

(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. 13/2561

Re: Detailed Rules on Maintenance of Capital of Investment Advisors and Derivatives Advisors and Provisions in Case of Failure to Maintain Capital

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)*, Clause 5 of the *Notification of the Securities and Exchange Commission No. Kor Thor. 4/2561 Re: Maintenance of Capital of Investment Advisors and Derivatives Advisors* 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 Companies* 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 The *Notification of the Office of the Securities and Exchange Commission No. Sor Thor 13/2557 Re: Rules in Detail related to Maintenance of Ongoing Capital Adequacy and Provisions in Case of Intermediary Having Failed to Maintain Such Capital* dated 5 June 2014 shall be repealed.

Clause 3 In this Notification:

“**intermediary**” means an **intermediary** engaging in the business of investment advisory service or derivatives advisory service which has the duty to maintain the capital under the **Notification concerning Maintenance of Capital**.

“**Notification concerning Maintenance of Capital**” means the *Notification of the Securities and Exchange Commission concerning Maintenance of Capital of Investment Advisors and Derivatives Advisors*.

“**financial institution**” means:

(1) a commercial bank under the *Law on Financial Institutions*¹;

(2) a financial institution established under a specific law and treated as a financial institution under the *Law on Loan Interest of Financial Institutions*²;

¹ The *Law on Financial Institutions* means the *Financial Institution Act B.E. 2551 (2008)*.

² The *Law on Loan Interest of Financial Institutions* means the *Interest Rates on Loans from Financial Institution Act B.E. 2523 (1980)*.

(3) Islamic Bank of Thailand;

“*obligor*” means a person bound to make repayment under a financial instrument as an issuer, drawer, acceptor, giver of aval, endorser, or guarantor, as the case may be.

“*unit of collective investment scheme*” mean a unit of a collective investment scheme which has characteristics similar to a mutual fund but excluding the collective investment scheme with the objective of directly investing in properties relating to infrastructures or real estates or real estate development businesses. However, such scheme shall be established upon approval, registration or any other similar action from the the home regulator of any ASEAN member country 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 the Memorandum of Undertstanding on Streamlined Authorization Framework for Cross-border Public Offers of ASEAN Collective Investment Schemes and being empowered to supervise the collective investment scheme or the responsible person of such scheme.

“*credit rating*” means the credit rating by a credit rating agency accepted by the SEC Office which estimates the capability to make repayment under instruments or contracts.

“*insurance*” means the professional indemnity insurance.

Chapter 1

Calculation and Reporting of Maintenance of Capital

Division 1

Liquid Assets and Insurance Used for Maintenance of Capital

Clause 4 The liquid assets which may be used for maintenance of the capital are the following assets which are free of encumbrance and are not short-term investments with the intention of resale or seeking to benefit from difference or change in price:

- (1) cash;
- (2) bank deposit or negotiable certificates of deposit of a *financial institution* which may be redeemed without any redemption period limit;
- (3) Thai government securities as follows:
 - (a) treasury bills;
 - (b) Government bonds;

(c) Bank of Thailand bills and bonds;

(d) bonds, bills of exchange, promisory notes, or debentures 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 instruments under Paragraph 1 of Paragraph 1(3) is more than ten years, the debt instruments must be traded every two weeks on average and having the average turnover rate of the most recent three months not lower than 6.25 percent of the outstanding.

(4) foreign debt instruments having characteristics similar to Thai government securities under Paragraph 1(3) under which a foreign government or a supranational organization is the *obligor*;

(5) debt instruments in the categories of bills of exchange, promisory notes, bonds and debentures but excluding structured notes and debenture imposing obligation on debenture holder.

In case the remaining time to maturity of the debt instruments under Paragraph 1 of Paragraph 1(5) is more than three months, the debt instruments must be traded every two weeks on average and having the average turnover rate of the most recent three months not lower than 6.25 percent of the outstanding.

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

(7) investment units of the Money Market Fund;

(8) 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 followings:

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

(b) investing in the investment units under paragraph 1(8)(a).

