

(UNOFFICIAL TRANSLATION)

Codified up to No. 4

As of 12 October 2016

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. 14/2558

**Re: Rules in Detail on the Prevention and
Management of Conflicts of Interest**

By virtue of Section 126 (1) of the *Securities and Exchange Act B.E. 2535 (1992)* and Section 139 (5) of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 2) B.E.2542 (1999)*, and Clause 5 (1) in conjunction with Clause 16, Clause 17, Clause 18, Clause 19, Clause 22 (3), Clause 23 and Clause 24 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 SEC Office hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 October 2015.

Clause 2 The following Notifications shall be repealed:

(1) *Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 29/2549 Re: Acts That May Create Conflicts of Interest on Fund Management and Preventive Rules* dated 19 July 2006;

(2) *Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 21/2551 Re: Acts That May Create Conflicts of Interest on Fund Management and Preventive Rules (No. 2)* dated 14 July 2008.

Clause 3 In this Notification:

“**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 Providing Services to Clients of Securities Companies and Derivatives Intermediaries* dated 6 September 2013;

“**fund**” means any mutual fund and private fund;

“**mutual fund for a specific purpose**” means any mutual fund established under the following Notifications:

(1) *Notification of the Capital Market Supervisory Board regarding Rules, Conditions and Procedures for Establishment and Management of Property Funds for Solving Financial Institution Problems*;

(2) *Notification of the Capital Market Supervisory Board regarding Rules, Conditions and Procedures for Establishment and Management of Mutual Funds for Solving Financial Institution Problems;*

(3) *Notification of the Capital Market Supervisory Board regarding Rules, Conditions and Procedures for Establishment and Management of Property and Loan Funds;*

“**inside information**” means any fact that is material to the change of the prices of securities or derivatives and has not been disclosed to the public, and any information related to clients that should not be disclosed and has become known by an intermediary through its operation of securities business or derivatives business;

“**investment**” means an acquisition, disposal or holding of securities or other assets;

“**management company**” means *mutual fund management company* or *private fund management company*;

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

“**private fund management company**” means a securities company licensed to undertake securities business in the category of private fund management;

“**connected person**”³ means the following persons unless otherwise prescribed herein:

(1) a person with a relationship or connection to a *management company* or a *fund* according to the appendix attached herein;

(2) a person identified by a *management company* as a *connected person* in accordance with the nature of conflicts of interest which the *management company* is required to specify under Clause 18 (1) of the *Notification on Standard Conduct of Business*;

(3) a person of whom a *management company* could be aware that if the *management company* enters into a transaction for a *fund* with such person, the benefit arising from such transaction would be for the benefit of the persons under (1) or (2) ultimately;

(4) a person with a close relationship with an intermediary, either by contract, shareholding, control or management, including any *connected person* in relation to such person. In this regard, such person may be liable to cause the intermediary to provide services to clients unfairly.

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 44/2559 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 4)* dated 12 October 2016 (effective as from 16 November 2016).

Clause 4 The rules in detail according to this Notification have been prescribed in order for intermediaries to comply with the *Notification on the Standard Conduct of Business* regarding the prevention and management of conflicts of interest to be in the same manner with respect to the following matters:

- (1) Excessive Transactions for Clients shall be in accordance with Chapter 1;
- (2) Additional Rules on Transactions for Clients with Intermediaries or *Connected Persons* shall be in accordance with Chapter 2;
- (3) Disclosure of Information related to Acts That May Cause a Conflict of Interest shall be in accordance with Chapter 3;
- (4) Supervision of Investment for Employees' Assets shall be in accordance with Chapter 4.

Chapter 1

Excessive Transactions for Clients

Clause 5² In prescribing a policy for prevention and management of conflicts of interest in accordance with Clause 17 of the *Notification on Standard Conduct of Business*, an intermediary shall include therein excessive transactions (churning) in the following manners:

- (1) refrain from soliciting or encouraging clients to enter into transactions more often than necessary;
- (2) refrain from entering into any transaction for a client with any particular counterparty more often than necessary.

