

(UNOFFICIAL TRANSLATION)

Codified up to No. 5

As of 31 October 2017

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. KorThor/Nor/Khor. 14/2551

Re: Approval for Undertaking of Derivatives Business

By virtue of Section 9 and Paragraph 3 of Section 16 of the *Derivatives Act B.E. 2546 (2003)* which contains certain provisions in relation to the restriction of rights and liberties 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 hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 16 November 2008.

Clause 2 The following notifications shall be repealed:

(1) *Notification of the Securities and Exchange Commission No. KorNor. 8/2547 Re: Licensing Derivatives Business Operator in the Category of Derivatives Fund Manager* dated 23 January 2004;

(2) *Notification of the Securities and Exchange Commission No. KorThor. 56/2547 Re: Licensing Derivatives Business Operator in the Category of Derivatives Brokerage* dated 25 November 2004.

Clause 3 In the Notification:

(1) “*derivatives business license type Sor-1*” means a license to undertake derivatives business in various categories consisting of:

- (a) derivatives brokerage;
- (b) derivatives dealing;
- (c) derivatives advisory service;
- (d) derivatives fund management;

(2) “*derivatives business license type Sor-2*” means a license to undertake derivatives business in various categories consisting of derivatives brokerage and derivatives dealing limited to debt-securities derivatives and derivatives advisory service;

(3) “*debt securities derivatives*” means derivatives whose underlying products are debt securities or variables are interest rates or any other variables as prescribed by the Office;

(4) “*applicant*” means a person applying for derivatives business license under this Notification;

(5) “*commercial bank*” means any commercial bank in accordance with law on commercial banking or law on business of financial;

(6) “*securities company*” means any securities company under the law governing securities and exchange;

(7) “*company*” means a limited company or a public limited company;

(8) “*conglomerate*” means a group of legal entities having relationship in respect of shareholding structure, whereby all legal entities in such group have relationship with each other as *parent company* or *subsidiary*, or each legal entity in such group is held

by the same legal entity, whether directly or indirectly, in the amount or in aggregation of exceeding fifty percent of the total number of shares with voting right of such legal entity;

(9) “**parent company**” means:

(a) a **company** holding shares of the **applicant** exceeding fifty percent of the total number of shares with voting right of the **applicant**;

(b) a **company** holding shares of the **company** under (a) exceeding fifty percent of the total number of shares with voting right of such **company**;

(c) a **company** holding shares of other companies in all upward levels of shareholding, beginning with the **company** holding shares of the **company** under (b) and shareholding in each level exceeds fifty percent of the total number of shares with voting right of such other companies;

(d) a **company** holding shares of the **applicant**, whether directly or indirectly, by itself or combining with others exceeding fifty percent of the total number of shares with voting right of the **applicant**;

(10) “**subsidiary**” means:

(a) a **company** whose shares are held by a **parent company** exceeding fifty percent of total number of shares with voting right of such **company**;

(b) a **company** whose shares are held by the **company** under (a) exceeding fifty percent of total number of shares with voting right of such **company**;

(c) a **company** whose shares are held by other companies in all downward levels of shareholding, beginning with the **company** whose shares are held by the **company** under (b) and shareholding in each level exceeds fifty percent of the total number of shares with voting right of such **company** in the lower level; or

(d) a **company** whose shares are held by a **parent company** or other companies under (a), (b) or (c), whether directly or indirectly, by itself or combining with others exceeding fifty percent of total number of shares with voting right of such **company**;

(11) “**major shareholder**” means any shareholder or beneficial owner of shares who holds more than ten percent of the total number of shares with voting right of the **applicant**.

For the purpose of the provision in Paragraph 1, a beneficial owner of shares includes any beneficial owner of shares prescribed under Paragraph 4 of Section 25;

(12) “**Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business**” means the Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business B.E. 2551 (2008) promulgated under the Securities and Exchange Act B.E. 2535 (1992);

(13) “**securities business license type A**” means a securities business license type A under the **Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business**;

(14) “**securities business license type B**” means a securities business license type B under the **Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business**;

(15) “**securities business license type C**” means a securities business license type C under the **Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business**;

(16) “**securities business license in the category of investment advisory service**” means a license to undertake securities business in the category of investment advisory service under the *Law on Securities and Exchange*.

