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The Office of the Securities and Exchange Commission

Notification of the Office of the Securities and Exchange Commission

No. SorNor. 43/2544

Re: Rules, Conditions and Procedures for the Approval of Mutual Fund Managers

By virtue of the second paragraph of Clause 40 and Clause 41 of the Notification of the Securities and Exchange Commission No. KorNor. 46/2541 Re: Rules, Conditions and Procedures for the Establishment and Management of Mutual Funds dated 16 December 1998 and Section 109 of the Securities and Exchange Act B.E. 2535 (1992) and Clause 1(3) of the Notification of the Securities and Exchange Commission Re: Rules and Timeframe for the Submission of Reports of Securities Companies dated 18 May 1992, the Office of the Securities and Exchange Commission hereby issues the following requirements:

Clause 1. The Notification of the Office of the Securities and Exchange Commission No. SorNor. 32/2543 Re: Rules, Conditions and Procedures for the Approval of Mutual Fund Managers dated 31 July 2000 shall be repealed.

Clause 2. In this Notification,

“Mutual fund manager” means a director or an employee of a management company who is authorized by the management company to make decisions regarding investments in securities or other assets or to acquire, by other means, returns that will become assets of the mutual fund;

“Mutual fund” means any mutual fund which accepts or does not accept redemptions of investment units;

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

“Training institute” means Thailand Securities Institute and other training institutes accepted by the Office;

“Executive” means any director, manager and executive director including deputy manager, assistant manager, department director and any person holding an equivalent position but called otherwise, who are responsible for a line of work relating to the offering of securities services, the securities operation or research on securities or capital markets or other similar lines of work regardless of whether the operation of such lines of work is to provide services for other persons or for the benefit of the company itself;

“Executive director” means any person who is appointed by the board of directors as an executive director or authorized to make decisions on the company’s operation on behalf of the board of directors;

“Department director” means any person who is responsible for the operation of a department within the company;

“Company” means any limited company or public limited company and shall include any juristic person established by a specific law with an objective to undertake businesses;

“Association” means any association relating to securities businesses which has been approved by and registered with the Office and whose main objective is to promote and develop securities businesses in the category of investment management;

“Private fund manager” means a director or an employee of a securities company licensed to undertake securities business in the category of private fund management, who is authorized by such securities company to make investment decisions to acquire benefits from securities or other assets on behalf of the customers;

“Financial institution” means any financial institution under the laws governing loan interest rates of financial institutions;

“Office” means the Office of the Securities and Exchange Commission.

Clause 3. An applicant seeking an approval to act as a mutual fund manager shall have the following qualifications;

(1) Being a permanent staff member who is able to work full-time for a management company or being a director of the management company who does not hold any other positions in such management company except where such positions are under the vertical line of command or do not cause any conflicts of interest with the management of mutual funds;

(2) Having attained the age of twenty;

(3) Having passed the fundamental knowledge examination for professionals administered by a training institute or having completed the courses that are approved by the Office;

(4) Being neither a permanent staff member nor an executive who has power of management in other companies, nor being an investment manager for other persons in any manner which is similar to or in competition with the management company’s operation, except where the capacity as such permanent staff member, executive or investment manager does not cause any conflicts of interest with the management of mutual funds;

(5) Having passed the fundamental knowledge examination on the subjects of securities and exchange laws, the relevant rules and regulations and professional ethics and standards, which is administered by an association or a training institute, for a period of time not exceeding two years on the date of submission of the application. If the examination on such knowledge has been passed for a period of time exceeding two years on the date of submission of the application, such applicant

shall complete such knowledge training courses administered by an association or a training institute for a period of time not exceeding two years on the date of submission of the application.

In cases where the applicant under the first paragraph hereof is a manager or a department director who is responsible for a line of work relating to the investment management of a management company and has taken any fundamental knowledge courses as stipulated in (5) for a period of time not exceeding two years on the date of submission of the application, such applicant shall be exempt from such qualifications under (3) and (5). However, such exemption shall apply to only one applicant for each management company and shall be terminated once such person no longer performs such duty or holds such position.

Clause 4. Any applicant seeking an approval to act as a mutual fund manager shall not possess any of the following prohibited characteristics:

- (1) Being a bankrupt;
- (2) Having been imprisoned by a final court judgment for an offense relating to property committed with dishonest intent;
- (3) Having been an executive of a financial institution whose license is revoked, unless an exemption has been granted by the Office;
- (4) Having been removed from a position of director or manager in accordance with Section 144 or Section 145 or in accordance with the provisions of other laws;
- (5) Being subject to receivership by a court order;
- (6) Being an incompetent or quasi-incompetent person;
- (7) Being a person whose name appears on the list of persons considered by the Stock Exchange of Thailand to be unsuitable to act as an executive under the regulations of the Stock Exchange of Thailand;
- (8) Being accused or prosecuted under the securities and exchange laws, the laws governing the undertaking of finance, securities and credit foncier businesses, the commercial banking laws, the life insurance laws or any laws relating to financial businesses of similar natures, regardless of such laws being Thai or foreign, by any competent agencies under such laws in respect of any offense relating to unfair activities on securities trading or management in a deceitful, fraudulent or dishonest manner, or under the laws relating to money laundering control;

