

TRANSLATED VERSION

As of March 31, 2015

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. TorKhor. 35/2553

**Re: Rules, Conditions and Procedures for Appointment
of Agents for Selling Investment Units or Receiving
Requisition of Investment Unit Redemption
and Marketing Representatives of
Private Funds**

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 the second paragraph of Section 100 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain 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 Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 *Notification of the Capital Market Supervisory Board No. TorKhor. 56/2552 Re: Rules, Conditions and Procedures for Appointment of Agents for Selling Investment Unit or Receiving Requisition of Investment Unit Redemption and Marketing Representatives of Private Funds* dated 3 August 2009 shall be repealed.

Clause 2 In this Notification:

(1) “**representative**” means a person appointed by a **management company** as an agent for selling investment units or receiving requisition of investment unit redemption, and in case the **management company** is a **private fund management company**, the representative means a person appointed by the **private fund management company** as **marketing representative of private funds**;

(2) “**marketing representative of private fund**” means a person appointed by a **private fund management company** as a **representative** for **client solicitation**;

(3) “**management company**” means a **mutual fund management company** and a **private fund management company** [unless indicated otherwise], including:

(a) a securities company licensed to undertake securities business in the category of brokerage, dealing or underwriting of any securities and;

(b) a securities company licensed to undertake securities business in the category of brokerage, dealing or underwriting limited to investment units;

(4) “**mutual fund management company**” means a securities company licensed to undertake securities business in the category of mutual fund management;

(5) “**private fund management company**” means a securities company licensed to undertake securities business in the category of private fund management;

(6) “**gold ETF**” means a gold ETF established under the *Notification of the Office of the Securities and Exchange Commission concerning Establishment of Mutual Funds and Execution of Agreements for Private Fund Management*;

(7) “**major shareholder**” means a person directly or indirectly holds shares of a juristic person exceeding 10% of the total number of voting rights of such juristic person;

(8) “**client solicitation**” means soliciting clients for engaging in an agreement with a **private fund management company** by the way of providing investment plans for the clients as well;

(9) “**financial institution**” means a financial institution having any of the following characteristics:

(a) a commercial bank under the law on financial institution business¹;

¹ law on financial institution business means *Financial Institution Business Act B.E. 2535 (2008)*

(b) financial institution established under a specific law;
 (c) any financial institution other than those specified in sub clauses (a) and (b), which is a financial institution under the law on loan interests of financial institutions².

Clause 3 This Notification shall be applicable to the appointment of a *representative* of a *management company* in the following cases:

- (1) the appointment of an agent for selling investment units or receiving requisition of investment unit redemption;
- (2) the appointment of a *marketing representative of private fund*.

Chapter 1

Appointment of a Representative

Division 1³

Appointment of an agent for selling investment unit or receiving requisition of investment unit redemption

Clause 4 In appointing a natural person to be an agent for selling investment units or receiving requisition of investment unit redemption, a *management company* shall appoint a natural person who has obtained an approval from the SEC Office in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel in the Capital Market Business*.

² law on loan interests of financial institutions means *Loan Interests of Financial Institutions Act B.E. 2523 (1980)*

³ In this Division 1, the meaning of word “*management company*” dose not include “*private fund management company*”.

Clause 5 In appointing a juristic person to be an agent for selling investment units or receiving requisition of investment unit redemption, the scope and limitation of appointment shall be in accordance with the following rules:

(1) in case of investment units in category of **gold ETF**, the appointment to be the agent in the Kingdom of Thailand shall be conforming to the rules under Clause 6;

(2) in case of investment units in any other case except sub clause (1), the appointment to be the agent in the Kingdom of Thailand, for supporting the **management company** to increasingly distribute investment units to investors and supporting investors to access more various investment channels, shall be conforming to the rules under Clause 6/1;

(3) in case of investment units having been sold in a foreign country, the appointment to be an agent therein shall be conforming to the rules under Clause 8.

Clause 6 In case of investment unit in category of **gold ETF**, a **management company** shall appoint a juristic person having the following qualifications to be an agent as prescribed in sub clause (1) of Clause 5:

(1) being a gold trader for not less than 3 consecutive years and being a member of the Gold Traders Association, the Thailand Gold Retail Club or other organizations recognized by the SEC Office;

(2) of which directors, managers and partners not having any prohibited characteristics as prescribed in the relevant Notification of the Capital Market Supervisory Board relative to Prohibited Characteristics of Personnel in Securities Business;

(3) of which **major shareholder** or any person holding more than 10% of the capital not having any prohibited characteristics as specified in the *Notification of the Ministry of Finance concerning Prescription of Conditions for Securities Companies to Apply for Approval of Person to Be Major Shareholder, mutatis mutandis*. In this regard, in case such person is a juristic person, the directors or partners of such juristic person shall also not have the prescribed prohibited characteristics thereof;

** (4) having sufficient readiness for providing services and ensuring that the services provided to investors would comply with the regulations relating to providing investment consultation and providing services relating to trading investment units, including the disciplines in accordance with such regulations as specified by the *management company*;