Clause 4 This Notification shall apply to application for license and issuance of derivatives business licenses as follows:

- (1) *derivatives business license type Sor-1*;
- (2) *derivatives business license type Sor-2*;
- (3) derivatives business license in the category of derivatives advisory service;
- (4) derivatives business license in the category of derivatives fund manager;

The **applicant** under this Notification shall be a limited company or public limited company which meets the qualifications prescribed under Clause 5, Clause 6, Clause 7 or Clause 8 of Chapter 1, as the case may be.

Chapter 1 The Applicant

Clause 5 The **applicant** for *derivatives business license type Sor-1* shall be:

- (1) a *securities company* which obtains a *securities business license type A* or is in a process of applying for such license;
- (2) securities companies other than the *securities company* under (1) which obtain a securities business license in the category of securities brokerage not limited to debt securities or investment units;
- (3) a person who obtains derivatives business license in the category of derivatives brokerage whose shareholder is a *commercial bank* or the *securities company* under either (1) or (2) holding more than 50 percent of the total number of shares with voting right of such person;
- (4) a company which is newly established for the purpose of applying for *derivatives business license type Sor-1* whose shareholder is a *commercial bank* or the *securities company* under either (1) or (2) holding more than 50 percent of the total number of shares with voting right of such company;
- (5) securities companies other than the *securities company* under (1) and (2) but not including financial institutions established by any other law which have obtained securities business license after acquiring a status as financial institution;
- (6)¹ a person who obtains derivatives business license in the category of derivatives brokerage limited to precious metal derivatives;
- (7) a *commercial bank*;
- (8) other financial institutions as prescribed by the Securities and Exchange Commission; or
- (9) a newly established *company* other than companies under (4) for the purpose of applying for *derivatives business license type Sor-1*.
- (10)³ a person who had been permitted to undertake derivatives business in the category of derivatives brokerage under the *Agricultural Futures Trading Act, B.E. 2542 (1999)* on the date when the cabinet passed the resolution on guidelines for merging the Agricultural Futures Exchange of Thailand on 30 December 2014, and had filed an

¹ Amended by the *Notification of the Securities and Exchange Commission No. KorThor/Nor/Khor. 9/2554 Re: Approval for Undertaking of Derivatives Business (No.2)* dated 28 April 2011 (effective on 1 May 2011).

³ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4)* dated 2 December 2015 (effective on 16 December 2015).

application for obtaining *derivatives business license type Sor-1* prior to the termination of such Act.

(11)³ a person who obtains agricultural derivatives business license under Notification of the Securities and Exchange Commission concerning application for undertaking agricultural derivatives business license.

Clause 6 An *applicant* for *derivatives business license type Sor-2* shall be a *securities company* which obtains a *securities business license type B* or is in a process of applying for such license.

Clause 7 An *applicant* for derivatives business license in the category of derivatives advisory service shall be a *securities company* which obtains a *securities business license in the category of investment advisory service* or is in a process of applying for such license.

Clause 8 An *applicant* for derivatives business license in the category of derivatives fund management shall be a *securities company* which obtains a *securities business license type C* or is in a process of applying for such license.

Clause 9 An *applicant* shall be granted a *derivatives business license type Sor-1* only upon meeting the following qualifications:

(1)⁴ having paid-up registered capital under Notification of the Securities and Exchange Commission concerning determination of paid-up registered capital of a person who obtains derivatives business license;

(2) not having a reasonable ground to believe that the *applicant* has financial condition that is likely to cause damage or any other circumstances indicating the *applicant's* financial hardship, including not having any reasonable ground to believe that the *applicant* has any deficiency or inappropriateness regarding the sound business control conduct;

(3) being able to maintain capital funds and set aside reserve capital in compliance with law establishing such legal entity or law controlling business undertaking of such legal entity;

(4)³ being able to show that capital market personnel performing one of the following duties has qualifications and does not have any prohibited characteristics under Section 24 and the notification of the Capital Market Supervisory Board concerning rules of capital market personnel:

(a) duties concerning management, designation, control, and supervision of policies of an *applicant*;

(b) duties concerning control, supervision, and administration of business units: investment consultation, investment planning, investment or capital market product analysis, investment management, or managing branches of an *applicant*;

(c) duties concerning control, supervision, and administration of operation of business units, work performance supervision, internal audit, or risk management;

³ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4)* dated 2 December 2015 (effective on 16 December 2015).

