

(UNOFFICIAL TRANSLATION)

Codified up to No. 6

As of 17 May 2013

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. Tor Thor. 80/2552

**Re: Criteria for Undertaking Derivatives Business
for Licensed Derivatives Brokers**

By virtue of Section 18 of the *Derivatives Act B.E. 2546 (2003)*, which contains certain provisions relating to the restriction of the 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 the Capital Market Supervisory Board under 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 from 1 September 2009.

Clause 2 The *Notification of the Capital Market Supervisory Board No. Tor Thor. 6/2551 Re: Criteria for Undertaking Derivatives Business for Licensed Derivatives Brokers* dated 2 April 2008 shall be repealed.

Clause 3 In this Notification:

(1) “**derivatives broker**” means a person who is licensed to undertake the derivatives business in the category of derivatives brokerage;

(2) “**manager**” means a person authorized by a company’s board of directors to assume the highest responsibility in the company’s management, regardless of his or her title;

(3) “**institutional investor**” means an *institutional investor* under Section 3 of the *Derivatives Act B.E. 2546 (2003)* and the relevant *Notification of the Securities and Exchange Commission concerning Additional Types of Juristic Persons Classified as Institutional Investor*;

(4) “**derivatives exchange**” means a derivatives exchange that is licensed by the Securities and Exchange Commission;

(4/1)¹ “**foreign derivatives business operator**” means a person licensed to undertake the derivatives business by a regulatory agency on derivatives in a foreign country which is a member of the International Organization of Securities Commissions (IOSCO);

¹ As added by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 2/2553 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 2)* dated 1 February 2010.

(5)² “*investor contact*” means a person who performs duties in contacting, soliciting, giving advice or planning with respect to trading or investment in derivatives for investors. There are two categories of *investor contacts*: the type A *investor contact* who conducts an analysis on the value or suitability of any trading or investment in derivatives, and the type B *investor contact* who does not conduct an analysis on the value or suitability of any trading or investment in derivatives;

(6)³ Repealed.

Chapter 1 General Provisions

Clause 4 In providing the derivatives brokerage services outside *derivatives exchange* [OTC derivatives], the *derivatives broker* shall provide such services to *Institutional investors* only, in which case the provision of Clause 17 and Clause 19 shall not apply.

In providing the derivatives brokerage service under Paragraph 1, the *derivatives broker* shall provide all counterparties of derivatives contract being *institutional investors*.

Clause 5⁴ The provisions in Clause 21, but only with respect to providing information or documentation relating to investment objectives, client levels of understanding and experience in trading derivatives; together with the provisions of Clause 23 and Clause 24, shall not apply to the providing of derivatives brokerage services to the clients who are *institutional investors*.

Chapter 2 Organizational Structure, Operation System, and Operational Control

Clause 6 The *derivatives broker* shall set up its organizational structure, and formulate its policies, scopes of authority, duties, and responsibilities, as well as the operation of the work units relating to undertaking the derivatives brokerage business in a manner

² As repealed and replaced by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 2/2553 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 2)* dated 1 February 2010.

³ As repealed by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 27/2556 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 6)* dated 17 May 2013.

⁴ As repealed and replaced by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 10/2555 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 3)* dated 18 January 2012.

whereby it can be demonstrated that a system to prevent conflicts of interests, a system to prevent leakage of information among work units and personnel, risk management, operational management, and internal audit and internal control are put in place, so as to efficiently accommodate the undertaking of the derivatives business, as well as establish control and monitoring measures to ensure that the operations are carried out as required.

Clause 6/1⁵ The *derivatives broker* shall put in place policies, regulations, and guidelines for supervising the trading of derivatives by the employees in order to prevent the illegal use of internal information by the employees and conflicts of interest in the employees' performance of their duties. In this regard, the policies, regulations, and guidelines shall be formulated in writing, approved by the *derivatives broker's* board of directors, and comply with the criteria prescribed by the Association of Thai Securities Companies and approved by the SEC Office.