Chapter 2

Additional Rules on Transactions for Clients with Intermediaries or Connected Persons

Clause 6 The following provisions shall not apply to transactions for a *mutual fund for a specific purpose* with a *mutual fund management company* or a *connected person*.

² Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 72/2558 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 3)* dated 21 October 2015 (effective as from 15 November 2015).

Clause 7³ Repealed.

Clause 8 In the case where a provident fund with multiple *investment* policies under Section 17 (2) of the *Provident Fund Act B.E. 2530 (1987)* is concerned, any transaction between each *investment* policy shall be deemed a transaction with a *connected person* as well.

Division 1

Preparation for Evidentiary Documentation of Transactions

Clause 9 In the case where an intermediary enters into a transaction for a client with the intermediary itself or a *connected person*, in addition to compliance with the provisions under Clause 22 (1) and (2) of the *Notification on Standard Conduct of Business*, the intermediary shall disclose information on any potential conflict of interest to the client adequately and appropriately\ prior to entering into such transaction.

Clause 10 In the case where an intermediary has a reasonable ground to enter into a transaction for a client with the intermediary itself or a *connected person* in accordance with Clause 22 of the *Notification on Standard Conduct of Business*, the intermediary shall provide evidentiary documentation that demonstrates facts representing such reasonable ground for entering into such transaction and an opinion on the appropriateness for every such transaction, and maintain the evidentiary documentation retrievable for inspection by the SEC Office.

Division 2

Specific Rules for Execution of Transactions for a Fund with a Management Company or a Connected Person

Clause 11³ In entering into a transaction for a *fund* with a *management company* or a *connected person*, the *management company* shall comply with the following rules:

³ Repealed by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 44/2559 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 4)* dated 12 October 2016 (effective as from 16 November 2016).

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Tor. 44/2559 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 4)* dated 12 October 2016 (effective as from 16 November 2016).

(1) the execution of a transaction between the *mutual fund management company* and a mutual fund under its management shall be in accordance with the specific rules prescribed under Clause 12;

(2) the appointment of a custodian who is a *connected person* of a *private fund management company* shall be in accordance with the specific rules prescribed under Clause 13;

(3) the determination of the *investment* policy of a private fund investing in the units of a mutual fund or trust certificate of a trust with similar characteristics as a mutual fund under management of the *management company* which is responsible for the management of such private fund shall be in accordance with the specific rules prescribed under Clause 13/1;

(4) cases other than (1) (2) and (3) shall be in accordance with Clause 15.

Clause 12 Any transaction between a *mutual fund management company* and a mutual fund under its management may be executed only when necessary and appropriate, and upon written approval of the mutual fund supervisor prior to entering into such transaction.

The provision in the first paragraph shall apply to the case where the *management company* is the liquidator of the mutual fund under its management and receives a compensation for performing such role. In this regard, if such compensation is in accordance with the rules under Clause 15 (2), the *management company* may proceed without the approval of the mutual fund supervisor prior to entering into such transaction.

Clause 13³ Appointing a custodian who is a *connected person* of a *private fund management company* is permissible only upon written consent of the client or the provident fund committee before the appointment of such custodian.

In seeking the consent under the first paragraph, the *private fund management company* shall explain the connection with the *connected person* under the first paragraph to the client or the provident fund committee and the reasons for choosing such *connected person* as custodian.

Clause 13/1³ Determining the investment policy of a private fund for *investment* in the units of a mutual fund or a trust certificate similar to the mutual fund for whose management the *management company* of such private fund is responsible is

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Tor. 44/2559 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 4)* dated 12 October 2016 (effective as from 16 November 2016).

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Tor. 44/2559 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 4)* dated 12 October 2016 (effective as from 16 November 2016).

permissible only upon written consent of the client or the provident fund committee before the determination of such investment policy.

In seeking the consent under the first paragraph, the *management company* shall explain to the client or the provident fund committee the following matters:

- (1) the reason for determining such investment policy which shall at least take into account the best interest of the client;
- (2) a conflict of interest that may arise from such investment policy;
- (3) details on the management fee that the *management company* will receive for managing the private fund and mutual fund or trust.

