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Notification of the Capital Market Supervisory Board
No. TorThor. 2/2551
Re: Securities and Derivatives Trading
for Derivatives Broker

By virtue of Section 18 of the Derivatives Act B.E. 2546 (2003) as amended by the Derivatives Act (No. 2) B.E. 2551 (2008) which contains certain provisions in relation to the restriction of rights and liberty of persons which Section 29 in conjunction with Section 33, Section 34, Section 36, Section 41, Section 43, and Section 45 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Securities and Exchange Commission acting as Capital Market Supervisory Board by virtue of Section 6 of the Derivatives Act (No.2) B.E. 2551 (2008) hereby issues the following regulations:

Clause 1. In this Notification:

“derivatives broker” means any company licensed to undertake derivatives business in the category of derivatives broker;

“derivatives contract” means a derivatives contract under Section 3 of the Derivatives Act B.E. 2546 (2003) having securities, gold, crude oil, currencies, exchange rate, interest rate, financial index, securities index as goods or variable, or any other assets or variables as specified in the Notification of the Office;

“financial institution” means any financial institution under the law on interests of loans of financial institution;

“foreign financial institution” means any juristic person established under foreign law licensed to provide derivatives services under the law of such foreign countries;

“institutional investor” means institutional investor under Section 3 of the Derivatives Act B.E. 2546 (2003) and the Notification of the Securities and Exchange Commission governing determination of juristic person that is institutional investor;

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“derivatives exchange” means any derivatives exchange licensed by the Securities and Exchange Commission and shall also mean any juristic person established under foreign law licensed to provide derivatives services under the law of such foreign countries and acceptable to the Office.

Clause 2. The derivatives broker investing in securities for its proprietary account shall set policies and rules for investment and shall sufficiently and efficiently have a risk management system, a system to prevent conflicts of interest and leaking of information which should not be disclosed between units and personnel (Chinese wall). The policies, rules and practices shall be prepared in writing with an approval from the company’s board of directors.

Clause 3. The derivatives broker shall not trade derivatives contract or any other contracts with the same characteristics as derivatives contract for their proprietary account, unless such derivatives trading is for hedging or for investment of its proprietary account and complies with the rules prescribed herein.

Clause 4. The derivatives broker shall trade derivatives contract for hedging purpose to prevent risk from changing of price or value of assets or liability, an obligation binding or going to bind in the future by derivatives broker. Such trading shall be made through off-exchange with a counterparty that is a financial institution or a foreign financial institution or through derivatives exchange.

Clause 5. The derivatives broker shall invest in derivatives contract for their proprietary account, and shall trade derivatives contract through off-exchange with a counterparty which is a financial institution or a foreign financial institution or through derivatives exchange only when obtains an approval from the Office.

Clause 6. The derivatives broker with the following qualifications are allowed to trade derivatives contract according to Clause 5:

(1) having sufficient personnel responsible for making decision on derivatives trading and managing risks of derivatives trading, and such personnel shall have knowledge, understanding and experience that benefit responsible jobs.

(2) having policies and rules for investment including policies and measures in controlling and managing risks from derivatives trading and operational management, a system to prevent conflicts of interest and leaking of information which should not be disclosed between units and personnel (Chinese wall), a system for internal audit and internal control. Such policies, rules and practices shall be prepared in writing with an approval from the company’s board of directors and shall contain at least the following details:

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(a) system for the calculation of capital adequacy according to standard required by the Office, or any other higher standards approved by the Office;

(b) the limit of derivatives position (position limit) held by the company at any time considering from:

1. total position
2. position without hedging
3. position of each types of goods or variable
4. position of each counterparty
5. position that is loss

(c) efficient internal audit unit responsible for auditing the operation of the company;

(d) independent compliance unit with acceptable standards and reliable for inspecting the operation of the company;

(e) standard and reliable system for data recording and reporting of information to the company's executive.

Clause 7. Unless otherwise specified in Clause 9, the derivatives broker intends to seek an approval for derivatives trading according to Clause 5 shall submit the application for approval to the Office together with supplementary documents according to the forms and procedures provided in the Office's electronic system.

Clause 8. The Office shall consider and make a decision relating to the application for approval for derivatives trading according to Clause 7 within thirty days as from the date on which the Office receives the complete application and supplementary documents.

Clause 9. In case the derivatives broker is a securities company which has obtained an approval from the Office to make a derivatives trading for their own account according to the notification governing derivatives trading and providing of derivatives services by the securities company issued by virtue of the Securities and Exchange Act B.E. 2535 (1992) and such derivatives broker possess qualifications specified in Clause 6, it shall be deemed that such derivatives broker is allowed to invest in derivatives contract for their proprietary account according to this Notification.

Clause 10. The derivatives broker allowed for derivatives trading under Clause 8 and Clause 9 shall maintain its qualifications according to Clause 6 at all times when such derivatives broker trades derivatives for its proprietary account.

Clause 11. In case the derivatives broker trades derivatives contract whose underlying products are gold or crude oil through off-exchange according to Clause 5, such derivative broker shall perfectly hedge to prevent risks from changing in price or value without delay.

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The provision in the first paragraph shall not apply to the derivatives broker who enters into an option contract as an option holder.

The word “option contract” means the contract with the characteristic as specified in (3) of the definition of “derivatives contract” under Section 3 of the Derivatives Act B.E. 2546 (2003).

Clause 12. In case it appears to the Office that the investment in securities or the trading in derivatives by any derivatives broker violates or does not comply with this Notification or the guideline set by the derivatives broker according to this Notification or it appears that such trading is done in an inappropriate manner, the Office may order such derivatives broker to rectify, undertake, or refrain from undertaking any act in compliance with this Notification.

Clause 13. In case the derivatives broker invested in securities or held position for their proprietary account before the effective date of this Notification, such derivatives broker shall:

(1) In case of investing in securities, the derivatives broker shall act in accordance with the details specified in Clause 2 within thirty days as from the date on which this Notification comes into force.

(2) In case of holding derivatives position, the derivatives broker may continue the holding for the remaining period and shall not extend or renew such contract unless such derivatives broker acts in compliance with the rules prescribed in Clause 4 or Clause 5, as the case may be.

Clause 14. This Notification shall come into force as from 1 July 2008.

Notified this 2nd day of April 2008.

(Mr. Surapong Suebwonglee)

Minister of Finance

Chairman of the Securities and Exchange Commission

Remark: The reason for issuing this Notification is that the trading of securities and derivatives contract for the derivatives broker’s proprietary account may affect its financial condition. Therefore, it is deemed appropriate to issue this Notification to determine rules for the operation of derivatives brokers.