office in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel in the Capital Market Business* to give advice pertaining to the bonds thereof, the *intermediary* shall disclose information to clients in accordance with the following criteria:

(1) disclose information on risks and characteristics of the bonds by one or more of the following methods:

(a) assigning an employee who is capable of giving information to clients on standby at an office of the *intermediary* where clients contact for the distribution thereof;

(b) arranging a communication system which clients can use to communicate with the employees of the *intermediary* who can provide such information to clients;

(c) establishing an investment information center to provide such

information to clients which shall be opened for service at least throughout the working hours of the *intermediary*.

(2) promote or disseminate information on the arrangement under subclause (1) to clients;

(3) visibly reveal the redemption prices;

(4) control and monitor any employee who gives the information thereof to clients for correctness and accuracy.

Clause 24/1⁴ In cases where the securities *intermediary* in the category of investment consultant or derivatives *intermediary* in the category of derivatives advisor gives investment advice to clients by taking into account the appropriateness of the investment, the objective of investment, financial condition or the demand of a specific client (specific advice), such *intermediary* shall assign the job to an investment planner pursuant to the Notification on Rules related to Capital Market Personnel.

Chapter 4/1⁴ **Procedure of Securities Trading**

Clause 24/2 In cases where an *intermediary* provides services of securities brokerage, the *intermediary* shall comply with the following regulations:

(1) examine the account status of a client before trading securities for the client;

(2) specify the method and procedure for trading securities for clients on the first-come-first-served basis and take into consideration the interest of clients before the interest of the *intermediary*;

(3) specify a method and procedure for revising securities trading transactions of the clients clearly in writing and supervise to ensure that no securities trading transactions of clients shall be revised in violation of or inconsistent with the specified methods and procedures.

Chapter 5 **Sending out Transaction Confirmation of Clients**

Clause 25 After a client has made a decision for investment or entering into a transaction, an *intermediary* shall report or inform the result of the performance to

⁴ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 13/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No. 5)* dated 12 February 2019 (effective on 16 March 2019).

⁴ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 13/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No. 5)* dated 12 February 2019 (effective on 16 March 2019).

the client in accordance with Clause 43(3) of the *Notification on Standard Conduct of Business* by sending a confirmation statement with details specified by the Association⁵, with an approval of the SEC Office, through a method agreed upon with the client.

Clause 26 In case of the following transactions, an *intermediary* shall send out a confirmation statement with details under Clause 25 to clients within the periods of time as specified in the following subclauses:

- (1) in case of transaction in respect of trading shares, the confirmation statement shall be sent out within the following business day of the transaction date;
- (2) in case of transaction in respect of trading derivatives, the confirmation statement shall be sent out within the following business day of the transaction date or the date of requiring additional collateral, as the case may be;
- (3) in case of securities borrowing and lending transaction, and pledging or redeeming collateral, the confirmation statement shall be sent out within the following business day of the transaction date.

Clause 27 For the purpose of sending out confirmation statements under Clause 26:

- (1) in case of a transaction executed in a foreign country, a confirmation statement shall be sent to the client within the following business day or the day when the *intermediary* has received insistence on the transaction from the foreign country. In this regard, if such insistence taking place off the working hours of the *intermediary*, it shall be deemed that the *intermediary* has received the insistence on such transaction on the following business day;
- (2) it shall be deemed that the derivatives trading which takes place at the derivatives exchange after the closing of the normal trading hours are transactions taken place on the following business day of the day when the *intermediary* has executed such trading for clients.

Chapter 6³

Communication and Providing Services relating to High-Risk or Complex Capital Market Products

Clause 28 In communicating with and providing services relating to high-risk or complex capital market products to clients, an *intermediary* shall comply with the rules prescribed under this Chapter in addition to the general rules so that the provided services thereof are in compliance with Clause 12(3/1), Clause 25/1, Clause 30 and Clause 38 of the *Notification on Standard Conduct of Business*.

