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**Notification of the Capital Market Supervisory Board**

**No. TorThor. 7/2551**

**Re: Rules for Applying for Permission and Granting of Permission to  
Derivatives Brokers to Establish Branch Offices**

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By virtue of Section 18 of the Derivatives Act B.E. 2546 (2003) as amend by the Derivatives Act (No. 2) B.E. 2551 (2008) which contains certain provisions in relation to the restriction of right and liberty of person 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.** This Notification shall come into force as from 1 May 2008.

**Clause 2.** In this Notification,

“Derivatives broker” means any company licensed to undertake derivatives business in the category of derivatives broker, but shall not include a financial institution under other law and later obtain a license to undertake derivatives business;

“Full-service Branch Office” means a derivatives broker’s branch office in Thailand that provides services within the scope approved for such derivatives broker.

“Online Branch Office” means a derivatives broker’s branch office in Thailand that provides services through computer and limit its services to the transaction set forth in Clause 7.

**Clause 3.** The derivatives brokers shall establish branch office only after obtain an approval from the Office according to rules prescribed herein.

## **Chapter 1**

### **Full-service Branch Office and Online Branch Office**

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**Clause 4.** It shall be deemed that the Office approves the establishment of the full-service branch office and online branch office, provided that on date the derivatives broker start-up an operation, it meets the following qualifications;

(1) maintain a net liquid capital according to rules prescribed by the notification of the Securities and Exchange Commission governing the maintenance of financial status of a licensed derivatives broker;

(2) shareholders' equity as shown in the latest financial statement that has been audited by an auditor approved by the Office shall be positive. In case where the derivatives broker increase its paid-up capital after the issuance of the latest financial statement, such increasing shall be calculated in the shareholder's equity of the derivatives broker.

(3) not being incriminated or prosecuted under the criminal lawsuit by an authority in charge (by law), and has no records on offences relating to unfair derivatives trading, securities trading or mismanagement in the manner of deception, frauds or corruption during the period as prescribed by the Office, but not exceeding five years prior to the date the branch office starts its operation;

(4) not being ordered by the Securities and Exchange Commission, the administrative panel or the Office to suspend or restrict its operation, or not being ordered by the Securities and Exchange Commission, the administrative panel or the Office to undertake or refrain from undertaking any act, as the case may be.

(5) for the period of twelve months prior to the date the branch office starts its operation, it must not appear that the derivatives broker conducts an offence relating to misleading its financial status or actual performance;

In the case where the derivatives broker lacks of qualification under (3) or (5), the derivatives broker may be granted an approval from the Office only when the derivatives broker cause the relevant executive or personnel who rendered the company into such disqualification to leave the company.

**Clause 5.** The derivatives broker shall arrange for the full-service branch office to have a branch office manager and the following work units:

- (1) A derivatives services unit;
- (2) A derivatives operation unit, the derivatives broker may arrange for the full-service branch office to share the derivatives operation unit with the head office or other full-service branch offices.

In case of absent of the branch office manager under the first paragraph, the derivatives brokers shall arrange to have a new manager within one month unless obtain a waiver from the Office. In the mean time, the derivatives brokers may assign an officer of the head office or the manager of other full-service branch offices to temporary acting as a manager.

**Clause 6.** In case where the derivatives broker intends to share the branch manager with other full-service branch offices such derivatives broker shall submit the application together with document evidence showing the details of plans for management and supervision of the operation of the full-service branch offices managed by the same manager.

The Office shall consider and notify the result of its consideration to the derivatives broker within thirty days as from the date of receipt of completed application and document evidence, unless there appear to be additional fact and the Office notify of such necessity to the derivatives broker prior to the period of thirty days, the Office may extend the period for consideration as needed.

When meet the period specified in the second paragraph if the Office does not notify the result of its consideration, or does not order ~~otherwise~~ to the derivatives broker, it shall be deemed that the Office grants an approval as per the derivatives broker's request.

**Clause 7.** The online branch office shall perform only the following duties:

- (1) arrange to have a computer set where customer can submit a trading instructions for derivatives contract by themselves;
- (2) accept a derivatives trading account opening form and forward the application to head office or a full-service branch office for approval;
- (3) accept or deliver money or securities by electronic equipment;
- (4) undertake any other necessary duties as prescribed by the notification of the Office.

In providing services under the first paragraph, the online branch office is not allowed to give an advice concerning derivatives contract or suitability of

trading in derivatives contract to customer. The derivatives broker shall arrange to have a clearly statement that the derivatives broker is not allowed to give an advice concerning derivatives contract or suitability of trading in derivatives contract to customer.

**Clause 8.** The derivatives broker shall appoint a person responsible for managing the online branch office. Such person may be an officer from the head office or a manager from a full-service branch office.

**Clause 9.** The derivatives broker shall submit the details of the establishment of full-service branch office or online branch office to the Office prior to the date the branch office starts its operation in accordance with the format set out in an electronic system of the Office.