Clause 7 The *derivatives broker* shall set up a compliance unit in which acceptable and reliable standards are adopted. The compliance unit shall be independent to monitor the operation of the *derivatives broker*.

Clause 8 The *derivatives broker* shall put in place an efficient risk system for the management of financial and operational risks.

In managing risks associated with the operation of information technology, the *derivatives broker* shall put in place a system of control of the operation and security of information technology in accordance with the criteria prescribed and notified by the SEC Office.

Clause 9 The *derivatives broker* shall ensure that at least one-quarter of the company's directors are independent directors.

In cases in which an independent director of the *derivatives broker* dies, resigns, or his or her approval by the SEC office is revoked; or in the case that the *derivatives broker* is part of a financial conglomerate with its shareholding structure, internal group audit and supervision carried out by another regulatory body as prescribed and notified by the SEC Office, the SEC Office shall have the authority to exempt the *derivatives broker* from the requirement of the proportion of independent directors in Paragraph 1 on a temporary or permanent basis. In this regard, the SEC Office may prescribe other conditions for the *derivatives broker* to comply with.

Clause 10. The *derivatives broker* shall procure personnel who are knowledgeable, capable or experienced and who are beneficial to the undertaking of the derivatives brokerage business in a sufficient number to accommodate the undertaking of the derivatives business in an efficient manner.

⁵ As added by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 53/2555 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 4)* dated 14 December 2012;

Clause 11. The *derivatives broker* shall procure an information management system to ensure that the information relating to the undertaking of the derivatives business, in the form of both paper and electronic data, is accurate, complete, and available for use in an efficient manner within an appropriate time, as well as a security system which is sufficient to prevent the access to or amendment of such information by any unauthorized person.

Clause 12. The *derivatives broker* shall provide documentation evidencing derivatives trading and ensure that complete documentation is maintained and updated, and shall keep reports or articles on the analysis of the value or suitability in trading derivatives and the underlying products in relation to any variables in derivatives in accordance with the criteria prescribed and notified by the SEC Office.

Chapter 3

Operation

Division 1

Client Contact, Solicitation, or Giving Advice and Professional Conduct

Clause 13⁶ Repealed.

Clause 13/1⁷ The *derivatives broker*, who provides advice to clients by a *foreign derivatives business operator*, shall undertake the following acts:

- (1) consider and select a *foreign derivatives business operator* who is reliable and permitted to give advice under the law governing business operation in that country;
- (2) inform that *foreign derivatives business operator* of the criteria on giving advice under the law governing derivatives;
- (3) give the name and contact details of the *derivatives broker* in order for the client to be able to make enquiries on the giving of advice; and
- (4) comply with the criteria for the translation of analysis prescribed by the relevant organization with the derivatives business recognized by the SEC Office.

⁶ As repealed by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 10/2555 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 3)* dated 18 January 2012.

⁷ As added by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 2/2553 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 2)* dated 1 February 2010.

Clause 14 In performing the duty as a *derivatives broker* for clients, the *derivatives broker* shall comply with the following criteria:

(1) the *derivatives broker* shall perform his or her duty honestly by taking into consideration the best interests of clients;

(2) the *derivatives broker* shall give equitable treatment to clients;

(3) the *derivatives broker* shall maintain each client's confidential information and refrain from disclosing personal information, information on trading of derivatives, or a client's financial information to other persons, unless disclosure is made as a result of its obligation for disclosure;

(4) the *derivatives broker* shall not represent any fixed rate of profits or returns on investment or represent that there shall no loss on investment at any fixed rate, with the exception of a representation given in accordance with the criteria prescribed and notified by the SEC Office;

(5) in the case where the *derivatives broker* will engage in a derivatives contract with a client as a counterparty, the *derivatives broker* shall inform the client of such position and obtain a written consent from such client;

(6) in the case of giving advice on derivatives, the *derivatives broker* shall give advice which is suitable to and in the best interests of each client, as well as monitor and supervise to ensure that any preparation and giving of advice adheres to the generally-accepted principles and that such advice is substantiated by reliable documentation, including taking into consideration investment objectives, the level of knowledge, understanding, and experience in derivatives trading, the financial status, and the repayment ability of each client.