⁵ The Association has the same meaning as the one stipulated in the *Notification of the Capital Market Supervisory Board No. TorThor 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.

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 3/2560 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No.4)* dated 9 February 2017 (effective on 16 February 2017 except Clause 31(2), which shall become effective on 1 July 2017).

Clause 29 This Chapter shall not be applicable to the following clients:

- (1) institutional investor;
- (2) ultra-high net worth or high net worth investor having status as a juristic person that does not wish to comply with methods and procedures prescribed in this Chapter and have made statement of such intention in writing;
- (3) an investor or a person uses services related to capital market products specifically to over-the-counter derivatives.

Clause 30 The following products shall be deemed as high-risk or complex capital market products:

- (1) investment units of a mutual fund offered for sale to institutional or ultra-high net worth investors in accordance with the *Notification of the Capital Market Supervisory Board Re: Rules, Conditions and Procedures for Establishment and Management of Mutual Funds Offered to institutional or ultra-high net worth investors*;
- (2) investment units of a mutual fund having complex investment in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Additional Rules for Mutual Fund Investing in Derivatives and Credit Linked Notes*;
- (3) investment units of a mutual fund whose returns calculation is made in a complicated way (complex return fund);
- (4) investment units of a mutual fund whose *net exposure in commodities* is made through its *investment in commodity-linked derivatives or instruments*;
- (5) investment units of a mutual fund whose investment policy allows investment in non-investment grade or unrated bond more than sixty percent of the net asset value;
- (6) hybrid securities with debt repayment period longer than two hundred and seventy days as from the date on which hybrid securities have been issued. In addition, such hybrid securities shall have one of the following characteristics:
 - (a) hybrid securities issuer having the rights to postpone or exempt debt payment, or the rights to postpone or exempt payment of returns or interests;
 - (b) hybrid securities issuer having the rights to receive debt repayment from the issuer before common shareholders but after debenture holders;
- (7) perpetual bonds;
- (8) non-investment grade or unrated bonds;
- (9) structured debentures according to the *Notification of the Capital Market Supervisory Board concerning Application for and Approval of Offer for Sale of Newly Issued Structured Debentures or other Instruments having Structured Debentures*;
- (10) subordinated instruments eligible for inclusion as capital issued according to the *Notification of the Capital Market Supervisory Board concerning Offer for Sale of Subordinated Instruments Eligible for Inclusion as Additional Capital of Commercial Banks*;
- (11) derivatives according to the *Law on Derivatives*⁶;
- (12) capital market products issued or offered for sale in foreign countries which have similar characteristics or conditions to the capital market products under (1) to (11).

⁶ The *Law on Derivatives* means the *Derivatives Act B.E. 2546 (2003)*.

Clause 31 In communicating with and providing services relating to high-risk or complex capital market products under Clause 30 to clients, an *intermediary* shall comply with the rules prescribed in Chapter 1/1 of this Notification as well as have operating systems for supervising the procedure of such communication and service providing to clients, and the following aspects should be taken into consideration:

(1) select and assign personnel with knowledge and understanding of the high-risk or complex capital market products to communicate with and provide services to clients;

(2) examine the client's knowledge by taking the following factors into consideration before communicating with and providing services to clients;

(a) educational background;

(b) work experience;

(c) investment experience;

(3) provide guideline for providing information or details of high-risk or complex capital market products especially details on damage that may occur if the expected return of an investment is not met;

(4) provide tools or media for providing information on the high-risk or complex capital market products for clients' better understanding;

(5) provide additional warning that high-risk or complex capital market products are different from plain vanilla products;

(6) inform clients about the risk which may arise from service or investment before providing services or making investment, provided that such process shall be made in accordance with the guidelines of the SEC Office;

Clause 32 In case of communicating with and providing services to clients related to such high-risk or complex capital market products under Clause 30(1) or (10), an *intermediary* shall inform a worst case scenario which would affect investment or service using of clients.