Clause 14³ In seeking the consent under the first paragraph of Clause 13 or the first paragraph of Clause 13/1, the *private fund management company* may seek a general consent from the client or the provident fund committee in advance in the private *fund* management agreement.

Clause 15 A *management company* may enter into a transaction for the *fund* with a *connected person* only upon the approval of the mutual fund supervisor or the consent of the client or the provident fund committee, whichever the case may be, in writing before entering into every such transaction, except in the following cases whereby the *management company* may carry out the transaction immediately:

- (1) a transaction for an acquisition or a disposal of securities or a financial instrument at a fair value in the secondary market where public disclosure is made;
- (2) a transaction for *investment* or service provision whose price, compensation or service fee is based on a referable rate or in accordance with the commercial practice applicable to such transaction.

In the case where a *management company* has determined a policy or a guideline for setting up the price or the rate for entering into a transaction with a *connected person*, and such policy or guideline has received a written approval from the mutual fund supervisor or a written consent of the clients or the provident fund committee, whichever the case may be, the *management company* may bypass the seeking of approval or consent before entering into every such transaction for the *fund* with a *connected person* as specified in the first paragraph.

³ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Tor. 44/2559 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 4)* dated 12 October 2016 (effective as from 16 November 2016).

¹The provisions in the first and second paragraphs shall not apply to a transaction for a property fund with a ***connected person***, which is an additional acquisition or disposal of a property or a leasehold right to a property in accordance with the rules specified in Division 3.

Division 3¹
Specific Rules on Transactions for
Property Funds with Connected Persons

Clause 15/1 In this Division:

“connected person” means the following persons:

(1) a person who has a relationship or association with a ***mutual fund management company*** or ***property fund management company*** according to the appendix attached hereto;

(2) persons in the same group as the person under (1);

“persons in the same group” means the persons who have a relationship in one or more of the following manners:

(1) the spouse and a minor child;

(2) a juristic person and a shareholder or a partner of the juristic person which holds shares or partners in such juristic person, whether directly or indirectly, more than fifty percent of the outstanding shares or the total partnership;

(3) a private fund of the persons under (1) or (2) excluding provident funds.

Clause 15/2 The following provisions shall apply to any transaction for a property fund with a ***connected person*** which fully meets the following requirements:

(1) being an additional acquisition or disposal of a property or leasehold right to a property;

(2) having a value of one hundred million baht or more, or three percent or more of the net asset value of the mutual fund, whichever is lower. In this regard, the calculation of the value of the transaction shall include the total value of the transactions executed over a period of six months between the property fund and the ***connected persons*** having a relationship in the nature of ***persons in the same group***.

¹ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Tor. 69/2558 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 2)* dated 29 September 2015 (effective as from 16 October 2015).

¹ Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Tor. 69/2558 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 2)* dated 29 September 2015 (effective as from 16 October 2015).

Clause 15/3 The *mutual fund management company* may enter into a transaction under Clause 15/2 only upon obtaining an approval of the unitholders for such transaction. In this regard, the approval shall be in accordance with the rules under Clause 15/4.

In the case where the transaction under the first paragraph takes place between a property fund and a *connected person* with the specific characteristics as prescribed in the appendix, in addition to the action under the first paragraph, the *mutual fund management company* shall arrange for the mutual fund supervisor to examine and certify in writing that such transaction is in accordance with normal commercial practice similar to an arm's length transaction.

Clause 15/4 In seeking an approval of the unitholders to enter into a transaction under Clause 15/3, the *mutual fund management company* shall comply with the following rules:

- (1) send a written request for the resolution of the unitholders or call a meeting of the unitholders;
- (2) provide sufficient information for the unitholders' decision making in the written request for a resolution or the written notice of the meeting, whichever the case may be. In case of the execution of a transaction under the second paragraph of Clause 15/3, the examination and certification documents of the mutual fund supervisor shall also be attached to the written request for a resolution or the written notice of the meeting;
- (3) have the quorum of at least twenty-five unitholders or half of the total number of the unitholders holding collectively at least one third of the mutual fund's total units sold, in case of seeking a resolution by calling a meeting of the unitholders.
- (4) comply with the following rules regarding the resolution of the unitholders approving the transaction:
 - (a) in case of sending a written request for the resolution of the unitholders, more than half of the total votes of the unitholders possessing voting rights is required;
 - (b) in case of calling a meeting of the unitholders, at least three fourths of the total votes of the unitholders possessing voting rights and attending the meeting is required.