**Clause 10.** The derivatives brokers are allowed to upgrade its online branch office to full-service branch office provided that on the date the derivatives broker upgrades its branch, it meets the qualification as specified in Clause 4 and notify the details of the upgrading to the Office prior to the upgrade with the format set out in an electronic system of the Office.

## **Chapter 2**

### **Branch Office in Foreign Countries**

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**Clause 11.** The derivatives broker wishing to establish a branch office in foreign countries shall submit an application to the Office in accordance with the forms and procedures set out in electronic system of the Office.

**Clause 12.** The derivatives broker to be approved to establish a branch office in foreign countries according to Clause 11 shall possess the following qualifications:

(1) possess the qualifications as prescribed in Clause 4(1) (3) (4) and (5), in case the derivatives broker lacks of qualification under Clause 4(3) or (5) the derivatives broker may be granted an approval from the Office only when the derivatives broker cause the relevant executive or personnel who rendered the company into such disqualification to leave the company.

(2) shareholders' equity as shown in the latest financial statement that has been audited by an auditor approved by the Office shall not less than Baht one billion, In case where the derivatives broker increase or reduce its paid-up

capital after the issuance of the latest financial statement, such increasing or reducing shall be calculated in the shareholder's equity of the derivatives broker.

(3) demonstrate a plan for the business operation in foreign countries, such plan shall at least contain details of an efficient operational management, monitoring and supervision system, and record keeping system including readiness of personnel;

(4) have good management record as follows:

(a) for the period of one year prior to the date the derivatives broker submits the application, no investor contact working for the derivatives broker being imposed a probation or higher more than three cases, unless obtain a waiver from the Office. Such punishment shall not include the wrongdoing that was founded by the company and forward to the Office for proceeding.

Under the first paragraph "investor contact" means a derivatives investor contact according to the notification of the Office of the Securities and Exchange Commission governing an approval for derivatives investor contact and standard of conducts, and also means an investor contact according to the notification of the Office of the Securities and Exchange Commission governing an approval for investor contact and standard of conducts issued by virtue of the Securities and Exchange Act B.E. 2535 (1992)

(b) for the period of three years prior to the date the derivatives broker submits the application, it must not appears that the derivatives broker being ordered by the Office to rectify significant fault in its internal control system, monitoring and supervision system or the record keeping system relating to work operation, unless obtain a waiver from the Office;

**Clause 13.** The Office shall consider and notify the result of its consideration according to Clause 11 to the derivatives broker within thirty days as from the date of receipt of completed application and document evidence, unless there appear to be additional fact and the Office notify of such necessity to the derivatives broker prior to the period of thirty days, the Office may extend the period for consideration as needed.

**Clause 14.** The derivatives broker shall arrange for each branch office in foreign countries to have a manager who works only for such branch.

In case of absent of the branch office manager under the first paragraph, the derivatives brokers shall arrange to have a new manager within one month unless obtain a waiver from the Office. In the mean time, the derivatives brokers may assign other officers to temporary acting as a manager.

## **Chapter 3**

### **The Power of the Office and Notify of the Closing of Branch Office**

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**Clause 15.** Where it appears to the Office that the operations by a full-service branch office or online branch office or branch office in foreign countries may cause damages to investors, or the derivatives broker lacks of qualification under Clause 4 or Clause 12 (1) or (2) or such derivatives broker does not have an efficient operational management, monitoring and supervision system, and record keeping system or readiness of personnel as specified in Clause 12 (3), as the case may be, or not able to act in compliance with rules prescribed herein for every day during which the operation of such branch office continues, the Office shall have the power to instruct the derivatives broker to rectify, undertake, or refrain from undertaking any act to comply with this notification, or shall have the power to revoke the approval of such branch office.

**Clause 16.** The derivatives broker wishing to temporarily or permanently close the branch office shall notify the Office and publicly announced its closing at its premise in advance within reasonable time. In case of closing of full-service branch office or online branch office, the derivatives broker shall ensure that customer can use the service of head office or other branch offices or facilitate customer to use service from other derivatives broker.

### **Transitional Provisions**

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**Clause 17.** In case where derivatives broker has established the full-service branch office or online branch office prior to the date on which this Notification comes into force, it shall be deemed that such derivatives broker is permitted to establish a full-service branch office or online branch office under this Notification. The branch office shall remain its qualification and act in compliance with this notification for every day during which the operation of such branch office continues.

Notified this 2<sup>nd</sup> day of April 2008.

(Mr.Surapong Suebwonglee)

Minister of Finance

Chairman of the Securities and Exchange Commission

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**Note:**

The reason for issuing this Notification is that the derivatives broker has flexibility in operating its business, able to increase its income and expand its customer to prepared for the upcoming competition after the liberalization of derivatives business license in the future, this Notification is issued to determine the rules regarding permission to qualified derivatives broker to establish branch offices in foreign countries so it is deemed expedient to issue this notification.