** (5) having the following efficient operating systems relating to being an agent for selling or receiving requisition of investment unit redemption of *gold ETF*:

- (a) risk management system;
- (b) internal control system;
- (c) security system for investors' information in order to prevent unrelated and unauthorized persons from accessing or amending information;
- (d) non-public information protection system between the agent and its personnel;

(e) supervisory system for making personnel to complete their functions in accordance with the law on securities and exchange⁴, including regulations issued by virtue of such law in the part of their responsibilities;

** (6) having personnel to be investment consultant, investment planner or investment analyst, as the case may be. In this regard, such personnel shall obtain an approval from the SEC Office in accordance with the *Notification of the Capital Market Supervisory Board regarding Rules on Personnel in the Capital Market Business*.

** These sub clauses have been modified by the *Notification of the Capital Market Supervisory Board No. TorThor. 24/2557 Re: Rules, Conditions and Procedures for Appointment of Agents for Selling Investment Units or Receiving Requisition of Investment Unit Redemption and Marketing Representatives of Private Funds (No. 2)* dated 21 July 2014. However, the grace period for transition is permitted by Clause 10 of the Notification thereafter which management company shall arrange the appointed juristic person to comply with the rules under these sub clauses as soon as possible, but not later than 2 years as from the effective date of the Notification (within 16 August 2016).

⁴ law on securities and exchange means the *Securities and Exchange Act B.E. 2535 (1992)*

Clause 6/1 In appointing a juristic person to be an agent as prescribed in Clause 5(2), a **management company** shall appoint a juristic person who possesses the following qualifications:

(1) being a state enterprise, excluding state-owned financial institution, under the law on budgeting procedures⁵. In case of such state enterprise established in the form of company, its shares shall be directly held by the Ministry of Finance more than 50% of the total number of voting rights;

(2) being able to provide money services on deposits, withdrawals, transfers or payments in accordance with the regulations prescribed by the Bank of Thailand;

(3) having sufficient networks and channels for providing services or communication which is able to reach a wide range of investors;

(4) having financial readiness without any reasonable ground to believe that the financial status may cause damage or any other circumstance indicates an ongoing financial problem;

(5) having a clear action plan which demonstrates determination for providing services of trading investment units in the long run;

(6) having sufficient readiness for providing services and ensuring that the services provided to investors complies with the regulations relating to providing investment consultation and services relating to trading investment units, including the disciplines in accordance with such regulations as specified by the **management company**;

(7) having efficient operating systems relating to being an agent for selling investment units or receiving requisition of investment unit redemption, which are:

(a) risk management system;

(b) internal control system;

(c) security system for investors' information in order to prevent unrelated and unauthorized persons from accessing or amending such information;

(d) non-public information protection system between the agent and its personnel;

⁵ law on budgeting procedures means the *Budgeting Procedures Act B.E. 2502 (1959)*

(e) supervisory system for making personnel to complete their functions in accordance with the law on securities and exchange⁶, including regulations issued by virtue of such law in the part of their responsibilities;

(8) having readiness of personnel for proceeding as assigned by the *management company*. In this regard, in case the *management company* has assigned the juristic person to provide consultation or make a plan relating to investment units [to investors], such person shall have its personnel to perform duties as investment consultant, investment planner or investment analyst, as the case may be, who has obtained an approval from the SEC Office in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel in the Capital Market Business*.

Clause 7 In case the appointment of a juristic person to be an agent in the Kingdom of Thailand as prescribed in Clause 6 and Clause 6/1 has been complied with the specified regulations, but there is a certain fact appeared to the SEC Office which is reasonably suspicious that the *management company* may not be able to efficiently supervise the conduct of its agent, the SEC Office may not allow the *management company* to further appoint such person as agent, and in case of not allowing, the SEC Office shall clearly notify the ground supporting such consideration to the *management company*.

Clause 8 In appointing a juristic person to be an agent in a foreign country [as prescribed in sub clause (3) of Clause 5], a *management company* shall appoint an institution of finance or juristic person established in a foreign country which has legitimacy to sell investment unit or receive investment unit redemption under the law of such country, and the foreign institution of finance or juristic person thereof shall not be an agent for selling or receiving thereof in the Kingdom of Thailand whether directly by itself or through its representative office.

⁶ law on securities and exchange means the *Securities and Exchange Act B.E. 2535 (1992)*

Clause 9 An appointment of a person as an agent in the Kingdom of Thailand shall be for the following activities only:

(1) accepting the application for opening investments account and reviewing evidentiary documentation attached to the application before delivering them to the *management company* for considering an approval;

(2) disclosure of information or documents needed for making investment decisions to clients, as well as arranging clients' information in support of the *management company*'s consideration of the application thereof, and providing consultation to clients;

(3) accepting purchase or redemption orders of investment unit and delivering them to the *management company* for execution;

(4) providing consultation relating to [i] selling or redeeming investment units, or [ii] suitability of making such transaction.