The votes under (4) of the first paragraph shall exclude the units of the unitholders with an interest in the transaction.

Chapter 3
Disclosure of Information related to
Acts That May Cause a Conflict of Interest

Clause 16 In complying with Clause 23 of the *Notification on Standard Conduct of Business*, which requires sufficient and appropriate disclosure of the result of the transaction with a conflict of interest to clients, an intermediary shall proceed as follows:

- (1) disclose information on transactions for a mutual fund with the *management company* or a *connected person* in accordance with Clause 17;
- (2) disclose information on transactions for a private fund with the *management company* or a *connected person* in accordance with Clause 18.

Clause 17 A *mutual fund management company* shall disclose information on a transaction for a mutual fund with the *management company* or a *connected person* under Clause 16 (1) in compliance with the following rules:

- (1) disclose the information on the execution of such transaction to the SEC Office in the form and procedure specified in the Electronic Information System of the SEC Office;
- (2) disclose the information on such transaction on the website of the *mutual fund management company* on a monthly basis, as well as disclose such information in the report of the mutual fund for an accounting period, and in case of an open-end mutual fund, such information shall also be disclosed in any half-year report.

Disclosure of information under the first paragraph is not required on a transaction with a *connected person* in the following cases:

- (1) an *investment* in deposits or a financial instrument equivalent to deposits made with a *connected person* which is a financial institution being the issuer or the counterparty for the purpose of managing the fund's liquidity;
- (2) a transaction for a mutual fund for institutional investors or a mutual fund for foreign *investors*;
- (3)² an *investment* in treasury bills, government bonds or the Bank of Thailand bonds, at the initial public offering;

² Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 72/2558 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 3)* dated 21 October 2015 (effective as from 15 November 2015).

(4)² an *investment* in treasury bills, government bonds or the Bank of Thailand bonds issued by a *connected person*.

Clause 18 A *private fund management company* shall prepare information on the transaction under Clause 16 (2), and inform the clients or the provident fund committee, as the case may be, in writing according to the specified period in the private fund management agreement.

The information under the first paragraph shall include details on the transaction date, the nature of the transaction, the value of the transaction, the price per unit (if applicable), and the investment limit compared to the *investment* to the private fund's net asset value by indicating whether such transaction has the nature of a transaction with the *private fund management company* or a *connected person* according to the types of transaction specified by the SEC Office in the Electronic Information System of the SEC Office in accordance with Clause 17 (1), *mutatis mutandis*.

The *private fund management company* may specify other written terms for the preparation of information related to such transaction under the first and second paragraphs with the clients or the provident fund committee, as the case may be.

Chapter 4

Supervision of Investment for Employees' Assets

Clause 19 The stipulation of rules or preventive measures against conflicts of interest related to employees' *investment* in capital market products under Clause 18 (2) (d) of the *Notification on Standard Conduct of Business* shall include the following characteristics and shall comply with the Notifications of the Associations approved by the SEC Office:

(1) supervising the trading of capital market products by the employees, both for the *investment* of the employees' accounts or the accounts for which the employees are authorized to make an *investment*;

(2) being able to prevent the employees from using *inside information* they have become aware of as a result of duty performance to seek wrongful gains;

(3) requiring the employees to notify the intermediary in the case where the employees and their *connected persons* have an account for trading capital market products with another intermediary;

² Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 72/2558 Re: Rules in Detail on the Prevention and Management of Conflicts of Interest (No. 3)* dated 21 October 2015 (effective as from 15 November 2015).

(4) having a measure to allow the intermediary to access the information related to the trading of capital market products by the employees and their ***connected persons***.

The employees under the first paragraph shall mean the employees and workers of the intermediary, and shall include directors, managers or persons holding equivalent positions which are named otherwise.

The ***connected persons*** of the employees under the first paragraph shall be in accordance with the Notification of the Associations approved by the SEC Office.

Notified this 7th day of April 2015.

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