

UNOFFICIAL TRANSLATION

Codified up to No. 2

As of 20 February 2017

*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 Capital Market Supervisory Board  
No. Tor Nor. 89/2558  
Re: Rules for Management of Retail Funds,  
Mutual Funds for Accredited Investors,  
Mutual Funds for Institutional Investors and Private Funds**

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By virtue of Section 16/6 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, Section 109 and Section 117 of the *Securities and Exchange Act B.E. 2535 (1992)*, and Paragraph 2 of Section 133 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 2) B.E. 2542 (1999)*, the Capital Market Supervisory Board hereby issues the following regulations:

**Clause 1** In this Notification:

<sup>1</sup>The terms, “***institutional investor***,” “***ultra-high net worth investor***,” and “***high net worth investor***” shall have the same meanings as the definitions of such terms specified in the *Notification of the Securities and Exchange Commission concerning the Determination of Definitions of Institutional Investor, Ultra-High Net Worth Investor and High Net Worth Investor*.

“***fund***” means a mutual fund, private fund or provident fund unless otherwise specified herein;

“***mutual fund***” means any retail fund and mutual fund for accredited investors;

<sup>2</sup>“***retail fund***” means a mutual fund that is intended to offer investment units for sale to investors in general and not restricted to offer investment units for sale specifically to ***institutional investors***, ***ultra-high net worth investors***, ***high net worth investors*** and ***big retail investors***;

<sup>3</sup>“***accredited investor fund***” means a ***mutual fund*** whose investment policy is more flexible than that of a ***retail fund*** and whose investment units are restricted to be offered and held by ***institutional investors***, ***high net worth investors*** and

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 17/2560 Re: Rules for Management of Retail Funds, Mutual Funds for Accredited Investors, Mutual Funds for Institutional Investors and Private Funds (No. 2)* dated 20 February 2017 (effective as from 1 March 2017).

<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 17/2560 Re: Rules for Management of Retail Funds, Mutual Funds for Accredited Investors, Mutual Funds for Institutional Investors and Private Funds (No. 2)* dated 20 February 2017 (effective as from 1 March 2017).

<sup>3</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 17/2560 Re: Rules for Management of Retail Funds, Mutual Funds for Accredited Investors, Mutual Funds for Institutional Investors and Private Funds (No. 2)* dated 20 February 2017 (effective as from 1 March 2017).

**big retail investors;**

**“mutual fund for institutional investor”** means a **mutual fund** whose establishment has been approved by the SEC Office prior to the date on which this Notification comes into force, and whose unit holders are all **institutional investors** in accordance with the definition of “**institutional investor**” in the *Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 22/2552 Re: Establishment of Mutual Fund and Execution of Agreement for Management of Private Fund* dated 28 July 2009;

**“provident fund”** means a provident fund under the law governing provident funds;

**“management company”** means a mutual fund management company or a private fund management company, as the case may be;

**“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;

**“big retail investor”** means a person who will make an initial minimum subscription of 500,000 baht for investment units of a mutual fund;

**“fund manager”** means a **mutual fund** manager or a private fund manager who is responsible for making decisions regarding investments in or disposals of securities or other assets that are not immovable properties, leasehold rights to immovable properties, or the seeking of benefits generated by other means;

**“scheme”** means a **mutual fund** management scheme;

**“association”** means an association related to securities business and established under the approval of, and registration with, the SEC Office with the objective to promote and develop securities businesses in the category of investment management.

**Clause 2** This Notification is intended to prescribe the standard for the management of **retail funds**, **accredited investor funds**, **mutual funds for institutional investors**, and **private funds** to ensure that the **management companies** oversee and manage such **funds** with honesty and integrity by exercising their knowledge, competency and expertise with due care and prudence of the same standard or in the same manner as a professional.

**Clause 3** In managing a **fund**, a **management company** shall appoint a **fund manager** who is appropriately qualified whereby the person to be appointed as the **fund manager** shall be in accordance with the *Notification of the Capital Market Supervisory Board concerning Personnel in the Capital Market Business*.

**Clause 4** A **management company** shall arrange the evaluation of **fund** performance on a regular basis, and disclose the fund performance, as well as other information relating to the condition of such **fund** at each particular period, i.e., details of investment, financial position, expenses, and opinion of the **fund** supervisor to the investors and the general public by a method that sufficiently allows the investors and the general public to be continuously aware of information at every particular period as appropriate to the circumstances.

