

(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 Capital Market Supervisory Board
No. Tor Thor. 60/2561
Re: Rules, Conditions and Procedures for Outsourcing
Function related to Business Operation to Third Party**

By virtue of Section 16/6 and Section 113 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, Paragraph 2 of Section 100, Section 114, Section 115, Section 116 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)* and Section 18 of the *Derivatives Act B.E. 2546 (2003)*, and Paragraph 1(6) under Clause 16 of the *Ministerial Regulation concerning Granting Permission of Securities Business B.E. 2551 (2008)*, as amended by the *Ministerial Regulation concerning Granting Permission of Securities Business (No. 3) B.E. 2555 (2012)*, and Paragraph 1 of Clause 5 of the *Ministerial Regulation concerning Granting Permission of Securities Business in the Category of Securities Financing B.E. 2555 (2012)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force from 16 November 2018.

Clause 2 The following Notifications shall be repealed:

(1) *Notification of the Capital Market Supervisory Board No. Tor Thor. 25/2556 Re: Outsourcing Operational Function relating to Business Operation to Third Party* dated 17 May 2013;

(2) *Notification of the Capital Market Supervisory Board No. Tor Thor. 41/2556 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No. 2)* dated 2 October 2013;

(3) *Notification of the Capital Market Supervisory Board No. Tor Thor. 42/2558 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No. 3)* dated 10 July 2015;

(4) *Notification of the Capital Market Supervisory Board No. Tor Thor. 45/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No. 4)* dated 21 October 2016;

(5) *Notification of the Capital Market Supervisory Board No. Tor Thor. 56/2559 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No. 5)* dated 21 December 2016;

(6) *Notification of the Capital Market Supervisory Board No. Tor Thor. 47/2560 Re: Outsourcing Operational Function relating to Business Operation to Third Party (No. 6)* dated 1 August 2017.

Clause 3 In this Notification:

“**function related to business operation**” means an operational function for the undertaking of securities or derivatives business or a function having direct connection to the undertaking of securities or derivatives business;

“**intermediary**” means a securities company or derivatives intermediary, excluding venture capital fund management company or inter-dealer brokerage company, and registered derivatives intermediary;

“**intermediary’s board of directors**” means the board of directors of an or a committee assigned by the board of directors of an **intermediary**;

“**executive**” means a manager and a person responsible for control, supervision and management of the business units relating to investment advice, investment planning, analysis of investment or capital market products, investment management, management of the **intermediary’s** branch office, supervising account of **clients** and making investment decisions for **clients**, operational function, compliance function, internal audit, or risk management, in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel in the Capital Market Business*;

“**client**” means user of an **intermediary’s** service and shall include **fund**, unitholder or member of the provident fund;

“**fund**” means a mutual fund, private fund and provident fund;

“**central utility function**” means a **function related to business operation** which, in the event that a service provider ceases to provide services, fails to continue operation or is unable to provide services appropriately, may affect the overall capital market because there are few service providers or a replacement of another service provider cannot be arranged immediately;

“**affiliated company**” means a company having any of the following characteristics:

(1) a company related to an **intermediary** by shareholding structure, either directly or indirectly, more than fifty percent of the total number of shares sold;

(2) a company related to an **intermediary** by having **control** between each other;

(3) a company and an **intermediary** are under **control** of the same person.

“**control**” means control as determined by the definition of “control” under Section 89/1 [of the *Securities and Exchange Act B.E. 2535 (1992)*].

Clause 4 For the purpose of compliance with this Notification, the SEC Office is empowered as follows:

(1) announce a detailed guideline for the benefit of compliance with the requirements under this Notification in order to instruct appropriate and corresponding practicality. In case of having complied with such guideline, it shall be deemed that the **intermediary** has already complied with the requirements under this Notification;

(2) order an **intermediary** to amend, act or omit to act in any way to comply with this Notification or the rules prescribed by the SEC Office by virtue of this Notification, or order a suspension of the outsourcing to a service provider if it appears to the SEC Office that the **intermediary** violates or fails to comply with the provisions prescribed herein or the rules prescribed by the SEC Office by virtue of this Notification, or the service provider fails to maintain the qualifications or possess prohibited characteristics or become unsuitable to operate the outsourced function in accordance

with the provisions prescribed herein or the rules prescribed by the SEC Office by virtue of this Notification.