(9) Having been sentenced for commission of any offense under the securities and exchange laws, the laws governing the undertaking of finance, securities and credit foncier businesses, the commercial banking laws, the life insurance law or any laws relating to financial businesses of similar natures, regardless of such laws being Thai or foreign, by any competent agencies under such laws in respect of any offense relating to unfair activities on securities trading or management in a deceitful, fraudulent or dishonest manner, or under the laws relating to money laundering control;

(10) Having been fined for any offense under the laws governing securities and exchange in respect of unfair activities on securities trading or under any foreign laws of similar natures;

(11) Having his or her approval for acting as a mutual fund manager or a private fund manager revoked;

(12) Having been dismissed, discharged or terminated from employment as a result of any dishonest act;

(13) Being or having been an executive involved in causing damage or held jointly responsible for damage arising to a financial institution whose license has been revoked or business operation controlled or suspended because its business rehabilitation or operational plan has not been approved by the regulatory agency of such financial institution or the Board of the Financial Restructuring Authority (FRA), or which has been given an order to rectify its impaired financial condition by way of capital decrease and subsequent capital increase with an assistance from a government agency or a state-owned financial institution;

(14) Performing work in a dishonest manner;

(15) Intentionally concealing investments, financial condition or the actual performance of a mutual fund or a private mutual fund operated under the management company's responsibility, or intentionally making false statements in any material aspects or concealing material facts which should be declared in the application for an approval to act as a mutual fund manager;

(16) Intentionally neglecting to take action in compliance with any order of the Office or the Securities and Exchange Commission under Section 141, Section 142 or Section 143;

(17) Performing work in a manner that indicates a lack of professional ethics or standards as stipulated by an association under the Office's approval;

(18) Performing the management duty in a manner that indicates a negligence of reasonable performance of duty in supervising persons under the line of command to refrain from violating or failing to comply with the laws governing securities and exchange or the professional ethics or standards as stipulated by an association under the Office's approval, thereby having a possibility to cause a lack of confidence in the business of investment management as a whole or giving rise to damage to the reputation or the financial condition or the business operation or the customers of such business.

Clause 5. In applying for an approval to act as a mutual fund manager, the management company shall submit to the Office an application as per Form 117-6 attached to this Notification together with related documents.

In the event that after the Office has granted an approval for such person appointed by the management company to act as a mutual fund manager and it appears later that the information specified in Form 117-6 has changed, the management company shall prepare and submit a report on such changes to the Office as per Form 117-7 attached to this Notification within fourteen days from the next following date after such information has changed.

Clause 6. The management company shall prepare and submit to the Office the following documents relating to its mutual fund managers:

(1) Report on the dates of commencement or termination of duty performance as a mutual fund manager of each mutual fund, which shall be submitted as per Form 117-8 attached to this Notification within fourteen days from the next following date after such mutual fund manager commences or terminates such duty performance;

(2) List of the mutual fund managers of the respective mutual funds as of the end of the calendar year, which shall be submitted as per Form 117-10 attached to this Notification within fourteen days from the end of such calendar year.

Clause 7. Persons who have been granted an approval to act as a mutual fund manager shall attend any fundamental knowledge training courses as stipulated in Clause 3(5) at least once every two years unless the first attendance of such training occurs after such approval has been granted, in which case the Office may extend the interval of such training beyond two years.

If any person, who has been granted an approval by the Office to act as a mutual fund manager but no longer performs such duty for any management company, wishes to maintain the status of an approved mutual fund manager, such person shall proceed in accordance with the rules as prescribed in the first paragraph hereof.

If any person, who has been granted an approval to act as a mutual fund manager, fails to comply with the rules as prescribed in the first paragraph hereof, such approval shall be terminated.

If any person, who has been granted an approval to act as a mutual fund manager and whose approval has been terminated under the third paragraph hereof, attends any fundamental knowledge training courses as specified in Clause 3(5) and applies for a renewal with the Office within six months from the date when such approval has been terminated, such person shall be deemed to remain an approved mutual fund manager.

Clause 8. In cases where it appears subsequently that any person, who has been granted an approval to act as a mutual fund manager, has any of the following characteristics, the Office may order such mutual fund manager to rectify his or her qualifications within the period of time as specified by the Office or may revoke such approval previously granted:

- (1) Lacking qualifications under Clause 3(1) or (4);
- (2) Having any of the prohibited characteristics under Clause 4.

Clause 9. In managing a mutual fund, the mutual fund manager shall:

- (1) Comply with the laws, rules and regulations relating to mutual fund management;
- (2) Perform duties by adhering to the professional ethics and standards as stipulated by an association under the Office's approval.