Chapter 7

Acceptance of Trading Orders of Capital Market Products Outside Intermediary's Office

Clause 36 In this Chapter:

“*stock exchange*” means the Stock Exchange of Thailand or a stock exchange established under foreign law;

“*derivatives exchange*” means a derivatives exchange under the *Derivatives Act B.E. 2546 (2003)* or a derivatives exchange established under foreign law;

“*investment unit*” means any of the following investment units or instruments:

(1) *investment units* of a mutual fund as specified in the *Notifications on Establishment of Mutual Funds* issued by virtue of Section 117 of the *Securities and Exchange Act B.E. 2535 (1992)*;

(2) units of a foreign collective investment scheme.

Clause 37 To enable operational continuity of *intermediary* in accordance with Clause 12(3) of the *Notification on Standard Conduct of Business* in case of providing service for acceptance of trading orders of capital market products outside the *intermediary*'s offices, an *intermediary* shall comply with the regulations prescribed in this Chapter.

Clause 38 An *intermediary* may provide service for acceptance of trading orders of capital market products outside the *intermediary*'s offices only when the *intermediary* is qualified and ready to provide such service in the same manner as establishing a branch office according to the *Notification of the Capital Market Supervisory Board concerning Rules on Application for Approval and Granting the Establishment of Branch Offices of Intermediaries*.

Clause 39 In providing services for acceptance of trading orders of capital market products outside the *intermediary*'s offices, an *intermediary* shall comply with the following rules:

(1) in case of accepting trading orders of capital market products listed on the *stock exchange* or *derivatives exchange*, the *intermediary* shall comply with the following requirements:

(a) accept trading orders of capital market products only at the *intermediary*'s temporary office;

(b) require clients to send trading orders by themselves through an electronic system arranged by the *intermediary* at the temporary office.

(2) in case of accepting trading orders of capital market products which are not listed on the *stock exchange* or *derivatives exchange*, the *intermediary* shall accept such orders only in any of the following cases:

(a) trading orders of *investment units*;

(b) subscription forms for securities at the places and by the methods specified in the prospectus and the registration statement.

In cases where the capital market products under subclause (1) of Paragraph 1 are *investment units* of an exchange traded fund (ETF) which allows investors to redeem *investment units* directly from the mutual fund management company, the *intermediary* may accept redemption orders outside its offices without complying with subclause (1)(a) and (b) of Paragraph 1.

Clause 40 In cases where an *intermediary* wishes to accept trading orders of capital market products outside its offices other than those specified under Clause 38 and Clause 39, the *intermediary* shall submit an application for approval from the SEC Office on a case-by-case basis. In this regard, the SEC Office shall grant an approval only when the *intermediary* demonstrates that it has readiness of personnel, and has already prepared at least the following operating systems:

(1) a security system to protect clients' information, particularly trading information, which restricts access to such information on a need-to-know basis and prevents unlawful use of such information;

(2) a system for management and storage of data, documents or relevant evidence, for example, efficient records of conversations while providing advice and accepting trading orders which prevents eliminating, adding, editing or changing of the content of the conversations, etc.;

(3) an efficient system for receiving and executing trading orders;

(4) an internal audit and control system for accepting trading orders outside the *intermediary*'s offices, for example, internal audit plan and report.

In granting an approval under Paragraph 1, the SEC Office may impose additional requirements on the *intermediary* on a case-by-case basis.

Clause 41 An *intermediary* shall prepare a report of providing service for acceptance of trading orders outside the *intermediary*'s offices every calendar year, which has the details of venues, dates, time, and scope of services. Such report shall be kept at the *intermediary*'s head office for at least five years as from the last day of the calendar year when the services thereof are provided outside the *intermediary*'s offices in order to be examined by the SEC Office.

Chapter 7/1⁵

Providing Services of Portfolio Advisory or Program Trading

Clause 41/1 Providing services of *portfolio advisory* or *program trading* shall comply with the following regulations:

(1) specifying *portfolio advisory* or *investment strategy of program trading* shall comply with Division 1;

(2) *execution of trading order* of capital market products according to *portfolio advisory* or *investment strategy of program trading* shall comply with Division 2.