Clause 5 This Notification shall apply to outsourcing *function related to business operation* to a third party, excluding the following cases:

- (1) an appointment of a third party to be an agent or a broker of a securities company under Section 100 of the *Securities and Exchange Act B.E. 2535 (1992)* which has already been subject to specific Notifications;
- (2) an appointment of a third party to be a service provider in any matter which has already been subject to specific regulations under other Notifications.

Clause 6 In outsourcing *function related to business operation* to a third party, an *intermediary* shall comply with the following rules:

- (1) establish a policy, measures and procedures for outsourcing operational function to a service provider in accordance with the rules prescribed in Chapter 1;
- (2) outsource the operational function in accordance with the rules prescribed in Chapter 2;
- (3) comply with the conditions specified in Chapter 3.

Chapter 1 Policy, Measures and Procedures for Outsourcing Operational Function to a Service Provider

Clause 7 An *intermediary* shall establish a policy, measures and procedures for outsourcing *function related to business operation* to a service provider in accordance with the following rules and shall supervise that its own personnel comply with such rules as well:

- (1) establish a written outsourcing policy having been approved by the *intermediary's board of directors* and containing at least details as specified in the provisions under Clause 8. The policy shall be reviewed on its efficiency and appropriateness at least once a year or promptly upon occurrence of any circumstance that may materially affect the business operation;
- (2) specify supportive measures to ensure business continuity in the event that the service provider fails to proceed with the outsourced function;
- (3) specify measures for preventing conflicts of interest related to outsourcing the *function related to business operation* to a third party;
- (4) specify measures for supervising the service provider's compliance with the rules related to outsourced functions prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office, including the guidelines specified by the *intermediary* in compliance with the aforesaid rules. In this regard, such measures shall at least ensure that the service provider shall not have any characteristic which may cause any ground to believe that there is a deficiency or inappropriateness in control and proper operation of the business;
- (5) procure necessary resources and a sufficient number of personnel with expertise to ensure efficient control and supervision of the service provider's operation and management of the risks associated with the outsource;

(6) consider the selection of a service provider with care as a professional.

Clause 8 The policy for outsourcing operational function to a service provider under Clause 7(1) shall specify details and comply with the following rules:

(1) scope and nature of the function to be outsourced;
 (2) criteria for selecting a service provider which shall contain details of the consideration guidelines in the following matters:

(a) financial position which shall be specified in such a way that the screening and selection of a service provider would be done without any ground to believe that its financial position may cause damage or having any circumstance that indicates an ongoing financial problem;

(b) capability and readiness for operational function which shall be specified in such a way that it is possible for screening and selecting a service provider who has sufficient and efficient work system;

(c) expertise, experience and business reputations;

(d) readiness of the service provider in case of providing services to many *intermediaries*;

(e) record of complaints or litigation in matters relating to the function to be outsourced;

(f) relationship with directors or *executives* of the *intermediary*;

(g) in the case where the service provider is located in a foreign country, there shall be consideration on change or uncertainty regarding economic, political, social and legal issues of the foreign country as well as the complexity in business continuity management of the service provider in the foreign country;

(3) criteria for reviewing and changing a service provider;

(4) guidelines for subcontracting the outsourced function by the service provider to another party, which shall include the following matters:

(a) in case of subcontracting the outsourced function which is investment management of mutual funds, provident funds, derivatives investment management or risk management of such investments, whether or not it is a *central utility function* and at any level, there shall be a procedure for requesting an approval from the *intermediary's board of directors* in each case every time before proceeding with the subcontracting and there shall be an arrangement for the subcontractor to become a person under Clause 12, Clause 16, Clause 17 or Clause 18, as the case may be;