⁴ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 27/2560 Re: Approval for Undertaking of Derivatives Business (No.5)* dated 31 October 2017 (effective on 1 December 2017).

(5) being able to show that person who is *major shareholder* does not have any prohibited characteristics under Paragraph 2 of Section 25 and the notification of the Capital Market Supervisory Board concerning prohibited characteristics of *major shareholders* of derivatives business operator, and in the case where such *major shareholder* is a legal entity, its director, manager and partner also shall not have any of such prohibited characteristics.

In case of application for *derivatives business license type Sor-2*, or derivatives business license in the category of derivatives advisory service or derivatives fund management, the *applicant* shall be granted such derivatives business license only upon meeting the qualifications under Paragraph 1(2), (3), (4) and (5).

³Paragraph 1(4) shall not apply to the *applicant*, who is a legal entity under Clause 5(10), for *derivatives business license type Sor-1* which has filed an application prior to December 15, 2016

Chapter 2

Application of License and Issuance of Derivatives Business License

Clause 10 An *applicant* shall file an application with the Office in accordance with form and procedure together with supplementary documents as specified in the electronic work system of the Office.

Clause 11³ *Repealed.*

Clause 12³ In the case where the Office considers that the *applicant* has properly and fully met the qualifications prescribed under Clause 9, the Office shall make proposal to the Securities and Exchange Commission for consideration of issuing a license within sixty days from the date on which the Office receives the complete application and supplementary documents according to public guide, the Securities and Exchange Commission shall complete its consideration for issuance of derivatives business license within thirty days from the date of receipt of the Office's proposal.

In the case where the Securities and Exchange Commission issues the *derivatives business license type Sor-2*, or derivatives business license in the category of derivatives advisory service or derivatives fund management to the *applicant* who has not already obtained a *securities business license type B*, or a *securities business license in the category of investment advisory service* or a *securities business license type C*, as the case may be, the derivatives business license so issued shall become effective when the relevant securities business license has become effective.

The derivatives business license shall be in the form attached hereto.

³ Amended by the Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4) dated 2 December 2015 (effective on 16 December 2015).

³ Repealed by the Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4) dated 2 December 2015 (effective on 16 December 2015).

³ Amended by the Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4) dated 2 December 2015 (effective on 16 December 2015).

Clause 13 The derivatives business licensee shall comply with the following conditions:

(1) the licensee shall commence operation of derivatives business in the category specified in the license only after the SEC Office having completed its inspection, is of the view that the licensee is able to show that it has:

- (a) already provided sound and effective arrangements for management;
- (b) policy and effective measures for [i] preventing conflicts of interest, [ii] preventing leaking of inside information between units and personnel, [iii] internal control and [iv] risk management for operation of derivatives business in the category to be commenced, including measure for controlling and monitoring the compliance with the policy and measures set in place;
- (c) operational system promptly for operation of derivatives business in the category to be commenced;
- (d) human resources promptly for operation of derivatives business in the category to be commenced;

(2) the licensee shall undertake any of the categories of derivatives business specified in the license within one hundred and eighty days from the date of obtaining the license except where the licensee is a securities business which has already been undertaking securities business;

(3)³ the licensee shall maintain the qualifications under Clause 9 and take steps in the matter shown under (a), (b), (c) and (d) of (1) at all time during which it undertakes derivatives business except the licensee of *derivatives business license type Sor-1* is a legal entity under Clause 5(10) which certain waivers of the qualifications are provided under Paragraph 3 of clause 9; such licensee shall have and maintain such qualifications since December 16, 2016;

(4) the licensee of *derivatives business license type Sor-1* which is the legal entity under Clause 5(3) or (4) and obtained the license prior to 1 January 2012 shall maintain shareholding proportion by the *commercial bank* or *securities company* which obtains a securities business license in the category of securities brokerage not limited to debt securities or investment units in compliance with the requirements set out in Clause 5(3) or (4), as the case may be, until 31 December 2011;

(5) the following licensee of *derivatives business license type Sor-1* shall maintain the status as a legal entity in a *conglomerate* at all time during the period of undertaking derivatives business and in accordance with details on the most recent shareholding structure shown to the SEC Office:

(a) the licensee being granted a waiver on the derivatives business license fee under Clause 16(3);

(b) the licensee having a legal entity in a *conglomerate* being a *securities company* obtaining a *securities business license type A* where the said *securities company* has been granted a reduction in the securities business license fee in accordance with the *Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business*;

(6) the licensee of *derivatives business license type Sor-2*, or derivatives business license in the category of derivatives advisory service or in the category of derivatives fund manager shall be the *securities company* which has a *securities business license type B*, or a *securities business license in the category of investment advisory service*

³ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4)* dated 2 December 2015 (effective on 16 December 2015).

or a *securities business license type C*, as the case may be, at all time during its undertaking of derivatives business.