The evaluation of performance and the calculation of the net asset value of each ***fund*** shall conform to the recognized academic principles or international standards as prescribed by the ***association*** with the approval of the SEC Office.

<sup>4</sup>If it is necessary and expedient, the SEC Office shall have the power to instruct a ***management company*** to act additionally or differently from the operating standard specified by the ***association*** under Paragraph 2.

**Clause 5** A ***mutual fund management company*** shall prepare the financial statements of each ***mutual fund*** in compliance with the Accounting Guideline for Investment Management Business issued by the ***association*** with the approval of the SEC Office. In this regard, such financial statements shall be audited and given an opinion by an auditor who has been approved by the SEC Office in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Granting of Approval for Auditors* except for the following cases:

(1) in case of a ***mutual fund*** that offers all investment units for sale to persons who are not domiciled in Thailand, the ***mutual fund management company*** may prepare the financial statements in compliance with the International Accounting Standards Board or the American Institution of Certified Public Accountants or the Financial Accounting Standards Board. In this regard, such financial statements shall be audited and given an opinion by an auditor who is duly authorized to engage in the auditing business in the countries where the investment units are offered, provided that such matter shall be clearly specified in the ***scheme*** by the ***mutual fund management company***.

(2) in case of the preparation of the financial statements for a ***mutual fund*** that is terminated within fifteen months as from the registration date of the ***mutual fund***, or in case of the preparation of the financial statements for the final accounting period of a ***mutual fund***, the ***mutual fund management company*** may prepare the financial statements for such accounting period upon dissolution date of the ***mutual fund*** on that one occasion for a period of longer than twelve months but no longer than fifteen months.

**Clause 6** In managing a ***fund***, the SEC Office, with the approval of the Capital Market Supervisory Board, shall have the power to prescribe and notify the rules, conditions and procedures for ***management company*** to comply with so as to have rules that are suitable for the specific characteristics of the ***fund*** or clients, e.g., guaranteed fund, foreign investment fund, clients who are a provident fund, the Government Pension Fund and clients with similar investment characteristics, etc.

<sup>5</sup>**Clause 7** A ***private fund management company*** may seek a loan or create any obligation on behalf of a ***private fund*** only in the following manners:

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<sup>4</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 17/2560 Re: Rules for Management of Retail Funds, Mutual Funds for Accredited Investors, Mutual Funds for Institutional Investors and Private Funds (No. 2)* dated 20 February 2017 (effective as from 1 March 2017).

<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 17/2560 Re: Rules for Management of Retail Funds, Mutual Funds for Accredited Investors, Mutual Funds for Institutional Investors and Private Funds (No. 2)* dated 20 February 2017 (effective as from 1 March 2017).

(1) being a loan for trading or exchanging of securities with a securities company or a foreign financial institution which is permitted to provide services of such transactions under the law of the country where such financial institution operates;

(2) being a creation of obligation related to permissible investment of private funds in accordance with the *Notification of the Capital Market Supervisory Board concerning Investment of Funds*.

**Clause 8** To protect investors and fair treatment for their entitlement, and to ensure the uniformity of operating standards, the SEC Office shall have the power to issue rules, conditions, and procedures for the following matters for compliance by **management companies**:

(1) the sale and redemption of investment units of **mutual funds**, the increase or reduction of investment units of **mutual funds** or **provident funds**, the payment for redemption of investment units or the payment of benefits to members of **private funds** that are **provident funds**, including the incorrect calculation of the number or value of investment units;

(2) fees or expenses imposed on investors;

(3) merger or amalgamation of **mutual funds**;

(4) acceptance of debt repayment in the form of securities or other assets by **funds**;

(5) undertaking for open-end **funds** to maintain their liquidity and the procedure in case of failure to maintain liquidity as specified;

(6) any other provisions relating to the management of **funds** in the interest of investor protection or to ensure the uniformity of operating standards.

**Clause 9** Apart from what specifically prescribed earlier, the SEC Office shall have the power to prescribe rules, conditions, and procedures in detail relating to the matters specified in this Notification to provide clarity on compliance and to facilitate the inspection of such compliance by the SEC Office.