(9) *units of collective investment scheme* having characteristics similar to the assets under Paragraph 1(7) or (8).

Where the redemption period of the investment units under Paragraph 1(8) or the units under Paragraph 1(9) having characteristics similiary to such invesment units is more than sixty days, only fifty perent of the value of such assets may be included in the calculation for maintentance of capital.

Clause 5 The liquid assets under Paragraph 1(3) (4) and (5) of Clause 4 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 6 The liquid assets under Paragraph 1(2) (4) and (5) of Clause 4 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 a 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.

Clause 7 The *insurance* shall be used for the maintenance of capital in accordance with all of the following rules:

(1) the *insurance* shall cover the damage arising from the operation of the *intermediary* or its personnel committed in the name of the *intermediary*;

(2) the *insurance* shall be used only for the maintenance of capital under Paragraph 1(3) of Clause 4 of the *Notification concerning Maintenance of Capital* for the portion in excess of the particular under Paragraph 1(2) of Clause 4 of such Notification;

(3) in case the insurance does not provide retrospective coverage for damage arising 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 insured amount.

Division 2 Calculation of Capital

Clause 8 The *intermediary* shall calculate the rate or value of the capital required to be maintain under the *Notification concerning Maintenance of Capital* twice a year, on the last business day of June and December.

Clause 9 The value of liquid assets or *insurance* used for the maintenance of capital shall be calculated by the *intermediary* on the last business day of each quarter, unless in case of any event which may cause 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 a 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;

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

(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

Clause 10 The *intermediary* shall file the report on maintenance of capital with the SEC Office in the format of the capital maintenance report and explanation provided on the website of the SEC Office, in accordance with the rules and within the period of time as follows:

(1) in case of maintenance of capital from January to June of each year, the report shall be filed within 7th July of such year;

(2) in case of maintenance of capital from July to December of each year, the report shall be filed within 7th January of the following year.

Clause 11 The *intermediary* shall cause documents relating to the maintenance of capital 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

Clause 12 An *intermediary* failing to maintain the capital in accordance with the *Notification concerning Maintenance of Capital* shall:

(1) submit a notice of failure to maintain the capital and the reason of such failure to the SEC Office within two business days from the day it becomes or ought to become aware of the failure to maintain the capital;

(2) submit the corrective plan or guideline to the SEC Office within ten days from the day it is or ought to be aware of the failure to maintain the capital, unless prior to expiration of such period the capital is corrected in accordance with the *Notification concerning Maintenance of Capital* for not less than five consecutive business days;

(3) implement the corrective plan or guideline notified to the SEC Office under (2) in order to regain the maintenance of capital in accordance with the *Notification concerning Maintenance of Capital* within thirty days from the day it is or ought to be aware of the failure to maintain the capital, unless extension of such period is granted by the SEC Office on account of necessary and reasonable cause, in accordance with steps and procedure specified in the public handbook;

(4) submit a notice of result of such implementation to the SEC Office within two business days from the day it regains the maintenance of capital in accordance with the corrective plan or guideline notified to the SEC Office under (2).

Clause 13 During the period when an *intermediary* fails to maintain the capital in accordance with the *Notification concerning Maintenance of Capital* or is in the process of complying with Clause 12 (3) until the *intermediary* is able to maintain the capital in accordance with the *Notification concerning Maintenance of Capital*, the *intermediary* shall not:

(1) provide services to new clients;

(2) extend the period for provision of services to its existing clients;

(3) take any other action in the manner that increases risk to the financial condition, the operation or the performance under the agreement with the clients, as prescribed by the SEC Office.

Clause 14 Where the *intermediary* fails to regain the maintenance of capital within the period under Clause 12 (3) or does not have capital for more than five consecutive business days, it shall:

(1) suspend the operation of business in the category relating to the maintenance of capital until the *intermediary* regains the maintenance of capital in accordance with the *Notification concerning Maintenance of Capital* and obtains approval from the SEC to resume the operation of such business as usual;

(2) give a written notice of the suspension of business under (1) to the clients without delay;

(3) take or omit any other action 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*.

Notified this 17th day of January 2018.

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