

(UNOFFICIAL TRANSLATION)

*Readers should be aware that only the original Thai text has legal force, and that this English translation is strictly for reference.*

**Notification of the Office of the Securities and Exchange Commission**

**No. Sor Thor. 12/2561**

**Re: Detailed Rules on Maintenance of Capital of Mutual Fund Management Companies, Private Fund Management Companies, Securities Brokers and Dealers and Underwriters limited to Investment Units and Derivatives Fund Management Companies and Provisions in Case of Failure to Maintain Capital**

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By virtue of Paragraph 1 of Section 109 and Paragraph 1(2) of Section 141 of the *Securities and Exchange Act B.E. 2535 (1992)* with the approval of the Capital Market Supervisory Board, Section 19 and Section 50 of the *Derivatives Act B.E. 2546 (2003)* and Clause 7(1) in conjunction with Clause 5(2) and (3) of the *Notification of the Securities and Exchange Commission No. Kor Thor 3/2561 Re: Maintenance of Capital of Mutual Fund Management Companies, Private Fund Management Companies, Securities Brokers and Dealers and Underwriters limited to Investment Units and Derivatives Fund Management Companies* dated 17 January 2018, and Clause 1(3) of the *Notification of the Capital Market Supervisory Board No. Tor Thor 59/2552 Re: Rules and Periods for Submitting Reports of Securities Company*, dated 3 August 2009, the SEC Office hereby issues this Notification with details as follows:

**Clause 1** This Notification shall come into force from 1 April 2018.

**Clause 2** This Notification shall not apply to the intermediaries having duty to maintain capital under the *Notification of the Securities and Exchange Commission concerning Maintenance of Net Capital*.

**Clause 3** In this Notification:

**“intermediary”, “management company”, “mutual fund management company”, “private fund management company” and “shareholders’ equity”** shall have the same definition as stipulated in the *Notification concerning Maintenance of Capital*;

**“Notification concerning Maintenance of Capital”** means the *Notification of the Securities and Exchange Commission Re: Maintenance of Capital of Mutual Fund Management Companies, Private Fund Management Companies, Securities Brokers and Dealers and Underwriters limited to Investment Units and Derivatives Fund Management Companies*;

**“management company managing real estate or infrastructure funds”** means a *management company* engaging in any one or several businesses as follows:

- (1) management of the following mutual funds:
  - (a) property fund;
  - (b) property fund for resolving financial institution problems;
  - (c) mutual fund for resolving financial institution problems;
  - (d) property and loan fund;
  - (e) infrastructure fund;
- (2) acting as trustee or trust manager of real estate or infrastructure investment trust.

“**management company not managing real estate and infrastructure funds**” means any other **management company** that does not manage real estate and infrastructure funds;

“**intermediary for investment unit trading**” means an **intermediary** engaging in the securities business in category of securities brokerage, securities dealing or underwriting of securities being investment units, certificate of trust having characteristics similar to the mutual fund or other securities prescribed by the SEC as securities with investment characteristics similar to investment units, but not including such **intermediary** having any of the following characteristics:

- (1) having investment in, or possessing, securities for its own investment;
- (2) trading securities listed on the Stock Exchange of Thailand for client through a member of the Stock Exchange of Thailand.

“**insurance**” means professional indemnity insurance.

“**provident fund**” means the provident fund under the *Law on Provident Fund*<sup>1</sup>.

**Clause 4** The detailed provisions under this Notification is stipulated for the benefit of corresponding compliance by the **intermediaries** with respect to the maintenance of capital, reporting of maintenance of capital and actions in case of failure to maintain capital by the **intermediary** as follows:

- (1) in case of the **management company not managing real estate and infrastructure fund** and the **intermediary for investment unit trading**, the provisions under Part 1 shall apply;
- (2) in case of the **management company managing real estate or infrastructure funds**, the provisions under Part 2 shall apply.

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<sup>1</sup> The *Law on Provident Fund* means the *Provident Fund Act B.E. 2530 (1987)*.

**Part 1**

**Rules for Management Company Not Managing Real Estate  
and Infrastructure Funds and Intermediary for Investment Unit Trading**

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**Clause 5** The provisions under this Part shall not apply to the *intermediary* approved by the SEC Office to suspend the operation of its business and having been suspending the operation of business as approved.