Division 2

Appointment of marketing representative of private fund

Clause 10 In appointing a natural person to be a *marketing representative of private fund*, a *private fund management company* shall appoint a person who has obtained an approval from the SEC Office in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel on the Capital Market Business*.

In appointing a juristic person to be a *marketing representative of private fund*, the *private fund management company* shall appoint a juristic person having obtained an approval from the SEC Office pursuant to the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Juristic Person as Marketing Representative of Private Fund and Standards of Conduct*.

Division 3
Agreement for appointing representative

Clause 11 The agreement for appointing a *representative* shall be made in writing and shall have the following provisions:

(1) stipulating rights and duties of a *management company* and the *representative* that are not contrary to or in contravention of the law on securities and exchange⁷ and relevant rules issued thereunder;

(2) requiring the *representative* to act in compliance with the rules of selling or redeeming investment units or *client solicitation*, and to cooperate with the SEC Office for the result of compliance with such rules;

(3) prohibiting the *representative* from appointing a sub-representative;

** (4) stipulating that the *representative* must cooperate with the SEC Office when the operation and evidentiary documentation relating to assigned duties of the *representative* is inspected.

⁷ Law on Securities and Exchange means the *Securities and Exchange Act B.E. 2535 (1992)*

** This sub clause has been modified by the *Notification of the Capital Market Supervisory Board No. TorThor. 24/2557 Re: Rules, Conditions and Procedures for Appointment of Agents for Selling Investment Units or Receiving Requisition of Investment Unit Redemption and Marketing Representatives of Private Funds (no. 2)* dated 21 July 2014. However, the grace period for transition is permitted by Clause 10 of the Notification thereafter which management company shall arrange the appointed juristic person to comply with the rule under this sub clause as soon as possible, but not later than 2 years as from the effective date of the Notification (within 16 August 2016).

Chapter 2
Superintending Representative by
Management Company

Clause 12 A *management company* shall [i] ensure that its *representative* renders services with loyalty and due care by taking into account the best interest of investors and provides appropriate and adequate information in line with standards of services of the *management company*, and [ii] supervise the *representative* to act as follows:

(1) comply with the provisions in the agreement and the rules relating to selling or redeeming investment units or *client solicitation*;

(2) maintain the qualifications as prescribed in Clause 4, Clause 6, Clause 6/1, Clause 8 or Clause 10, as the case may be, at all times.

In case the *representative* fails to act under the first paragraph, the *management company* shall revoke the appointment or change such *representative* without delay.

Clause 13 A *management company* shall handle investor complaints arising from the performance of the *representative* or its staff in a similar manner to handling of complaints arising from the performance of the *management company* itself or its staff.

Clause 14 A *management company* shall require the *representative* to completely keep updated evidentiary documentation as for providing services to clients. In this regard, such documents shall be made readily available for immediate use or verification by the *management company*, and shall be made available for the SEC Office's inspection upon request.

Clause 15 In case the SEC Office deems appropriate, a *management company* shall arrange for the SEC Office to inspect the operation and evidentiary documentation relating to doing duties of the *representative* as designated by the *management company*.

Chapter 3
Power of the SEC Office regarding Issuance of
Orders or Regulations

Clause 16 In addition to the specific provisions hereof, the SEC Office is empowered to issue Notifications prescribing detailed rules with respect to the matters specified in this Notification to ensure practical implementation and to enable the SEC Office to inspect such implementation.

Clause 17 In case there is a certain fact appeared to the SEC Office that any *management company* or *representative* has breached or failed to perform in compliance with the rules as prescribed in this Notification, the SEC Office may order such *management company* to rectify, operate or omit from any acts in order to comply with the rules as prescribed in this Notification, or suspend the approval for appointment of *representatives* for a specified period or conditions, or revoke the approval thereof.

Chapter 4
Transitional Provisions and Effective Date of Notification

Clause 18 Any Notification of the SEC Office, orders and circular letters issued under or prescribing guidelines or being remain in full force by virtue of the *Notification of the Capital Market Supervisory Board No. TorKhor. 56/2552 Re: Rules, Conditions and Procedures for Appointment of Representatives for Selling Investment Units or Receiving Requisition of Investment Unit Redemption and Private Fund Management Company* dated 3 August 2009 which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are neither inconsistent with nor contrary to the provisions of this Notification until sub rulings, orders and circulars issued by virtue of this Notification come into force.

Clause 19 Any reference, made in any other Notification, to the *Notification of the Capital Market Supervisory Board No. TorKhor. 56/2552 Re: Rules, Conditions and Procedures for Appointment of Agents for Selling Investment Unit or Receiving Requisition of Investment Unit Redemption and Marketing Representatives of Private Funds* dated 3 August 2009 shall mean reference to this Notification.

Clause 20 This Notification shall come into force as from 1 October 2010.

Notified this 14th Day of September 2010.

- Signature -

(Thirachai Phuvanatanarubala)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

Note: please note that the contents added in brackets [...] have only been provided in the English version for clearer understanding.