Clause 10. Any person, who has been granted an approval by the Office to act as a private fund manager, shall also be deemed to have been granted an approval to act as a mutual fund manager. In this regard, such person may perform duties as a mutual fund manager and a private fund manager in the same management company if such management company is also licensed to undertake securities business in the category of private fund management. However, such person shall not perform simultaneously the duties as a mutual fund manager for another management company or as a private fund manager for another securities company licensed to undertake securities business in the category of private fund management, except when granted a waiver by the Office.

Any person, who has been granted an approval to act as a private fund manager and is also deemed to have been granted an approval to act as a mutual fund manager under the first paragraph hereof, shall not be a person for whom the management company applies for an approval to act as a private fund manager under Clause 14 of the Notification of the Office of the Securities and Exchange Commission No. KorNor. 16/2543 Re: Rules, Conditions and Procedures for the Approval of Private Fund Managers and Private Fund Management by Private Fund Managers dated 4 April 2000.

Clause 11. In the event that any mutual fund manager violates or fails to comply with the laws, notifications or professional ethics relating to mutual fund management, the Office shall have the power to take the following actions;

- (1) Warning;
- (2) Probation;

(3) Suspension from duty performance as a mutual fund manager for a period of time the Office deems appropriate;

(4) Revocation of approval.

Clause 12. If any applicant seeking an approval to act as a mutual fund manager possesses any prohibited characteristics under Clause 4(9), (10), (11), (12), (13), (14), (15), (16), (17) or (18), the Office may specify a period of time or conditions for considering such person's application for an approval to act as a mutual fund manager of the management company, taking into account the severity of behaviors of such person on a case-by-case basis. Such specified period of time shall not exceed five years from the date when such person is released from such punishment under the judgment, or from the date when the Settlement Committee issues an order to impose fines on such person, or from the date when a decision of an agency having the power to supervise or consider such behaviors is issued.

Factors which may be taken into consideration to identify the severity of behaviors under the first paragraph hereof shall be *mutatis mutandis* in accordance with the Notifications of the Office of the Securities and Exchange Commission governing the determination of factors for considering the severity of prohibited behaviors of applicants seeking an approval or persons granted such approval to act as a private fund manager.

The provisions in the first paragraph hereof shall apply *mutatis mutandis* to such persons who have been granted an approval to act as a mutual fund manager of the management company and subsequently possess any prohibited characteristics under Clause 4(9), (10), (11), (12), (13), (14), (15), (16), (17) or (18).

Clause 13. If such facts relating to the behaviors of any person are as specified in Clause 4(9), (10), (11), (12), (13), (14), (15), (16), (17) or (18) and the severity of behaviors of such person, after such factors as stipulated by the Office as per Clause 12 hereof have been considered, falls into the category of behaviors onto which a maximum period of consideration of the application for an approval to act as a mutual fund manager under Clause 12 hereof is up to one year, the Office may consider that such person's behaviors are not prohibited characteristics as specified in Clause 4 if there is no reasonable ground to believe that the granting of an approval for such person to act as a mutual fund manager would damage the benefits of the mutual fund or would undermine the confidence of the unit holders of mutual funds in the investment management sector.

Clause 14. In cases where the Office does not grant an approval for a person to act as a mutual fund manager because such person possesses any prohibited characteristics under Clause 4(9), (10), (11), (12), (13), (14), (15), (16), (17) or (18), after a lapse of the period of time as specified in Clause 12, or if the conditions as stipulated in Clause 12 have been met, the Office shall not further consider such behaviors which are deemed to be any prohibited characteristics under Clause 4(9), (10), (11), (12), (13), (14), (15), (16), (17) or (18), which were previously considered as grounds for disapproval of such person to act as a mutual fund manager on such previous occasion, as grounds for any subsequent disapproval.

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Clause 15. In cases where any management company has a mutual fund manager who possesses any prohibited characteristics as per Clause 4, the management company shall report such fact in writing to the Office within seven days from the date when the prohibited characteristics of such mutual fund manager become known or there are reasons for such prohibited characteristics to become known.

Clause 16. Any person, who has already been granted an approval to act as a mutual fund manager under the Notifications of the Securities and Exchange Commission governing rules, conditions and procedures for the approval of mutual fund managers, shall be deemed as a mutual fund manager who is granted an approval under, and shall comply with, this Notification from the date when it comes into force.

Clause 17. From the date when this Notification has come into force until 31 December 2001, any person who has passed the fundamental knowledge examination or has completed any training courses under Clause 3(5) for a period of time exceeding two years on the date of submission of the application, may submit an application for an approval to act as a mutual fund manager and the Office shall not take into account the period of time as specified under Clause 3(5) in considering the granting of approval.

Clause 18. This Notification shall come into force as from 1 October 2001.

Notified this 25th day of September 2001.

- Signature -

(Mr. Prasarn Trairatvorakul)
Secretary-General

The Office of the Securities and Exchange Commission