**Clause 6** In this Part:

“*intermediary*” means the *management company not managing real estate and infrastructure funds* and the *intermediary for investment unit trading*.

“*deposit or deposit equivalents*” means the following assets:

(1) deposit, negotiable certificate of deposit, deposit receipt or other instruments having characteristics similar to deposit;

(2) agreement which is made in accordance with Shariah principles and equivalent to deposit, and under which the party equivalent to the depositor may demand full repayment of the principal from the other party equivalent to the depositor at any time;

(3) savings lottery issued under the law on Bank for Agriculture and Agricultural Cooperatives;<sup>2</sup>

(4) premium savings certificate issued under the *Law on Government Savings Bank*<sup>3</sup>.

“*financial institution*” means:

(1) a commercial bank under the *Law on Financial Institutions*<sup>4</sup>;

(2) a *financial institution* established under the specific and treated as the *financial institution* under the *Law on Loan Interest of Financial Institutions*<sup>5</sup>;

(3) Islamic Bank of Thailand;

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<sup>2</sup> The *Law on Bank for Agriculture and Agricultural Cooperatives* means the *Bank for Agriculture and Agricultural Cooperatives Act B.E. 2509 (1966)*.

<sup>3</sup> The *Law on Government Savings Bank* means the *Government Savings Bank Act B.E. 2489 (1946)*.

<sup>4</sup> The *Law on Financial Institution* means the *Financial Institution Act B.E. 2551 (2008)*.

<sup>5</sup> The *Law on Loan Interest of Financial Institution* means the *Interest Rates on Loans from Financial Institution Act B.E. 2523 (1980)*.

“*obligor*” means a person who has an obligation to repay debt under any financial instrument as the issuer, drawer, acceptor, aval giver, endorser, or guarantor, as the case may be.

“*units of collective investment scheme*” means units of the collective investment scheme having characteristics similar to the mutual fund but not including the collective investment scheme with the objectives of investing directly in assets relating to infrastructure or in real estate or real estates development businesses. However, such scheme shall be established upon approval, registration, or any other similar action from the following home regulators empowered to supervise the collective investment scheme or responsible person of such scheme:

(1) home regulator of ASEAN member executing the Memorandum of Understanding Concerning Cooperation and Exchange of Information on Cross-border Offers of ASEAN Collective Investment Schemes to Non-retail Investors or Memorandum of Understanding on Streamlined Authorisation Framework for Cross-border Public Offers of ASEAN Collective Investment Schemes;

(2) home regulator of Asian member country of Asia Pacific Economic Cooperation (APEC) executing the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport.

“*credit rating*” means the *credit rating* by the credit rating agency accepted by the SEC Office, which estimates the capability to repay debt under instruments or agreement.

**Clause 7** The maintenance of capital of the *intermediary* shall be in accordance with the following rules:

(1) the calculation and report of information on maintenance of capital shall be in accordance with Division 1 of this Part;

(2) actions in case of the failure by the *intermediary* to maintain capital shall be in accordance with Division 2 of this Part.

## **Chapter 1**

### **Calculation and Report of Information on Maintenance of Capital**

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**Clause 8** The provisions in this Chapter shall not apply to the *intermediary* which is subject to regulation of financial condition under any other law.

**Division 1**  
**Liquid Assets and Insurance**  
**Used for Calculation of Capital**

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**Clause 9** The liquid assets which may be used to calculate the liquid capital are the following assets which are free of encumbrances and are not the short-term investment with the intention of resale or seeking benefit from difference or change in prices:

- (1) cash;
- (2) *deposit or deposit equivalents* of a financial institution which may be redeemed without any redemption period limit;
- (3) accrued fees receivable with the remaining term to repayment of not more than ninety days;
- (4) Thai government debt securities as follows:
  - (a) treasury bills;
  - (b) government bonds;
  - (c) Bank of Thailand bills and bonds;
  - (d) bonds, bills of exchange, promisory notes, or debenture under which the Ministry of Finance or the Financial Institution Development Fund is the *obligor*.