(b) in case of subcontracting the outsourced function which is not investment management of mutual funds, provident funds, derivatives investment management or risk management of such investments, the following requirements shall apply:

1. in case of a *central utility function*, the subcontractor at any level shall be a person approved by the SEC Office in accordance with Clause 12;

2. in case of a non-central utility function, there shall be a procedure for requesting an approval from the *intermediary* in each case every time before proceeding with the subcontracting.

(5) appropriate guideline for risk assessment according to the degree of importance of the outsourced function;

(6) information security system of a service provider for protecting the information of the *intermediary* and the *clients*;

Clause 9 In the case where an *intermediary* outsources investment management of mutual funds, provident funds, derivatives investment management and risk management of such investments to the same service provider, the *intermediary* shall specify a measure for preventing conflicts of interest in accordance with Clause 7(3) which shall cover the segregation of operation and management arrangement, including work system and any other measures to prevent conflicts of interest.

Chapter 2 **Outsourcing Rules**

Clause 10 In outsourcing *function related to business operation* to a third party, an *intermediary* shall comply with the outsourcing rules in this Chapter. In this regard, the outsourcing shall be based on objective reasons and shall not have a result as if the *intermediary* does not operate the business, and shall be in accordance with the following outsourcing principles at any level of outsourcing:

(1) having duties and responsibilities to *clients* and operating for the best interest of *clients*;

(2) operating in a manner that does not cause any obstacle to compliance with the governing laws or related regulations of the authority or affect the supervisory efficiency of the *intermediary* or the SEC Office.

Clause 11 An *intermediary* intending to outsource *function related to business operation* to a third party shall obtain an approval from the SEC Office before proceeding with the outsourcing.

Division 1 **Outsourcing central utility function**

Clause 12 In case of outsourcing *central utility function*, an *intermediary* shall assign only a person approved by the SEC Office to be the service provider by complying with the rules, conditions and procedures as prescribed by the SEC Office.

In case the outsourced function under Paragraph 1 is investment management of mutual funds, provident funds or derivatives investment management, the approved person shall be a person under Clause 16, Clause 17 or Clause 18, as the case may be.

Clause 13 The provisions under Clause 7(2) and (4), Clause 8(2), Clause 20(1)(b) and Clause 22(1) shall not apply to an *intermediary* which outsources *central utility function* to a person who has obtained an approval from the SEC Office.

Division 2 **Outsourcing Non-central Utility Function**

Clause 14 In case of outsourcing non-central utility function, an *intermediary* shall select a service provider who has the qualifications and does not possess prohibited characteristics as follows:

(1) having readiness and sufficiency on personnel and operating system to ensure that the operational function of the *intermediary* shall remain in accordance with the rules concerning outsourced function as prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office, including the guidelines specified by the *intermediary* to comply with such rules, and in any case there shall be at least sufficient and efficient operating systems as follows:

(a) risk management system;
 (b) internal control system;
 (c) information security system to prevent unauthorized and unrelated persons from accessing or amending information as well as from accessing non-public information between the service provider's unit and its personnel;
 (d) contingency management system which specifies procedures and a person in charge in each case clearly;

(2) there is no reasonable ground to believe that the financial condition may cause damage or having any circumstance which indicates an ongoing financial problems;

(3) there is no reasonable ground to believe that there is a deficiency or inappropriateness relating to the control and proper operation of the business.

Clause 15 In case the outsourced function is investment management of *funds*, an *intermediary* shall proceed in accordance with the following rules:

(1) specify details of the outsourcing clearly in the details of the mutual fund project, or obtain a written consent from a client who is a private fund or a provident fund, as the case may be;

(2) arrange a report on supervision of the service provider and include it in the annual compliance report.

