

## UNOFFICIAL TRANSLATION

*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 Securities and Exchange Commission

**No. Kor Dor. 21/2552**

#### **Re: Licensing Derivatives Exchange and Derivatives Clearing House**

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By virtue of Section 6, Section 9, Paragraph 3 of Section 54 and Paragraph 3 of Section 75 of the *Derivatives Act B.E. 2546 (2003)*, 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 hereby issues the following regulations:

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

**Clause 2** The *Notification of the Securities and Exchange Commission No. Kor Yor. 49/2547 Re: Licensing Derivatives Exchange and Derivatives Clearing House* dated 11 October 2004 shall be repealed.

**Clause 3** In this Notification:

(1) “*derivatives exchange*” means a derivatives exchange open for services to the general public;

(2) “*derivatives clearing house*” means derivatives clearing house open for services to the general public;

(3) “*parent company*” means:

(a) a juristic person who holds no less than fifty percent of the total outstanding shares of an applicant for *derivatives clearing house* license;

(b) a juristic person who holds no less than fifty percent of the total outstanding shares of the juristic person under (a).

### Chapter 1

#### Derivatives Exchange Licensing

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**Clause 4** An applicant for the *derivatives exchange* license shall be a public limited company with the following qualifications:

(1) having the registered capital of no less than one hundred million baht on the application date and having the paid-up registered capital of no less than one hundred million baht prior to the license issuing date;

(2) being able to show its capability to operate as a *derivatives exchange* as

prescribed under Section 57 and in accordance with the *Notification of the Securities and Exchange Commission, the Notification of the Capital Market Supervisory Board and the Notification of the Office of the Securities and Exchange Commission concerning the Rules on Operating a Derivatives Exchange*;

(3) having directors and executives with honesty and integrity based on their career records, as well as having skills and experiences which are beneficial to the business operation;

(4) being able to show the readiness of its work system and personnel in undertaking the business; and

(5) being able to show that the clearing house which will provide the clearing and settlement services for the *derivatives exchange* to be established has been granted the license or is in the process of applying for the *derivatives clearing house* license from the Securities and Exchange Commission.

**Clause 5** The applicant for the *derivatives exchange* license shall submit the application and supplementary documents together with two sets of such document copies to the SEC Office in accordance with the format and procedures specified in the electronic work system of the SEC Office.

**Clause 6** In applying for the *derivatives exchange* license, the applicant shall allow and facilitate persons designated by the SEC Office to access the applicant's place of business or establishment or other relevant places for inspection of facts relating to the financial condition, operations, assets and other relevant information of the applicant.

**Clause 7<sup>1</sup>** The SEC Office shall submit the matter to the Securities and Exchange Commission for consideration and making order in relation to the application for the *derivatives exchange* license within one hundred and twenty days from the date on which the SEC Office receives the application and supplementary documents in full according to the Licensing Manual for the Public.

The Securities and Exchange Commission shall complete its consideration and making of order in relation to the application for the *derivatives exchange* license within sixty days from the date on which it receives the matter from the SEC Office under Paragraph 1.

The *derivatives exchange* license shall be in the Form attached herein.

**Clause 8<sup>1</sup>** *Repealed.*

**Clause 9** A licensee for operating a *derivatives exchange* shall commence its

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<sup>1</sup> Amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 13/2558 Re: Licensing Derivatives Exchange and Derivatives Clearing House (No. 2)* dated 6 August 2015 (effective from 1 September 2015).

<sup>1</sup> Repealed by the *Notification of the Securities and Exchange Commission No. Kor Thor. 13/2558 Re: Licensing Derivatives Exchange and Derivatives Clearing House (No. 2)* dated 6 August 2015 (effective from 1 September 2015).

operation only when the SEC Office verifies that:

(1) the licensee has arranged for the work system and personnel to be ready in undertaking the business as shown in its application except where there is any difference in the procedures to the extent that it will not materially change the work system and personnel provided in the application;

(2) the rules and regulations of the *derivatives exchange* necessary for compliance with the qualifications set out under Clause 4(2) have been approved by the Capital Market Supervisory Board; and

(3) the *derivatives clearing house* to provide the clearing and settlement services for the *derivatives exchange* has been granted a license by the Securities and Exchange Commission and is able to operate in accordance with the law.

