

(UNOFFICIAL TRANSLATION)

Codified up to No.4  
As of 17 January 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 Capital Market Supervisory Board**

**No. TorThor. 22/2553**

**Re: Rules on the Undertaking of Derivatives Business for  
Registered Derivatives Broker and Dealer**

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By virtue of Section 18 of the *Derivatives Act B.E. 2546 (2003)* which contains certain provisions relating to the restriction of rights and liberties 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 Capital Market Supervisory Board hereby issues the following regulations:

**Clause 1** The *Notification of the Capital Market Supervisory Board No. TorThor. 81/2552 Re: Rules for Undertaking Derivatives Business for Registered Derivatives Broker and Dealer dated 3 August 2009* shall be repealed.

**Clause 2** In this Notification:

(1) “*derivatives business operator*” means any person having obtained permission by registering to undertake derivatives brokerage or derivatives dealing business;

(2) “*derivatives broker*” means any person having obtained permission by registering to undertake derivatives brokerage business;

(3) “*derivatives dealer*” means any person having obtained permission by registering to undertake derivatives dealing business;

(4) “*institutional investor*” means an institutional investor as prescribed in Section 3 [of the *Derivatives Act B.E. 2546 (2003)*] and the *Notification of the Securities and Exchange Commission concerning the Determination of an Additional Entity to be Classified as Institutional Investor*.

**Clause 3** This Notification shall be applicable to the *derivatives business operator* who undertakes derivatives business only with the *institutional investor*.

**Chapter 1**  
**Organizational Structure, Operating System and**  
**Operational Control**

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**Clause 4** For operating derivatives business, a *derivatives business operator* shall arrange for a proper organizational structure, operating system and operational control to support the operating derivatives business efficiently in order to [i] ensure that the derivatives business is able to be operated with honesty by taking into account a client's interest and treats all clients with fairness and [ii] maintain the integrity of the capital market and the derivatives trading system as a whole.

**Clause 5** In order to arrange for a proper organization structure, operating system and operational control as prescribed in Clause 4, a *derivatives business operator* shall have efficient measures for [i] preventing conflicts of interest and inhibiting access to inside information between operating until and personnel, [ii] risk management of derivatives business, [iii] operational management, [iv] compliance and [v] internal control.

**Clause 6** A *derivatives business operator* shall have a system for arranging and keeping information relating to the operating of derivatives business to ensure that such system shall serve accurately, completely and currently so that the information is able to be used and examined efficiently. In addition, the system shall be protected and prevented from accessing or altering the information by unauthorized person.

The *derivatives business operator* shall keep the information under Paragraph 1 for at least five years as from the date of being recorded in information system. In this regard, in the first two years of keeping such information, the information shall be kept in a manner that it is able to be promptly retrieved and inspected by the SEC Office.

**Clause 7** A *derivatives business operator* shall examine, supervise, and be responsible for ensuring that its staff and personnel are complying with [i] the *Law on Derivatives*,<sup>1</sup> [ii] any relevant rules and regulations issued under such law and [iii] any other code of conduct announced by the *derivatives business operator*.

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<sup>1</sup> *Law on Derivatives* means the *Derivatives Act B.E. 2546 (2003)*.

## Chapter 2

### Restriction on Operating Business of Derivatives Broker

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**Clause 8** A *derivatives broker* shall only provide services pertaining to Over-the-Counter derivatives.

## Chapter 3

### Standard for Operating Derivatives Business

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**Clause 9** The provisions prescribed in this Chapter are the minimum standard for undertaking derivatives business in order to ensure that the *derivatives business operator* undertake its business with care, diligence and best interest for its client.

## Division 1

### General standard for derivatives business operator

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**Clause 10** A *derivatives business operator* shall not disclose false information or conceal facts which should be revealed to deceive or materially mislead clients relating to derivatives or goods or variables.

**Clause 11** In order to engage in derivatives transactions with clients, a *derivatives business operator* shall have the procedure for knowing its client and making client due diligence to realize its clients' information sufficiently and to ensure that its clients are *institutional investor*. In addition, the *derivatives business operator* shall provide a system for recording, examining and reviewing the clients' information so as to ensure that such information is correct and complete, as well as current throughout the period of derivatives.

**Clause 12<sup>1</sup>** *Repealed.*

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<sup>1</sup> Repealed by the Notification of the Capital Market Supervisory Board No. TorThor. 26/2554 Re: Rules on the Undertaking of Derivatives Business for Registered Derivatives Broker and Dealer (No.2) dated 6 June 2011.

**Clause 13** In case a *derivatives business operator* has outsourced other persons to undertake function of [i] contacting, soliciting or giving advice relating to derivatives transaction or [ii] analyzing value or suitability of the derivatives and goods or variables specified in derivatives and disseminates those analysis to its clients, the *derivatives business operator* shall inform the name and information of such person to the SEC Office within seven days as from the outsourcing date.