If the derivatives business licensee fails to satisfy any condition set out under Paragraph 1, the Securities and Exchange Commission may revoke its license.

Clause 13/1³ To comply with conditions regarding operation commencement of derivatives business under Clause 13(1) for the licensee of *derivatives business license type Sor-1* which qualified as a legal entity under clause 5(10), the following conditions shall also be considered:

(1) in the case where the licensee undertaking derivatives business under *the Agricultural Futures Trading Act, B.E. 2542 (1999)* at all time up until the date of filing the application, licensee shall commence derivatives business' operation in such category without the SEC Office inspection: provided that such derivatives business shall has similar characteristics to the category of the derivatives business that will be commenced and such licensee has limit scope of its derivatives business that will be commenced specifically to agricultural derivatives;

(2) in the case where the licensee has requested the SEC Office to inspect operation's promptness during application consideration period and the SEC Office having completed its inspection and considers that the *applicant* has properly and fully met qualifications prior to the date of obtaining the license, it is shall be deemed that the licensee has comply with the prescribed conditions.

Clause 14³ Subject to Clause 15, Clause 16 and Clause 17, the fees for application and issuance of license for undertaking derivatives business shall be as follows:

(1) application fee for derivatives business license shall be thirty thousand baht per application;

(2) fee for *derivatives business license type Sor-1* shall be five million baht per license.

Application fee under Paragraph 1(1) and license fee under Paragraph 1(2) which is four million eight hundred and fifty thousand per license shall be waived for the following *applicants*:

(1) legal entity under Clause 5(10);

(2) legal entity under Clause 5(11) in which the licensee having obtained agricultural derivatives business license under the Notification of the Securities and Exchange Commission concerning application of agricultural derivatives business license due to its qualifications as the licensee having permitted to undertake derivatives business in the category of derivatives brokerage under the *Agricultural Futures Trading Act, B.E. 2542 (1999)*;

When the Office receives the complete application and supplementary documents according to public guide, the *applicant* shall make the application fee payment to the SEC Office.

³ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4)* dated 2 December 2015 (effective on 16 December 2015).

³ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4)* dated 2 December 2015 (effective on 16 December 2015).

The license fee shall be paid by the licensee on the date when it receives the license.

Clause 15 In case of simultaneous filing of application for derivatives business license and securities business license, if the *applicant* or a legal entity in the *conglomerate* of the *applicant* has paid the application fee for such securities business license, the application fee under this Notification shall be waived.

Clause 16 In case of applying for *derivatives business license type Sor-1*, the application fee under Clause 14(2) shall be waived if the *applicant* is one of the following legal entities:

- (1) a *securities company* having obtained a *securities business license type A*;
- (2)¹ a person having obtained derivatives business license in the category of derivatives brokerage not limited to *debt securities derivatives* or precious metal derivatives;
- (3) a licensee having a legal entity in a *conglomerate* being a *securities company* which has obtained a *securities business license type A* or *derivatives business license type Sor-1*.

Clause 17¹ In case of application for *derivatives business license type Sor-1*, if the *applicant* has obtained derivatives business license in the category of derivatives brokerage limited to precious metal derivatives, the license fee paid by the *applicant* shall be reduced in the amount equal to the amount of the license fee already paid by the *applicant* for the said derivatives business license.

Chapter 3 Return of Existing Derivatives Business License

Clause 18 An *applicant* for derivatives business license for the purpose of undertaking derivatives business in addition to the categories already licensed derivatives business license previously obtained, shall file the application as specified in accordance with Chapter 2.

In filing the application under Paragraph 1, the *applicant* shall file the application to return the derivatives business license obtained by the *applicant* or the legal entity in the *conglomerate* prior to the filing date of such application altogether in accordance with Clause 19 or Clause 20, as the case may be.