In case the remaining time to maturity of the debt instrument under Paragraph 1 (4) Paragraph 1 is more than ten years, such debt instrument shall be traded every two weeks on average and having the average turnover rate for the most recent three months not less than 6.25 percent of the outstanding;

(5) foreign debt instruments having characteristics similar to Thai government debt securities under Paragraph 1(4) under which the foreign government or a supranational organization is the *obligor*;

(6) debt instruments in the categories of bills of exchange, promisory notes, bonds and debentures but not including structured notes, subordinated debt instruments counted as capital of a commercial bank and debenture imposing obligation on debenture holder.

In case the remaining time to maturity of the debt instrument under Paragraph 1(6) is more than three months, such debt instrument shall be traded every two weeks on average and having the average turnover rate for the most recent three months not less than 6.25% of the outstanding.

(7) shares listed on the Stock Exchange of Thailand and included in the SET 100 index calculation;

(8) investment units of the money market fund;

(9) investment units of the mutual fund with the ninety-day redemption period limit and the policy to invest no less than eighty percent of its net asset value in any of the following:

(a) investing in any one or several liquid assets under Paragraph 1 (1) (2) (4) (5) (6) (7) or (8), provided that in case of investment in the liquid assets under Paragraph 1 (2) (5) or (6), such liquid assets shall have the *credit rating* in accordance with the rules provided in Clause 11;

(b) investing in the investment units under Paragraph 1 (9) (a);

(10) *units of collective investment scheme* having characteristics similar to the assets under Paragraph 1(8) or (9).

Where the redemption period of the investment units under Paragraph 1(9) or the units under Paragraph 1(10) having characteristics similar to such investment units is more than sixty days, only fifty percent of the value of such assets may be included in the calculation for maintenance of capital.

**Clause 10** The liquid assets under Paragraph 1(4) (5) and (6) of Clause 9 shall have the following characteristics:

(1) being debt instruments registered with the Thai Bond Market Association;

(2) in case of payment of return on such liquid assets, the return shall be either in the form of fixed interest rate or floating interest rate;

(3) in case of accepted, aval, endorsed, or guaranteed debt instruments, such acceptance shall be unqualified, aval shall be given as to the whole amount, endorsement shall be made with right of recourse and without any waiver or limitation of liability of the endorser, or the guarantee shall be given unconditionally for the whole amount of principal and interest, as the case may be.

**Clause 11** The liquid assets under Paragraph 1(2) (5) and (6) of Clause 9 shall be given the investment-grade *credit rating*.

The *credit rating* under Paragraph 1 shall mean the instrument *credit rating*, unless where such liquid assets do not have the instrument *credit rating*, the *credit rating* of the *obligor* shall be used. In case the *obligor* is the bank established under the specific law, the *credit rating* shall include the support *credit rating* assessed by the *credit rating* agency based on the tendency that such bank shall receive financial aids from the government if necessary.

The consideration and use of the *credit rating* information shall be in accordance with the rules stipulated in the *Notification of of the Office of Securities and Exchange concerning Use of Credit Rating, mutatis mutandis*.

**Clause 12** The *insurance* shall be used for the maintenance of capital in accordance with all of the following rules:

(1) the *insurance* shall at least cover damage to the client or a third party arising from any action taken by the *intermediary* and its executives or personnel in the name of the *intermediary* as a result of the following causes:

(a) negligence of the *intermediary*'s executives with respect to supervision or procurement of sufficient operation system to prevent inappropriate action;

(b) damage to any deed evidencing the ownership of any asset of the fund or client;

(c) inaccurate valuation of assets of the client, only where the *intermediary* is the *management company*.

(2) the most recent financial strength rating of the insurer shall be at the grade and given by the rating agency accepted by the SEC Office, unless where there is no such financial strength rating, the insurer shall be given the issuer rating at the investment grade;

(3) the calculation of value of *insurance* for the maintenance of capital shall be in accordance with the following rules:

(a) where the deductible provision is included in the *insurance*, the *intermediary* may not count the deductible as the amount for the purpose of maintenance of capital;

(b) in case of group *insurance* or *insurance* with multiple beneficiaries, only the proportional amount payable to the *intermediary* shall be calculated as the value of the *insurance* for the purpose of maintenance of capital;

(c) in case the *insurance* does not provide retrospective coverage for the period of 10 years continuing until the day of submission of the capital maintenance report by the *intermediary* to the SEC Office or from the date of commencement of the business, the value of the *insurance* for the purpose of maintenance of capital shall be limited to fifty percent of the amount payable to the *intermediary* after deduction of the deductible (if any).

