

(UNOFFICIAL TRANSLATION)

*Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference. The SEC, Thailand cannot undertake any responsibility for its accuracy, nor be held liable for any loss or damages arising from or related to its use.*

---

**Notification of the Capital Market Supervisory Board  
No. TorThor. 43/2552  
Re: Custody of Assets of Clients by Securities Companies**

---

By virtue of Section 16/6 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 4) B.E. 2551 (2008) and Section 98(3) of the Securities and Exchange Act B.E. 2535, which contains certain provisions in relation to restriction of rights and liberties of persons, which Section 29, in conjunction with Section 33 Section 34 Section 41 Section 43 Section 44 and Section 64 of the Constitution of the Kingdom of Thailand, so permits by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board under Section 60 of the Securities and Exchange Act (No. 4) B.E. 2551 (2008) hereby issues the following regulations:

**Clause 1.** This Notification shall come into force from 1 September 2009.

**Clause 2.** The Notification of the Capital Market Supervisory Board No. TorThor. 9/2551 Re: Custody of Assets of Clients by Securities Companies dated 16 May 2008 shall be repealed.

**Clause 3.** In this Notification:

(1) “assets” means

- (a) cash;
- (b) securities;
- (c) other assets;

(d) any benefits accruing from the assets under (a) to (c), for example, right in dividend or interest, right to purchase capital increase shares and right to attend and vote at a meeting of securities holders.

(2) “margin account” means an account which keeps records of lending of money to a client for purchasing securities or lending of securities to a client for making a short sale;

(3) “cash account” means an account which keeps records of securities purchasing or selling transactions other than those recorded in a margin account;

(4) “securities depository center” means a securities depository center under the law on securities and exchange.

## **CHAPTER 1**

### **General Provisions**

---

**Clause 4.** A securities company which undertakes custody of assets of clients, whether for the purpose of keeping, purchasing, selling, borrowing or lending of securities or for guarantee of purchasing, selling, borrowing or lending of securities or for any other purpose, shall comply with the rules prescribed herein.

The provisions in the first paragraph shall not apply to the following assets or persons:

(1) assets of a client which is a mutual fund, private fund or any other similar fund under management of a securities company in its position as securities business operator in the category of mutual fund or private fund management or under custody of a securities company in its position as fund supervisor or custodian;

(2) a financial institution which is governed by a main regulator and later obtains a license to undertake securities business, but not including a financial institution licensed to undertake securities borrowing and lending business which undertakes custody of assets of clients in relation to securities borrowing and lending business;

(3) money paid for subscription of securities which a securities company receives from securities underwriting.

**Clause 5.** A securities company shall set up a work unit responsible for custody of assets of clients, which is independent from a work unit responsible for securities trading (front office) or giving advice on securities trading, and shall put in place a good internal control system for custody of assets of clients. At least, there shall be a separation of personnel responsible for preparing records of assets of clients from those responsible for physical keeping of such assets, and each transfer of assets of clients shall be approved by the company’s authorized person who shall be neither a person responsible for preparing records of assets of clients nor a person responsible for physical keeping of such assets.

**Clause 6.** A securities company shall establish rules or practice guidelines for custody of assets of clients in accordance with the provisions of this Notification. Such rules and practice guidelines shall be made in writing, indicating operating procedures and persons authorized to undertake custody of assets of clients. A securities company shall strictly oversee that the undertaking of custody of assets of clients comply with such rules or practice guidelines.

The rules or practice guidelines under the first paragraph shall at least include the following matters:

- (1) Receipt or delivery of assets of clients;
- (2) Record keeping of assets of clients;
- (3) Management of information relating to assets of clients.

**Clause 7.** In undertaking custody of assets of clients, a securities company shall proceed as follows:

(1) give information and have its clients sign for acknowledgement of procedures for making a deposit or withdrawal of assets with or from the securities company, and methods for undertaking custody of assets of clients as well as fees charged for custody of such assets (if any).

If the information under the first paragraph changes significantly, the securities company shall inform its clients of such change without delay;

(2) inform its clients that when the securities company encounters financial problems, the client's money which has been kept under custody of the securities company shall not be protected under the Deposit Protection Agency Act;

(3) provide a written contract or agreement on custody of assets of clients, which indicates the rights, duties, and responsibilities of both parties. Such contract or agreement shall not have any statement denying the securities company's responsibility to the client for any act or omission of any act, whether willfully or negligently, of the securities company, its personnel, or any other person authorized to undertake custody of assets of clients.