¹ Amended by the *Notification of the Securities and Exchange Commission No. KorThor/Nor/Khor. 9/2554 Re: Approval for Undertaking of Derivatives Business (No.2)* dated 28 April 2011 (effective on 1 May 2011).

¹ Amended by the *Notification of the Securities and Exchange Commission No. KorThor/Nor/Khor. 9/2554 Re: Approval for Undertaking of Derivatives Business (No.2)* dated 28 April 2011 (effective on 1 May 2011).

Clause 19³ In case of application for *derivatives business license type Sor-1*, an *applicant* shall take steps to return the derivatives business license in the following categories:

(1) *derivatives business license type Sor-2*, agricultural derivatives business license, derivatives business license in the category of derivatives brokerage, derivatives advisory service and derivatives fund management obtained by the *applicant* prior to the filing date of the application;

(2) derivatives business license in the category of derivatives brokerage, excluding the following licenses which a legal entity in a *conglomerate* has obtained prior to the filing date of the application:

(a) derivatives business license in the category of derivatives brokerage limited to precious metal derivatives;

(b) agricultural derivatives business license.

Clause 20 In case of application for *derivatives business license type Sor-2*, an *applicant* shall take steps to return the derivatives business license in the category of derivatives advisory service obtained by the *applicant* prior to the filing date of the application.

Clause 21 In the case where the licensee, being required to maintain its status of legal entity in a *conglomerate* pursuant to Clause 13(5), is to change its shareholding structure to the extent that it is unable to maintain such status but intends to continue undertaking the derivatives business as licensed, the licensee shall file an application to return such derivatives business license with the Office prior to the date of such change of shareholding structure together with the application for license of derivative business in the category of which it intends to undertake in accordance with Chapter 2.

Clause 22 In the case where a derivatives business license has been issued to an *applicant* filing the application to return the derivatives business license in accordance with Paragraph 2 of Clause 18 or Clause 21, as the case may be, such issued license shall be effective on the date of cancellation of the returned license.

Transitional Provisions

Clause 23 Any licensee of derivatives business pursuant to the notifications of the Securities and Exchange Commission which is repealed by this Notification shall continue to undertake the licensed derivatives business under the terms and conditions of that license.

Clause 24 In respect of any application for derivatives business license having been filed with the Office pursuant to the notifications of the Securities and Exchange Commission which is repealed by this Notification, and whose supporting documents having been duly filed in full prior to the date on which this Notification comes into force, the

³ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 25/2558 Re: Approval for Undertaking of Derivatives Business (No.4)* dated 2 December 2015 (effective 16 December 2015).

application and approval of which shall be proceeded in compliance with the said notifications and any relevant notifications.

Clause 25 Any licensee of derivatives business pursuant to the notifications of the Securities and Exchange Commission being repealed by this Notification who does not commence the operation of the derivatives business under the licensed category shall commence the operation of such derivatives business upon inspection by the Office that the licensee has proceeded to meet with the qualifications prescribed under the said notifications except for a case where there is difference in procedures which does not result in any material change of the qualifications stated in the application.

Clause 26 Any licensee of derivatives business in the category of derivatives brokerage which is a **company** newly established for the purpose of applying for such license pursuant to the *Notification of the Securities and Exchange Commission No. KorThor. 56/2547 Re: Licensing Derivatives Business Operator in the Category of Derivatives Brokerage* dated 25 November 2004 which is repealed by this Notification shall maintain the shareholding structure by a **commercial bank** or **securities company** having obtained the securities business license in the category prescribed by the said notification in the proportion exceeding fifty percent of the total number of shares with voting right of the licensee until 31 December 2011.

Notified this 5th day of November 2008.

(Mr. Vijit Supinit)
Chairman
Securities and Exchange Commission

Remarks: The reason for issuing this Notification is that it deems appropriate to modify the qualifications of applicants for derivatives business license to offer opportunity to business operators with proper qualifications and readiness in term of financial and management capability to undertake derivatives business as well as to improve the issuance of derivatives business license so as to cover a number of derivatives business categories so that licensed operators are able to offer a fully integrated services in respect of derivatives business similar to the case of issuance of license for securities business which is closely related with derivatives business.