In performing the duty in accordance with the criteria specified in Paragraph 1, the *derivatives broker* shall comply with the standards of conduct prescribed and notified by the SEC Office.

Clause 15 The *derivatives broker* shall keep records of giving advice and accepting trading orders in accordance with the criteria prescribed and notified by the SEC Office.

Clause 16⁸ Repealed.

Division 2

Opening of Derivatives Trading Account and Acting as a Derivatives Brokerage

⁸ As repealed by the *Notification of the Capital Market Supervisory Board No. TorThor. 24/2556 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers*(No. 5) dated 4 April 2013.

Clause 17 In providing the derivatives brokerage service, the *derivatives broker* shall enter into a written agreement with the client who has assigned the *derivatives broker* to act as the client's agent in derivatives trading, provided that the written agreement the *derivatives broker* has made with the client shall contain no statement which enables the *derivatives broker* to disclaim its liability to its clients in respect of any willful act or omission or negligent act by the *derivatives broker* or its employees or any person who works for the *derivatives broker*.

Clause 18 At the time the *derivatives broker* agrees to provide the service to the client, the *derivatives broker* shall put in place a written agreement which provides that upon the client's request for settlement of a civil dispute incidental to or in connection with the undertaking of the derivatives business, such dispute will be settled by means of arbitration organized by the SEC Office in accordance with the criteria and procedures prescribed and notified by the SEC Office.

Clause 19 In the interest of preventing and desisting unfair derivatives trading practices and trading abuse, the *derivatives broker* shall prescribe conditions as prescribed and notified by the SEC Office in the aforesaid agreement made with the client under Clause 17.

Clause 20 In considering an application for opening a derivatives trading account, the *derivatives broker* shall establish a written method and procedure for considering an account opening application. Reasonable processes shall be established to ensure that the client is the same person as the one appearing in the documentation in support of the application, and verify the identification of the client, the beneficial owner, and the person controlling the derivatives trading of the client.

Clause 21 The *derivatives broker* shall provide sufficient information or documentation in support of the consideration of the application for opening an account in order to ascertain the client's financial status, repayment ability, investment objectives, level of knowledge, understanding, and experience in derivatives trading for the purpose of consideration of an application for opening an account and the giving of advice to the client.

Clause 22 Prior to opening an account for a client, the *derivatives broker* shall consider the client's ability to place collateral and the client's repayment ability for any maximum position the client may have at any given time.

In considering the client's ability to place collateral and the client's repayment ability under Paragraph 1, the *derivatives broker* shall exercise its prudence by reviewing the financial status, sources of income, and assets to be placed as collateral or for repayment in derivatives trading.

Clause 23. Prior to opening an account or commencing derivatives trading with a client, the *derivatives broker* shall put in place a procedure to ensure that the client is aware of the risk associated with derivatives trading by preparing, at a minimum, a risk disclosure statement, which contains at least the particulars and material information in accordance with the guidelines for risk disclosure statement prescribed by the SEC Office.

In disclosing risks associated with derivatives trading under Paragraph 1, the *derivatives broker* shall sign on the risk disclosure statement to certify that it has given an explanation of the risks associated with derivatives trading to the client, as well as procure the client sign the aforesaid document to certify that the *derivatives broker* has given an explanation on risks which may arise from derivatives trading.

Clause 24. In the case that a client wishes to enter into derivatives trading which involves specific risks that are different from those indicated in the risk disclosure statement under Clause 23, and such risks have not been disclosed by the *derivatives broker*, the *derivatives broker* shall disclose such specific risks to the client together with any material information which may affect derivatives trading prior to the commencing of derivatives trading for that client.