## Chapter 2 Derivatives Clearing House Licensing

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**Clause 10<sup>2</sup>** An applicant for the *derivatives clearing house* license shall be a public limited company or a limited company with the following qualifications:

(1) having the registered capital of no less than three hundred million baht on the application date and having the paid-up registered capital of no less than three hundred million baht prior to the license issuing date;

(2) being able to show that it can obtain financial resources of no less than five hundred million baht for proper performance of its operation and for assumption of various risk exposure that may associate with its operation of a *derivatives clearing house*, and the resources of which may comprise shareholders' equity of the *derivatives clearing house*, assets maintained by the *derivatives clearing house* for the stability of its trading and settlement system in the derivatives market or any written and legally enforceable commitment by its *parent company* to provide financial support to the *derivatives clearing house* to be established under which the *parent company* shall allocate liquid and low-risk assets to secure its performance of such commitment (explicit guarantee);

(3) being able to show its capability to operate as a *derivatives clearing house* as prescribed under Section 78 and in accordance with the *Notification of the Securities and Exchange Commission, the Notification of the Capital Market Supervisory Board and the Notification of the Office of the Securities and Exchange Commission concerning the Rules on Operating a Derivatives Clearing House*;

(4) having directors and executives with honesty and integrity based on their career records, as well as having skills and experiences which are beneficial to the business operation; and

(5) being able to show the readiness of its work system and personnel in undertaking the business.

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<sup>2</sup> Amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 4/2559 Re: Licensing Derivatives Exchange and Derivatives Clearing House (No. 3)* dated 2 August 2016 (effective from 1 July 2016).

**Clause 11** The applicant for the *derivatives clearing house* license shall submit the application and supplementary documents together with two sets of such document copies to the SEC Office in accordance with the format and procedures specified in the electronic work system of the SEC Office.

**Clause 12<sup>1</sup>** The provisions under Clause 6 and Clause 7 shall apply to the application for the *derivatives clearing house* license, *mutatis mutandis*.

**Clause 13** A licensee for operating a *derivatives clearing house* shall commence its operation only when the SEC Office verifies that:

(1) the licensee has arranged for the financial resources, the work system and personnel to be ready in undertaking the business as shown in its application except where there is any difference in the procedures to the extent that it will not materially change the work system and personnel provided in the application; and

(2) the rules and regulations of the *derivatives clearing house* necessary for compliance with the qualifications set out under Clause 10(3) have been approved by the Capital Market Supervisory Board.

**Clause 14** Any notifications of the Office of the Securities and Exchange Commission, orders and circulars issued under or providing guidelines for compliance with the *Notification of the Securities and Exchange Commission No. Kor Yor. 49/2547 Re: Licensing Derivatives Exchange and Derivatives Clearing House* dated 11 October 2004 which have been in effect prior to the effective date of this Notification shall remain in full force and effect to the extent that they are not inconsistent with nor contrary to the provisions of this Notification, until any new notifications, orders and circulars issued under or providing guidelines for compliance with this Notification come into effect.

**Clause 15** Any reference made under any other notifications to the *Notification of the Securities and Exchange Commission No. Kor Yor. 49/2547 Re: Licensing Derivatives Exchange and Derivatives Clearing House* dated 11 October 2004 shall mean reference to this Notification.

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

(Mr. Vijit Supinit)  
Chairman  
Securities and Exchange Commission

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<sup>1</sup> Amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 13/2558 Re: Licensing Derivatives Exchange and Derivatives Clearing House (No. 2)* dated 6 August 2015 (effective from 1 September 2015).

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*Remark:* The reason for issuing this Notification is that the *Derivatives Act (No. 2) B.E. 2551 (2008)* stipulates that the granting of approval of the rules concerning derivatives exchange and derivatives clearing house shall be the power of the Capital Market Supervisory Board, therefore, it deems appropriate to revise the texts contained in this Notification to be in accordance with such power.