Clause 41/2 An *intermediary* shall keep information and evidence on providing services under this Chapter in accordance with the regulations specified in the *Notification of the Office of the Securities and Exchange Commission concerning Rules in Detail related to Providing Services of Securities Companies and Derivatives Intermediaries*, except that the period for keeping information and evidence on providing execution of trading services of capital market products shall be at least five years as of the trading date and during the first two years the safekeeping shall be retrievable immediately upon the SEC Office's request for viewing or examination.

Division 1

Determination of Portfolio Advisory or Investment Strategy of Program Trading

Clause 41/3 In this Division:

"*portfolio advisory*" means securities analysis and investment consultation to design a *portfolio advisory* for a client which shows each type of capital market products and asset allocation;

⁵ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 33/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No. 6)* dated 12 April 2019 (effective on 16 May 2019).

“**investment strategy of program trading**” means specifying investment strategy for an execution of trading orders of capital market products based on an automated program that runs product selection and trading placement without interference throughout the transaction process.

“**intermediary**” means:

- (1) securities business operator in the category of securities brokerage or investment advisory;
- (2) derivatives business operator in the category of derivatives agent or derivatives advisory;

“**supervisor of investment line of work**” means a supervisor of the investment line of work under the *Law on Life Insurance* and the Notifications issued under such law;

The terms, “**fund manager**” and “**investment analyst**” shall have the same meaning as defined in the *Notificaton of the Capital Market Supervisory Board concerning Rules on Personnel in Capital Market Business*, excluding the persons approved to be such personnel by virtue of the qualifications of manager or equivalent position called by any other name with the highest responsibility for the line of work related to investment or the line of work related to capital market, as the case may be.

Clause 41/4 In providing **portfolio advisory** or **investment strategy of program trading** to clients, an **intermediary** shall arrange a mechanism or procedure for determining its efficient investment guidelines [house view] by incorporating the participation of **fund manager**, **investment analyst** or **supervisor of the investment line of work**. In this regard, such guidelines shall be approved by the chief executive responsible for the line of work related to capital market of the **intermediary**.

The investment guidelines of the **intermediary** shall have at least the following details:

- (1) appropriate **portfolio advisory** or **investment strategy of program trading** that takes into account the interest of clients;
- (2) guideline for selecting capital market products;
- (3) portfolio construction pursuant to the following regulations:
 - (a) in case of **portfolio advisory**, there shall be appropriate asset allocation or execution of capital market transactions;
 - (b) in case of **investment strategy of program trading**, there shall be a parameter for an automated program for capital market product selection and trading placement.

In this regard, the **intermediary** may appoint an investment committee comprising the chief executives responsible for the line of work related to analysis of capital market products and the line of work related to risk management to specify the investment guidelines in Paragraph 1.

Clause 41/5 An **intermediary** shall arrange an agreement on providing services for clients in writing, specifying the scope and conditions on providing services including the right of the client to use the services. In case of change of material information, the **intermediary** shall review the agreement for providing services and revise the information thereof immediately.

Clause 41/6 In communicating with and providing services to a client, an **intermediary** shall proceed as follows:

(1) supervise the personnel to provide *portfolio advisory* or *investment strategy of program trading* in consistent with the assessment result of the client's risk profile and investment objective within the scope of the house view investment guidelines. In the case where the client intends to invest in a capital market product inconsistent with the house view, the *intermediary* shall proceed in any manner in order for the client to be aware of the investment risk outside the house view and shall procure evidence showing that the client has acknowledged and accepted such investment risk;

(2) monitor and revise the client's information. In the case where the assessment result of the client's risk profile has changed, the *intermediary* shall revise the *portfolio advisory* or *investment strategy of program trading* and notify the client of such information without delay.