Clause 16 In case the outsourced function is investment management of mutual fund or provident fund, an *intermediary* shall outsource such function to a service provider who is a securities company in the category of private fund management and in case the outsourced function is related to derivatives investment, the service provider shall be a derivatives intermediary in the category of derivatives fund management as well.

Clause 17 In case the outsourced function is derivatives investment management, the service provider shall be an derivatives intermediary in the category of derivatives investment management and shall obtain a prior consent from the client who assigns the function of derivatives investment management.

Clause 18 In outsourcing investment management of mutual fund or provident fund or derivatives investment management to a foreign service provider, such service provider shall fully meet the following criteria:

(1) being capable of operating investment management business legally under the law of the jurisdiction where such foreign person operates business;

(2) being under the supervision of any of the following regulatory agencies which is located in a country whose supervisory measures on investment management are recognized by the SEC Office:

(a) a regulatory agency which is a member of the International Organization of Securities Commissions (IOSCO) and has already signed as a signatory A of the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (MMOU);

(b) a regulatory agency on securities or derivatives which has already signed memorandum of understanding (MOU) with the SEC Office concerning mutual assistance at a level not less than as specified in the MMOU, and the regulatory agency has the legal power to render the assistance thereof to the SEC Office in accordance with the MOU.

In case the foreign service provider is under supervision of a regulatory agency under Paragraph 1(2), but the regulatory agency is not located in a country whose supervisory measures are recognized by the SEC Office, the *intermediary* shall demonstrate the efficiency and appropriateness of the its outsourcing measures, the work system of the service provider and supervisory measures of the regulatory agency in such country.

Clause 19 In case of outsourcing non-central utility function, an *intermediary* shall supervise the outsourcing at least in the following matters:

(1) the appropriateness of the operation of the service provider shall be monitored and reviewed regularly, at least an immediate review shall be done when any circumstance occurs which may affect the qualifications or prohibited characteristics of the service provider or may cause violation of the regulations as prescribed in this Notification.

In case where it appears that the service provider lacks qualifications, possess a prohibited characteristic or is no longer suitable for the outsourced function, there shall be a change of service provider or any action, as deem appropriate, for the best interest of the *clients* in order for the service provider to comply with this Notification or other rules issued by the SEC Office by virtue of this Notification.

(2) a complete and updated summary report of the operational function outsourced to the service provider shall be prepared and submitted to the chief executive of the *intermediary*;

(3) a complete and updated evidentiary documentation of the operational function outsourced to the service provider shall be maintained in such a ready manner for retrieval for review or inspection by the SEC Office without delay;

(4) it shall be accommodated to the SEC Office for inspecting the operation of the service provider upon request.

Chapter 3 Compulsory Conditions in Outsourcing Operational Function

Clause 20 An *intermediary* shall arrange to have a written contract assigning a third party to be the service provider for *function related to business operation*, which contains at least material information in the following matters:

(1) duties and responsibilities of the service provider with details at least in the following matters:

(a) liability to the *intermediary* as a result of the service provider acting or omitting to act intentionally or negligently;

(b) measures and arrangements for business continuity of the service provider which shall include the outsourced function;

(c) information security, confidentiality and privacy regarding information of the *intermediary* and *clients*;

(d) service provider shall comply with the rules regarding outsourced function as prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office, including the guidelines specified by the *intermediary* in compliance with such rules.

(2) consent of the service provider for the SEC Office to inspect its operation, retrieve for viewing or examine relevant evidentiary documentation;

(3) causes, conditions and procedures for terminating the contract or suspending operation [under such contract];

(4) remuneration and charged expenses.

In the case where the service provider subcontracts the outsourced function to another party, the *intermediary* shall have the service provider arrange a written contract which contains details specified in Paragraph 1 at every level of subcontracting.