## **Division 2**

### **Calculation of Capital**

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**Clause 13** The rate or value of the capital to be maintained under the *Notification concerning Maintenance of Capital* shall be calculated by the *intermediary* on the last business day of each month.

**Clause 14** The calculation of the value of liquid capital shall be in accordance with the format of the capital maintenance report and explanation provided on the website of the SEC Office.

**Clause 15** The value of the maintained liquid capital or the *insurance* used for the maintenance of capital shall be calculated by the *intermediary* on the last business day of each month, except in case of any event which may cause any change in the value of the liquid assets or *insurance* used for the maintenance of capital, the value of such liquid assets or *insurance* shall be recalculated by the *intermediary* in accordance with the rules and within the period of time as follows:

(1) in case of significant event which may affect the value of the liquid assets or *insurance*, the value of such liquid assets or *insurance* shall be calculated on the date of such event and where such day falls on the holiday, the value shall be calculated on the following business day;

(2) upon sale, disposal, transfer, or redemption of the liquid assets or *insurance* on any day, the value of such liquid assets or *insurance* shall be calculated on the same day;

(3) where the liquid assets are shares, the value of such assets shall be calculated at the end of each business day;

(4) where the liquid assets are investment units of the mutual fund or *units of collective investment scheme* with either direct or indirect investment in shares, upon disclosure of the value of such investment units or units, the value of such assets shall be calculated on each business day.

### **Division 3**

#### **Report and Keeping of Information on Maintenance of Capital**

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**Clause 16** The *intermediary* shall take actions with respect to information on the maintenance of capital in accordance with the rules and the period of time as follows:

(1) preparing the capital maintenance report in accordance with the format of the capital maintenance report and explanation provided on the website of the SEC Office and submitting such report to the SEC Office within five business days from the last business day of each month;

(2) preparing the operational risk loss report on each calendar year in accordance with the format of the operational risk loss report and explanation provided on the website of the SEC Office within 31 January of the following year.

**Clause 17** The *intermediary* shall cause documents relating to the maintenance of capital of at least the past five years to be kept at its place of business in a manner that they are available for viewing or submission to the SEC Office for inspection upon request.

## Chapter 2

### Actions in Case of Failure by Intermediary to Maintain Capital

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**Clause 18** In this Chapter:

“*initial capital*” means the initial capital in the document relating to maintenance of capital of the *intermediary* annexed to the *Notification concerning Maintenance of Capital*.

“*additional capital for business continuity*” means the additional capital for business continuity in the document relating to maintenance of capital of the *intermediary* annexed to the *Notification concerning Maintenance of Capital*.

“*additional capital for operational risk*” means the additional capital for operational risk in the document relating to maintenance of capital of the *intermediary* annexed to the *Notification concerning Maintenance of Capital*.

**Clause 19** The *intermediary* failing to maintain the *additional capital for operational risk* shall:

(1) submit a notice of failure to maintain capital and the reason of such failure to the SEC Office on the business day following the day it is or ought to be aware of the failure to maintain capital;

(2) submit the corrective plan or guideline to the SEC Office within seven days from the day it is or ought to be aware of the failure to maintain capital, unless prior to expiration of such period the capital is corrected in accordance with the *Notification concerning Maintenance of Capital*, submitting the report of such correction, instead of the corrective plan or guideline, to the SEC Office on the business day following the day the capital is corrected in accordance with the *Notification concerning Maintenance of Capital*.

Where necessary and reasonable, the *intermediary* may request an extension of the period for submission of the corrective plan or guideline to the SEC Office in accordance with the steps and procedure specified in the *Licensing Manual for the Public*;

(3) implement such corrective plan or guideline in order to be able to promptly regain the maintenance of capital in accordance with the *Notification*

*concerning Maintenance of Capital* and complete such implementation within the period of time specified in such plan or guideline which shall be no more than thirty days from the date of failure to maintain capital;

(4) submit a notice of result of such implementation to the SEC Office on the business day following the day it is able to regain the maintenance of capital;

(5) in case of failure by the *intermediary* to regain the maintenance of capital within the period specified under (3), comply with Clause 21, *mutatis mutandis*.