**Clause 8.** A securities company shall not appoint any person as its agent to undertake custody of assets of clients unless such appointment complies with the following rules:

(1) a person to be appointed as the securities company's agent to undertake custody of assets of clients shall be:

- (a) a commercial bank;
- (b) a finance company;
- (c) a securities company;

(d) a securities depository center;

(e) a financial institution established under specific law.

(2) a contract on an appointment of an agent to undertake custody of assets of clients shall be made in writing. Such contract shall have a prohibition of an appointment of a sub-agent, and indicate terms and conditions relating to the responsibility of the agent and the person to be responsible for damage of assets of clients as well as a requirement of the agent's compliance with this Notification.

The securities company shall inform its client of the appointment of an agent to undertake custody of assets of clients without delay. In cases where the securities company appoints a person who has a relationship as a parent company, subsidiary company or associate company as its agent, the securities company shall inform its clients of such relationship as well.

The definition of the terms "parent company," "subsidiary company" and "associate company" in the second paragraph shall, *mutatis mutandis*, be similar to the definitions of such terms in the Notification of the Securities and Exchange Commission governing determination of definitions in notifications relating to issuance and offering of securities.

The segregation of assets of clients by the securities company according to the methods specified by Clause 18 (1) (a) or (2) (a) shall not be considered as an appointment of an agent to undertake custody of assets of clients.

**Clause 9.** A securities company shall not engage in any act which results in creating, altering, transferring, reserving or terminating a client's rights over assets, without or not complying with an order or consent given by the client or a person authorized by the client.

**Clause 10.** A securities company shall not use assets of a client for the benefit of another client, other persons, or itself, unless given a written order or consent from the client, on a case-by-case basis.

**Clause 11.** A securities company shall take actions as necessary to obtain a client's rights and benefits arising from any securities or instruments owned by the client which are under its custody from issuers of such securities or instruments within an appropriate time.

A securities company shall not declare its intention to use a client's rights and benefits without the client's order or consent given in writing.

## CHAPTER 2

### Record Keeping of Assets of Clients

---

**Clause 12.** A securities company shall prepare records of each client's assets under its custody in a separate account from any other asset account of the securities company and categorize as a margin account or a cash account, as the case may be.

The client's asset account under the first paragraph shall at least contain the following details:

- (1) the date of receipt or disposal of assets;
- (2) the amount and category of assets;
- (3) the cause of receipt or disposal of assets.

In cases where the assets recorded in a client's account belong to a third person and are deposited as collateral for the benefits of such client, the securities company shall record the name of the third person who is the owner of the assets in the client's asset account.

**Clause 13.** A securities company shall keep accurate, complete and up-to-date records of assets of clients. In case of making correction to any record, the securities company shall complete such correction within the same working day on which the cause of correction is found and shall record the cause of each correction.

**Clause 14.** A securities company shall arrange for the counting of assets of clients which are kept by itself at least once a month to verify the accuracy of records of assets of clients as prepared by the securities company.

For the assets of clients which are not kept by the securities company itself, the securities company shall put in place a system to retrieve updated information to verify the accuracy of the records of such assets reported by a third party custodian with the records of assets of clients which are prepared by the securities company.

**Clause 15.** A securities company shall submit a report on the assets of clients as of the end of each month to its clients within the seventh day of the following month, except where there is no transaction which affects the movement or change of the clients' assets under its custody. In cases where a client does not have any transaction for a period of six months or more, the securities company shall

submit a report on the assets to such client at least once every six months within the seventh day of the following month.

**Clause 16.** A securities company shall keep the information and documents relating to its custody of assets of clients for at least five years. Such information and documents shall be stored, during the first two years, in the manner that enables prompt access for review by the SEC Office upon request.

### CHAPTER 3

#### Custody of Assets of Clients

---

**Clause 17.** A securities company shall segregate assets under its custody as assets of clients in not less than the following amount:

(1) Money: the amount of money required to be segregated each day shall not be less than the total amount of the net balance calculated at the end of the prior working day or at the end of the present working day from cash accounts and margin accounts of all clients after deducting money deposited as collateral for securities borrowing for making a short sale of each client at the rate agreed upon by the securities company and the client who borrows such securities. In cases where the securities company uses the total net balance at the end of the present working day for calculation, the securities company shall continually use such method for calculation at all times, except in case of necessity where the securities company is unable to use such method, it may use the total net balance at the end of the prior working day for calculation. In such case, the securities company shall inform the necessity to the SEC Office without delay.