Clause 41/7 An *intermediary* shall disclose the information on performance for client's acknowledgement by comparing the performance with the benchmark in consistent with the *portfolio advisory* or *investment strategy of program trading* and such benchmark shall be the total return index. In the case where the benchmark cannot be identified as the total return index, the hurdle rate shall be disclosed in conjunction with the explanation of the appropriateness of such hurdle rate.

In cases where the *intermediary* provides execution of trading service of capital market products according to *portfolio advisory* or *investment strategy of program trading* under Division 2, the *intermediary* shall disclose the information on performance under Paragraph 1 for the client's acknowledgement within the period of time agreed upon with the client.

Division 2

Execution of Trading Order of Capital Market Products based on Portfolio Advisory or Investment Strategy of Program Trading

Clause 41/8 In this Division:

"*intermediary*" means:

- (1) securities business operator in the category of securities brokerage;
- (2) derivatives business operator in the category of derivatives agent.

Clause 41/9 In providing the execution of trading order of capital market products based on *portfolio advisory* or *investment strategy of program trading*, an *intermediary* shall proceed as follows:

(1) prescribe the method and procedure for clients to select a *portfolio advisory* or *investment strategy of program trading* provided that there shall be evidence on the client's confirmation of the selection of such *portfolio advisory* or *investment strategy of program trading*;

(2) have an efficient mechanism controlling the trading of capital market products that ensures the trading is in accordance with the selected *portfolio advisory* or *investment strategy of program trading* as well as monitoring and rebalancing the client's *portfolio advisory*;

(3) have a written agreement with clients regarding the following matters:

(a) method and procedure for executing trading orders of capital market products including in the case of force majeure or necessary ground for failure to provide services;

(b) conditions for fund switching from one to another mutual fund that has a similar investment policy in case of dissolution of invested mutual fund, closing of acceptance of trading orders of investment units or any other ground in a similar manner (if any).

(4) separate the trading account for the capital market products under this Chapter from other trading accounts of capital market products;

(5) arrange for the client to confirm the details of the trading orders before execution of capital market products pursuant to the following regulations:

(a) in case of execution of trading order of capital market products according to *portfolio advisory*, the client shall confirm the list of capital market products except for fund switching from one to another mutual fund that has a similar investment policy, in case of dissolution of the invested mutual fund, closing of acceptance of trading orders of investment units or any other ground in a similar manner;

(b) in case of execution of trading order of capital market products based on *investment strategy of program trading*, the client shall confirm the parameter of the investment strategy;

(6) notify the client of the following information before executing trading orders of capital market products pursuant to the *portfolio advisory*:

(a) estimate of asset allocation for each capital market product;

(b) appropriate price range for each capital market product.

Chapter 8 Transitional Provision

Clause 42⁴ In cases where a securities *intermediary* in the category of investment advisory or derivatives *intermediary* in the category of derivatives advisor provides advisory under Clause 24/1 and does not provide the service of agent to facilitate the acceptance and execution of trading orders of securities or derivatives under the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for Appointing an Agent to Facilitate the Acceptance and Execution of Trading Orders of Securities or Derivatives* by assigning personnel in the capital market business who are not investment planner to take action lawfully under Clause 5/2 of the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 12/2558 Re: Rules in Detail related to Specific Requirements for Providing Services of Securities Intermediary and Derivatives Intermediary* dated 3 April 2015, as amended by the *Notification of*

⁴ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 13/2562 Re: Rules in Detail on Communication with and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (No. 5)* dated 12 February 2019 (effective on 16 March 2019).

*the Office of the Securities and Exchange Commission No. Sor Thor. 1/2561 Re: Rules in Detail related to Specific Requirements for Providing Services of Securities Intermediary and Derivatives Intermediary (No. 3) dated 4 January 2018, the **intermediary** may continue to assign such personnel in the capital market business to proceed as before, but in any case no later than 1 February 2020.*

Notified this 10th day of November 2014.

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