**Clause 20** During the period when the *intermediary* fails to maintain the *additional capital for operational risk*, or in the process of complying with Clause 19 (3) until the *intermediary* is able to regain the maintenance of capital in accordance with the *Notification concerning Maintenance of Capital*, the *intermediary* shall comply with the following rules:

(1) not providing services to new clients;

(2) not investing in additional assets of the *intermediary's own account* except the investment in the following assets:

(a) *deposit or deposit equivalents*;

(b) investment units of the money market fund not investing in assets exposed to foreign risk for the benefit of the liquidity management of the *intermediary* only;

(c) derivatives for hedging purpose.

(3) in case of the *mutual fund management company*, not offering the investment units of the mutual fund which has not undertaken an initial public offering of its investment unit;

(4) in case of the *private fund management company*, not providing the asset management service to any new client, except in case of the management of the *provident fund* to which contributions are paid by the employees and employer at the rates specified in the article of the provident fund;

(5) in case of the *intermediary for investment unit trading*, not offering the mutual fund investment units, certificates of trust having characteristic similar to the mutual fund or other securities prescribed by the SEC as securities with investment similar to the investment units, except for the offering undertaken prior to the date of failure to maintain the *additional capital for operational risk*.

**Clause 21** The *intermediary* failing to maintain the *additional capital for business continuity* or the *initial capital*, or to regain the maintenance of *additional capital for operational risk* within the period specified in the plan or guideline or the extended period under clause 19 (3), or to maintain the financial condition under any other law applicable to such *intermediary* to the extent that causes the suspension of

business shall take the following actions:

(1) suspending the securities and derivatives business in the categories relating to the maintenance of capital until it is able to regain the maintenance of capital under the *Notification concerning Maintenance of Capital* or the maintenance of condition stipulated by any other law applicable to such *intermediary*, as the case may be, and obtaining approval from the SEC Office to resume its business as usual, except in the following cases:

(a) actions as necessary and reasonable to prevent damage to the value of assets under its management or exercise of right for the benefit of the mutual fund, the clients of the private fund or the provident fund as the owner of the invested assets, or for replacement of the matured instrument with the issuer of such instrument;

(b) management of contributions paid by the employees and the employer of the *provident fund* which is the existing client at the time of payment to a member of the *provident fund* whose membership is terminated.

(2) giving a written notice of the failure to maintain the capital or the financial condition, together with the reason and the suspension of business under (1) to the SEC Office and the unitholders, the clients, or the committee of the provident fund, as the case may be, within the business day following the day it is or ought to be aware of the failure to maintain capital;

(3) complying with the following additional rules, as the case may be:

(a) in case of the *mutual fund management company*, complying with Clause 22;

(b) in case of the *private fund management company*, complying with Clause 23;

(c) in case of the *intermediary for investment unit trading* with custody of client assets, complying with Clause 24;

(4) giving, without delay, a written notice of action under (3) to the unitholders, the clients or the committee of the provident fund, as the case may be;

(5) taking, or omitting, any other actions as prescribed by the SEC Office to ensure that the *intermediary* will be able to regain the maintenance of capital in accordance with the *Notification concerning Maintenance of Capital*.

**Clause 22** Where the *mutual fund management company* fails to maintain capital under Clause 21, it shall comply with the following additional rules:

(1) arranging for any other *mutual fund management company* to manage the mutual funds under its management within 30 days from the day it is or ought to be aware of the failure to maintain capital.

With respect to the selection of another *mutual fund management company* under Paragraph 1 (1), the *mutual fund management company* shall take into

account the benefit of the unitholders and obtain approval from the mutual fund supervisor of each mutual fund, and expenses incurred from the replacement of *mutual fund management company*, if any, shall be borne by the existing *mutual fund management company*;

(2) during the replacement of the *mutual fund management company* under (1), the existing *mutual fund management company* may manage the mutual funds under its management only to protect the benefit or exercise any right in order to prevent the mutual fund from any damage;

(3) another *mutual fund management company* shall repurchase the investment units from the unitholders, whose names appear on the unitholder register on the day it assumes the management of the mutual funds and who are desire to resell the investment units, free of the repurchase charge for not less than 30 days from the day it assumes the management of mutual funds, except in case of the interval fund of which the repurchase period does not fall within such 30-day period, the other *mutual fund management company* shall repurchase the investment units free of the repurchase charge during the following repurchase period, provided that the repurchase is limited only to the first repurchase of investment units at order of the unitholders.