**Clause 13/1<sup>3</sup>** In case a *derivatives business operator* wishes to arrange for foreign personnel to give advice relating to derivatives or appropriateness of derivatives denominated in foreign currency, part of the *Notification of Capital Market Supervisory Board concerning Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency*, which is about foreign personnel arrangement to give information or advice on investment in the capital market products denominated in foreign currency to the clients, shall be applicable *mutatis mutandis*.

## Division 2

### Specific standard for derivatives dealer

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**Clause 14<sup>2</sup>** In order to propose derivatives to clients, a *derivatives dealer* shall:

- (1) propose category of derivatives which is suitable for clients by at least taking into account the purpose of investment of clients;
- (2) determine the quantity of derivatives transaction of each client;
- (3) provide the suitability test of investment in derivatives in case the clients wish to do such test.

The part of the suitability test or entering into the transaction of the product in the capital market according to the *Notification of the Capital Market Supervisory Board concerning Standard Conduct of Business, Management Arrangement, Operating Systems*,

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<sup>3</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 3/2560 Re: Rules on the Undertaking of Derivatives Business for Registered Derivatives Broker and Dealer (No.4)* dated 17 January 2017.

<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 1/2557 Re: Rules on the Undertaking of Derivatives Business for Registered Derivatives Broker and Dealer (No.3)* dated 31 January 2014.

and Providing Services to Clients of Securities Companies and Derivatives Intermediaries shall be applicable to the suitability test under (3) of Paragraph 1, *mutatis mutandis*.

**Clause 15<sup>1</sup>** A *derivatives dealer* shall provide the procedure to ensure that its clients acknowledge and understand the information and the risk relating to the derivatives by minimum disclosure of the following information:

- (1) information relating to financial status, credibility and scope of the *derivatives dealer* business;
- (2) detailed information of the derivatives relating to types, characteristics, structures, goods or variables and conditions;
- (3) benefits or returns and profit or loss which the clients will receive from entering into derivatives transaction including the detailed calculation of such profit, loss, benefits or returns;
- (4) potential risks from entering into derivatives transaction including the factors of risks and the range of damages in case of the worst case scenario;
- (5) dispute resolution channel between clients and the *derivatives dealer*.

The provisions under Paragraph 1 shall not applicable to the following clients:

- (1) a *derivatives business operator* under Thai or foreign law;
- (2) clients other than (1) who declare the intention, in written to the *derivatives dealer*, not to receive such information.

**Clause 16** A *derivatives dealer* which is the juristic person established under foreign law and is operating as the *derivatives dealer* under such law, shall appoint at least one contact person to coordinate with the SEC Office and its clients in Thailand. In this regard, the *derivatives dealer* shall inform the name and the address of such person to the SEC Office within seven days from the appointing date or any changes, unless there is a necessary and reasonable reason that the SEC Office may temporary exempt the *derivatives dealer* from appointing such contact person.

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 26/2554 Re: Rules on the Undertaking of Derivatives Business for Registered Derivatives Broker and Dealer (No.2)* dated 6 June 2011.

## Chapter 4

### Authorities and Penalties

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**Clause 17** In case it appears to the SEC Office that a *derivatives business operator* [i] has breached or failed to comply with this Notification, or code of conduct announced by the *derivatives business operator* for complying with this Notification, or [ii] has had an inappropriate behavior to be a *derivatives business operator*, the SEC Office may order such person to amend, act or refrain to act in order to comply with this Notification.

**Clause 18** In case a *derivatives business operator* breaches this Notification, the *derivatives business operator* shall be liable to administrative sanction under Section 111 in conjunction with Section 114 [of the *Derivatives Act B.E. 2546 (2007)*].

## Chapter 5

### Transitional Provisions

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**Clause 19** A *derivatives business operator*, who has outsourced other persons to undertake function of [i] contacting, soliciting or giving advice relating to derivatives transaction or [ii] analyzing value or suitability of the derivatives and goods or variables and disseminated those analysis to its clients before the effective date of this provision, shall inform the name and information of such person to the SEC Office within seven days as from the date when this Notification comes into force.

**Clause 20** A *derivatives dealer*, who is juristic person established under foreign law and is undertaking as the *derivatives dealer* under such law which has been registered as the *derivatives dealer* before this Notification comes into force, shall appoint at least one person to coordinate with the SEC Office and its clients in Thailand and inform the name and contact address of such person to the SEC Office within ninety days as from the date when this Notification comes into force.

**Chapter 6**

**Effective date of this Notification**

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**Clause 21** This Notification shall come into force as from 16 June 2010.

Notified this 1st day of June 2010.

- Signature -

(Mr. Thirachai Phuvanatanarubala)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

*Note:* please note that contents added in brackets [...] have only been provided in the English version for clearer understanding.