The provision in Paragraph 2 of Clause 23 shall apply to the disclosure of specific risks in this Clause *mutatis mutandis*.

Clause 25. The *derivatives broker* shall put in place a reliable system to verify that the person who sends orders to the *derivatives broker* to take any action regarding the assets in the client's account is the rightful account owner or a person who has been authorized by the rightful account owner in writing.

Clause 26 The *derivatives broker* shall prepare and update records of derivatives trading transactions of each client. In this regard, the records of derivatives trading transactions shall contain the information prescribed and notified by the SEC Office at a minimum.

Clause 27 The *derivatives broker* shall conduct the Know Your Client procedure on a continuous basis and update the information on the client, the beneficial owner and the person controlling the derivatives trading, as well as review the repayment ability and the trading limit of each client on a regular basis.

Clause 28 The *derivatives broker* shall maintain complete documentation with respect to the undertakings in Clause 20, Clause 21, and Clause 27 in a manner that it is readily available for immediate request or inspection by the SEC Office, and shall maintain such documentation for at least five years from the date of the closing of the account.

Clause 29 In providing derivatives brokerage services, the *derivatives broker* shall not display any false statements or conceal any facts which should be disclosed in such a manner that may deceive or materially mislead the clients.

Clause 30 The *derivatives broker* shall put in place a system for handling client complaints, reporting client complaints, and results of the consideration of client complaints, in accordance with the criteria prescribed and notified by the SEC Office.

Clause 31⁹ In making client contact, soliciting or giving advice, the *derivatives broker* may use the services of third parties in making analysis or giving investment advice in accordance with the criteria prescribed and notified by the SEC Office.

Chapter 4 Other Provisions

Clause 32 The *derivatives broker* shall monitor and supervise its employees and the persons working for the *derivatives broker* so that they comply with this Notification and the regulations and guidelines specified by the *derivatives broker* for compliance with this Notification.

Clause 33 Unless otherwise specified, the SEC Office shall have the authority to prescribe and notify any detailed criteria on the matters prescribed in this Notification for the purpose of clarity in practice and for inspection by the SEC Office.

Clause 34 In the case that the SEC Office finds that a *derivatives broker* violates or fails to comply with this Notification or the regulations and guidelines specified by the *derivatives broker* to comply with this Notification, or has inappropriate behaviors while acting as *derivatives broker*, the SEC Office may instruct such person to take corrective action, or act or omit from any act to comply with this Notification.

Clause 35 The *derivatives broker* shall procure information or documentation relating to the persons controlling client derivatives trading, as well as the financial status and repayment ability of the existing clients from whom the *derivatives broker* has never received such information or documentation by 31 December 2009.

Clause 36 All notifications of the SEC Office, orders, and circulars which are issued under or that lay down the guidelines under the *Notification of the Securities and Exchange Commission No. Kor Thor. 65/2547 Re: Criteria for Undertaking Derivatives Business for Licensed Derivatives Brokers* dated 22 December 2004 that have been in force and effect prior to the effective date of this Notification shall remain in full force and effect to the extent that they are not inconsistent or contrary to the provisions of this Notification until the new notifications, orders, and circulars which are issued under or lay down the guidelines under this Notification shall come into full force and effect.

⁹ As repealed and replaced by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 27/2556 Re: Criteria for Undertaking the Derivatives Business for Licensed Derivatives Brokers (No. 6)* dated 17 May 2013.

Clause 37 Any reference made by any notification to the *Notification of the Securities and Exchange Commission No. Kor Thor. 65/2547 Re: Criteria for Undertaking Derivatives Business for Licensed Derivatives Brokers* dated 22 December 2004 shall mean reference to this Notification.

Notified this 3rd day of August 2009.

(Mr. Vijit Supinit)
Chairman
Capital Market Supervisory Board