**Clause 23** Where the *private fund management company* fails to maintain capital under Clause 21, it shall comply with the following additional rules:

(1) in case of the management of private fund, the existing *private fund management company* shall promptly contact its clients to ask the clients to choose any of the following methods for management of their assets:

(a) changing the registered particular to cause the clients to be named as the owners of their respective assets;

(b) allowing the existing *private fund management company* to arrange for another *private fund management company* to assume the management of the private funds.

Where the existing *private fund management company* is unable to contact the clients, it shall comply with Paragraph 1(1) Paragraph (a).

The existing *private fund management company* shall manage the clients' assets in accordance with the method under Paragraph 1(1) Paragraph 1 or Paragraph 2, as the case may be, within thirty days from the day it is or ought to be aware of the failure to maintain capital under Clause 21;

(2) in case of the management of the *provident fund*, the existing *private fund management company* shall promptly contact the committee of the *provident fund* and arrange for another *private fund management company* to successfully assume the management of the *provident fund* within sixty days from the day it is or ought to be aware of the failure to maintain capital under Clause 21.

Expenses incurred from the action under Paragraph 1, if any, shall be borne by the existing *private fund management company*.

**Clause 24** Where the *intermediary for investment unit trading* with the custody of client assets fails to maintain capital under Clause 21, it shall comply with the following additional rules within five business days from the day it is or ought to be aware of the failure to maintain capital under Clause 21, unless the extension of such period is granted by the SEC Office on account of necessary and reasonable cause, in accordance with the steps and procedures prescribed in the *Licensing Manual for the Public*:

- (1) causing the clients to be named as the securities holder;
- (2) transferring the securities trading account of each client to any of the following intermediary as the service provider in accordance with the desire of the client:
  - (a) any other intermediary for investment unit trading;
  - (b) the mutual fund management company which establishes and manages the mutual fund.

Expenses incurred from the action under Paragraph 1, if any, shall be borne by the existing *intermediary for investment unit trading*.

**Clause 25** The *intermediary* may request for extension of the period under Clause 19 (3), Paragraph 1 of Clause 22(1), Paragraph 1(1), Paragraph 3 or Paragraph 1(2) of Clause 23 in accordance with the steps and procedures prescribed in the *Licensing Manual for the Public* by submitting the application to the SEC Office no less than ten days prior to the expiration of such period. The SEC Office shall consider grant of the extension based on the necessity and appropriateness.

## Part 2

### Rules for Management Company Managing Real Estate or Infrastructure Funds

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**Clause 26** The *management company managing real estate or infrastructure funds* which have the following characteristics shall comply with the rules under Clause 27:

- (1) having management of mutual funds or *provident funds*, with the *shareholders' equity* of twenty million baht or more but less than thirty million baht as at the end of any month;
- (2) having management of private funds not including *provident funds*,

with the *shareholders' equity* of ten million baht or more but less than fifteen million baht as at the end of any month.

The provision under Paragraph 1 shall not apply to the management company subject to the regulation of financial condition under any other law.

**Clause 27** The *management company* having duty under Clause 26 shall comply with the following rules:

(1) reporting the *shareholders' equity* to the SEC Office within the business day following the day it is or ought to be aware that its shareholders' equity is lower than the following amount, as the case may be:

(a) thirty million baht in case of the *management company* having management of mutual funds or provident funds; or

(b) fifteen million baht in case of the *management company* having management of private funds not including provident funds;

(2) preparing the corrective plan to ensure that the *shareholders' equity* is not lower than the amount under Paragraph 1 (1) (a) or (b), as the case may be, and submitting such plan to the SEC Office within fifteen days from the day the *management company* is or ought to be aware that its *shareholders' equity* is lower than such amount, unless prior to the expiration of the specified period, the *management company* is able to increase the shareholders' equity to reach such amount;

(3) implementing the corrective plan submitted to the SEC Office under Paragraph 1 (2) and submitting the report on progress of the implement of such plan and the report on *shareholders' equity* as at the end of the month to the SEC Office within the seven business days of the following month until the *shareholders' equity* of the *management company* becomes not less than the amount under Paragraph 1(1)(a) or (b), as the case may be.