**Clause 10** In the case where a **mutual fund management company** has a necessity that causes failure to comply with the rules prescribed in this Notification or any other additional rules issued under this Notification with respect to the management of any **mutual fund** that offers investment units for sale in the country and abroad, the SEC Office shall have the power to grant a waiver of compliance with such rules to the **mutual fund management company** only in the part that has no impact on the investors in Thailand, provided that the **mutual fund management company** is able to demonstrate that the request for such waiver is neither inconsistent with nor contrary to the rules relating to the protection of the investors in the host country where such **mutual fund** offers investment units for sale;

**Clause 11** In the case of an occurrence of any of the following events, the SEC Office shall have the power to revoke the approval for the establishment and management of a **mutual fund**:

(1) the amendment of the **scheme** or **obligation** between unitholders and the **mutual fund management company** has been contradictory to the *Law on Securities and Exchange* as well as the Notifications, Regulations or Orders issued by virtue of such Law;

(2) investment units are offered for sale while the **mutual fund management company** fails to comply or ensure compliance with the rules related to

offering for sale of investment units of **retail funds** as prescribed in the *Notification of the Capital Market Supervisory Board concerning Rules on Delivery or Distribution of Prospectus and Offering for Sale of Investment Units*.

(3) in case of a **mutual fund for institutional investors**, a certain fact appears that any unitholder of the **mutual fund** is any person other than the institutional investors specified in the **scheme**;

(4) a **mutual fund management company** does not comply or fails to comply with the order of the SEC Office under the rules specified in the *Notification of the Capital Market Supervisory Board concerning Rules on Restriction of Investment Unit Holding in Mutual Funds and Duties of Management Companies*.

In the case that the SEC Office issues an order to revoke the approval for the establishment and management of a **mutual fund** under Paragraph 1, the **mutual fund management company** shall proceed to have the **mutual fund** dissolved immediately.

**Clause 12** To ensure that the management of a **mutual fund** is in accordance with the policy or the supervisory rules in effect at the time or to ensure the interest of investor protection, if any of the following facts becomes apparent, the SEC Office shall have the power to order the **mutual fund management company** to take any action or omit any action as the SEC Office deems appropriate within a specified period:

(1) the management of a **mutual fund** has the characteristic or form in accordance with the rules or conditions prescribed in the relevant Notifications, but a certain fact leads to it being considered that the true objective or the substance of the management of such **mutual fund** constitutes an avoidance of the provisions or the rules issued under the *Law on Securities and Exchange*;

(2) the management of the **mutual fund** may contravene a public policy or government policy relating to the capital market;

(3) the management of the **mutual fund** may have an impact upon the creditability of the overall Thai capital market;

(4) the management of the **mutual fund** may cause damage to the investors or may lead to unfair treatment of investors, or the investors may not obtain correct or sufficient information to support their investment decision making;

(5) the operation of the **mutual fund** is inconsistent with the **scheme** which has been approved by the SEC Office.

The power to issue an order under Paragraph 1 shall include orders in the following manners:

(1) clarification or disclosure of additional information;

(2) rectification of the characteristics of a **mutual fund**;

(3) suspension of an offering for sale of additional investment units.

**Clause 13** In the case where no rules under this Notification have been prescribed and notified by the SEC Office, **management companies** shall comply with the *Notification of the Office of the Securities and Exchange Commission No. Sor. Khor/Nor. 23/2552 Re: Rules, Conditions and Procedures for Establishment and Management of Funds* dated 28 July 2009 to the extent that it is not inconsistent with or contrary to the provisions in this Notification.

**Clause 14** In the case where the *Notification of the Capital Market Supervisory Board No. Tor Nor. 27/2552 Re: Rules, Conditions and Procedures for Establishment and Management of Funds* dated 20 July 2009 is referred to in other

Notifications with respect to the management of *retail funds*, *accredited investor funds* and private funds, such reference shall be a reference to this Notification.

**Clause 15** All applicable Notifications of the Office of the Securities and Exchange Commission, orders and circulars issued under, or establishing guidelines for compliance with, the *Notification of the Capital Market Supervisory Board No. Tor Nor. 27/2552 Re: Rules, Conditions and Procedures for Establishment and Management of Funds* dated 20 July 2009 and the *Notification of the Capital Market Supervisory Board No. Tor Nor. 17/2556 Re: Rules, Conditions and Procedures for Establishment, Management and Investment of Mutual Funds Offered for Sale to Accredited Investors* dated 11 March 2013 with respect to the management of *funds* that have been effective prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with or contrary to the provisions in this Notification until other orders and circulars issued under, or establishing guidelines for compliance with, this Notification come into effect.

**Clause 16** This Notification shall come into force as from 16 January 2016.

Notified this 17<sup>th</sup> day of December 2015.

(Mr. Rapee Sucharitakul)  
Secretary-General  
Office of the Securities and Exchange Commission  
Chairman  
Capital Market Supervisory Board