Clause 21 In case of outsourcing function related to management of mutual fund or provident fund or derivatives investment management, the contract under Clause 20 shall additionally contain material substances in the following matters:

(1) the *intermediary* is entitled to direct or specify guidelines for the service provider in matters related to the outsourced function;

(2) the *intermediary* is entitled to inspect the operation of the function outsourced to the service provider, retrieve for viewing or access the information related to the outsourced function;

(3) in case of any change to the service provider that may cause the outsourcing to be inconsistent with the outsourcing policy under Clause 7(1) and Clause 8, or may have a material effect to the capacity or the efficiency of the outsourced function or the compliance with the rules related to the outsourced function prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board or the SEC Office including the guidelines specified by the *intermediary* in compliance with the rules, the service provider shall report such change to the *intermediary* without delay;

(4) in the case where the outsourced function related to the management of mutual fund or provident fund or derivatives investment management is investment management or investment risk management, the *intermediary* shall specify the duties and responsibilities of the service provider as follows:

(a) specifying a supportive measure for business continuity under Clause 20(1)(b) which shall include an arrangement of an alternative site and readiness testing thereof on a regular basis;

(b) in case the service provider intends to assign another party to be a subcontractor at any level, the service provider shall obtain a written consent from the *intermediary* prior the assignment.

Clause 22 In the case where an *affiliated company* of the *intermediary* is a counterparty in the outsourcing contract with the service provider for the benefit of the *intermediary*, the *intermediary* shall ensure that the contract will validate the rights, duties and responsibilities of the service provider to the *intermediary* in the same manner

as though the *intermediary* is the counterparty itself. In addition, the *intermediary* shall at least comply with the following rules:

- (1) arranging for the *affiliated company* to have criteria for selecting a service provider in accordance with the policy specified by the *intermediary* under Clause 8(2);
- (2) arranging for the *affiliated company* to specify material substances in the contract in accordance with the provisions in Clause 20 and Clause 21, as the case may be, and add contractual terms which contain the following material substances:
 - (a) the *intermediary* shall be the third-party beneficiary of the outsourced function;
 - (b) the *intermediary* shall be entitled to the right of claim under the contract from the service provider;
- (3) examining the accuracy of the contract in accordance with (2) and keep a copy of the complete and undated contract in such a way that is ready for retrieval for viewing or examination by the SEC Office without delay.

Clause 23 An *intermediary* shall notify the details of the outsourcing of the *function related to business operation* to a service provider to the SEC Office within fifteen days as from the date of outsourcing, and in case of a material change, the *intermediary* shall notify the SEC Office of such change within fifteen days as from the date of such change by using the form available on the website of the SEC Office.

In case the service provider assigns another party to be a subcontractor at any level, the *intermediary* shall notify the SEC Office within fifteen days as from the date of the subcontracting by using the form available on the website of the SEC Office.

Clause 24 An *intermediary* shall submit a summary report of the outsourcing of the *function related to business operation* which has been approved by the *intermediary's board of directors* to the SEC Office at least once a year.

Chapter 4 Transitional Provisions

Clause 25 The Notifications of the Office of the Securities and Exchange Commission, orders and circulars issued or prescribing guidelines for compliance with the Notifications which have been repealed by this Notification and had been in effect before the effective date of this Notification shall remain in force to the extent that they are not in contrary to or inconsistent with the provisions under this Notification until other Notifications, orders and circulars issued or prescribing guidelines in accordance with this Notification come into force.

Clause 26 An operational function outsourced to a service provider in a similar manner as specified in this Notification which an *intermediary* has legally done before this Notification comes into force shall be deemed an outsourced function which is a lawful action under this Notification.

The *intermediary* under Paragraph 1 shall comply with this Notification or the rules prescribed by the SEC Office by virtue of this Notification. In case the outsourcing policy or contract fails to comply with the regulations under this Notification,

the *intermediary* shall amend such policy or contract in order to be in accordance with this Notification at the first opportunity but not later than two years as from the effective date of this Notification.

Notified this 1st day of October 2018.

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