The *management company* shall give a written notice to the SEC Office within the business day following the day it is able to maintain the *shareholders' equity* not less than the amount under Paragraph 1(1)(a) or (b), as the case may be.

**Clause 28** Where the *management company managing real estate or infrastructure funds* fails to maintain capital under the *Notification concerning Maintenance of Capital*, such *management company* shall:

(1) reporting to the SEC Office within the business day following the day it is or ought to be aware of such failure to maintain capital;

(2) complying with the following additional rules as the case may be;

(a) in case of the *mutual fund management company*, complying with Clause 29;

(b) in case of the *private fund management company*, complying with Clause 30;

(3) taking or omitting any other action as prescribed by the SEC Office to ensure that the *management company* will be able to regain the maintenance of capital under the *Notification concerning Maintenance of Capital*.

**Clause 29** Where the *mutual fund management company* fails to maintain capital under Clause 28, it shall comply with the following additional rules:

(1) arranging for any other *mutual fund management company* to manage the mutual funds in accordance with the methods prescribed in Clause 31 within fifteen days from the day the existing *management company* is or ought to be aware of the failure to maintain capital and where necessary and reasonable, the SEC Office may grant extension of such period. The benefit of the unitholders shall be taken into consideration with respect to the selection of another *mutual fund management company*, and expenses incurred from the replacement of *mutual fund management company*, if any, shall be borne by the existing *mutual fund management company*.

Where the existing *mutual fund management company* is not able to take such action within the period specified under Paragraph 1(1), it shall dissolve the mutual fund;

(2) suspending the mutual fund management business until it regains maintenance of capital under the *Notification concerning Maintenance of Capital* and obtains approval of the SEC Office to resume the business as usual, except where necessary and reasonable to prevent the value of assets of the mutual fund under its management from damage, to exercise any right for the benefit of the mutual fund as the owner of the invested assets, or to replace the matured instrument with the issuer of such instrument.

**Clause 30** Where the *private fund management company* fails to maintain capital under Clause 28, it shall comply with the following additional rules:

(1) informing the clients of the failure to maintain capital adequacy within the business day following the day the *private fund management company* is or ought to be aware of such failure to maintain capital;

(2) not executing the private fund management service agreement with new client or allowing the client to increase capital of the private fund or amending agreement with existing client which may affect the capital adequacy, but not including:

(a) management of contributions paid by employees and employer of the *provident fund* being the existing client at the time;

(b) payment to member of the *provident fund* whose membership is terminated;

(3) where the *private fund management company* is informed by any client of the desire to use the private fund management service of another *private fund management company*, such *intermediary* shall arrange for such *private fund management company* to assume the management of the private fund within fifteen days from the day it is informed by the client. Expenses incurred from replacement of the *private fund management company*, if any, shall be borne by the existing *private fund management company*.

**Clause 31** The replacement of *mutual fund management company* under Clause 29 (1) shall be undertaken by the existing *mutual fund management company* by any of the following methods:

- (1) requesting a resolution passed by majority vote of the unitholders representing more than fifty percent of the sold investment units of such mutual fund;
- (2) applying for approval of the SEC Office.

### **Part 3** **Transitional Provision**

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**Clause 32** Where the *management company not managing real estate and infrastructure funds* or the *intermediary for investment unit trading* has taken the professional indemnity *insurance* for the purpose of maintenance of capital prior to the effective date of this Notification, the *management company* may use the coverage amount of such *insurance* as the liquid capital for maintaining the *additional capital for operational risk* under the *Notification concerning Maintenance of Capital* without complying with the rules under Clause 12, provided that upon the lapse of one year from the effective date of this Notification, if the *management company* wishes to continue to use the coverage amount of such *insurance* as the liquid capital, use of such *insurance* shall be in accordanced with the rules under Clause 12.

Notified this 17th day of January 2018.

(Mr. Rapee Sucharitakul)  
Secretary-General  
Office of the Securities and Exchange Commission