A securities company may deduct the following money from the assets segregated as assets of clients under the first paragraph:

(a) money paid by a client prior to the clearing date of securities purchase transactions;

(b) money paid by a client for securities purchase transactions which exceeds the due amount and the securities company has already returned the excess money to the client within five working days from the date of receipt of such money;

(c) money received from securities sale transactions on behalf of a client and the securities company has already issued a cheque for payment or delivering such money to the client within the clearing date;

(d) money received on behalf of a client which is dividend or interest on securities or instruments owned by the client and the securities company

has already delivered all of such money to the client within five working days from the date of receipt of such money.

In cases where the client informs the securities company to keep the money under (b) (c) or (d) for the purpose of making transactions in the future, the securities company shall include such money in the net balance of the working day on which it is informed of the client's intention for the calculation of assets required to be segregated as assets of clients under the first paragraph.

(2) Securities: the amount of securities required to be segregated each day shall not be less than the total amount of securities recorded as assets of each client at the end of such working day.

(3) Other assets: the amount of other assets required to be segregated each day shall not be less than the total amount of other assets recorded as assets of each client at the end of such working day.

**Clause 18.** The following proceeding shall be deemed as the segregation of assets of clients under Clause 17:

(1) Money:

(a) Segregating by:

1. Depositing with a commercial bank or other banks established under specific law or investing in promissory notes issued by a finance company or TSFC Securities Limited. In cases where bank deposits or promissory notes are paid at maturity, such bank deposits or promissory notes shall not have any restriction on redemption before maturity;

2. Investing in treasury bills, Thai government bonds or state enterprise bonds which are unconditionally guaranteed by the Ministry of Finance for full repayment of principal and interest. Such financial instruments shall not have any restriction on selling or transferring before maturity;

3. Investing in other assets as specified by the SEC Office.

In proceeding under the first paragraph, the securities company shall clearly indicate in deposit accounts, promissory notes or such investments that the transaction is done by the securities company for the client's benefit.

(b) Segregating under self keeping which shall be done in the manner that can clearly identify without suspicion that such money belongs to the client;

(2) Securities:

(a) Segregating by depositing with a securities depository center, or the Bank of Thailand. There shall be a statement clearly indicating that such securities are deposited by the securities company for the client's benefit;

(b) Segregating under self keeping which shall be done in the manner that can clearly identify without suspicion that such securities belong to the client;

(3) Other assets: segregating in the manner that can clearly identify without suspicion that such assets belong to the client.

**Clause 19.** A securities company may agree with a client on the rate of return which the securities company will calculate from the amount of money segregated as assets of clients under this Notification. However, such rate of return shall not be higher than the rate which the securities company actually gains from making deposit or investment in promissory notes or other means of investment.

**Clause 20.** A securities company shall not use the client's money segregated under Clause 18 as collateral for debt repayment for the benefit of other persons or itself.

**Clause 21.** Subject to Clause 18(1) (a), a securities company shall not take money segregated as assets of clients to deposit or make investment with a financial institution which has a relationship as parent company, subsidiary company or associate company, unless explicitly given consent by the client.

The definition of "parent company", "subsidiary company" and "associate company" in the first paragraph shall, *mutatis mutandis*, be similar to the definition of such terms in the Notification of the Securities and Exchange Commission governing determination of definitions in notifications relating to issuance and offering of securities.

**Clause 22.** In cases where a securities company undertakes physical keeping of assets of clients by itself, whether in its own premises or another person's, such premises shall be secure. In case of using another person's premises, the securities company shall inform such person explicitly that the assets belong to the client.

## CHAPTER IV

### Transitional Provisions

---



**Clause 23.** All orders and circulars issued under or prescribing guidelines for compliance with the Notification of the Securities and Exchange Commission No. KorThor. 4/2543 Re: Custody of Assets of Clients by Securities Companies dated 4 January 2000 which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with nor contrary to the provisions of this Notification, until orders and circulars issued under or prescribing guidelines for compliance with this Notification come into force.

**Clause 24.** Any reference made in any other notifications to the Notification of Securities and Exchange Commission No. Kor.Thor. 4/2543 Re: Custody of Assets of Clients by Securities Companies dated 4 January 2000 shall mean reference to this Notification.

Notified this 3<sup>rd</sup> day of August 2009.

- Signature -  
(Vijit Supinit)  
Chairman

Securities and Exchange Commission

---

*Remark:* The rationale for issuing this Notification: as the Securities and Exchange Act (No. 4) B.E. 2551 (2008) stipulates that the issuance of rules prohibiting securities companies from engaging in any act which may cause damage or take advantage of its clients or related persons is under the authority of the Capital Market Supervisory Board, it is therefore deemed appropriate to issue this Notification as a replacement for the Notification of Securities and Exchange Commission No. KorThor 4/2543 Re: Custody of Assets of Clients by Securities Companies dated 4 January 2000.