

## UNOFFICIAL TRANSLATION

Codified up to No. 3

As of 4 January 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. TorThor. 23/2553**

#### **Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealers**

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

**Clause 1** In this Notification:

"*derivatives dealer*" means a person holding a license to undertake a derivatives business in the category of *derivatives dealer*;

"*institutional investor*" means an *institutional investor* under Section 3 and the *Notification of the Securities and Exchange Commission concerning Additional Determination of Type of Juristic Person Classified as Institutional Investors*.

### **Chapter 1**

#### **Organizational Structure, Operating System and Operational Control**

**Clause 2** In undertaking the derivatives business, a *derivatives dealer* shall set up organizational structure, operating systems and operational control which are able to uphold the derivatives business efficiently in order to ensure honest business conduct, taking into account the interest of the client, and fair treatment of all clients as well as maintaining the integrity of the capital market and the derivatives trading system as a whole.

**Clause 3** In setting the organizational structure, operating system and operational control under Clause 2, the *derivatives dealer* shall ensure efficient prevention of conflicts of interest and access to inside information between operational unit and personnel, risk management in business operation, operational management, compliance and internal control.

**Clause 4** The *derivatives dealer* shall provide a system for recording and keeping information to ensure that the information pertaining to the derivatives business undertaking is accurate, complete and current as well as functional and can be monitored effectively. There shall also be an adequate security system to prevent any unauthorized person from accessing or altering such information.

The *derivatives dealer* shall keep the information pertaining to derivatives business undertaking under Paragraph 1 for a period of not less than five years from the date on which the information was recorded in the system. In this regard, during the first

two years it shall be kept in a manner that is able to be retrieved promptly and inspected by the SEC.

**Clause 5** The *derivatives dealer* shall inspect, supervise and take responsibility to ensure that its staff and personnel are complying with the law on derivatives and the guidelines issued under such law including the code of conduct announced by the *derivatives dealer* in compliance with this Notification.

## **Chapter 2**

### **Restrictions in Undertaking Derivatives Business**

**Clause 6<sup>1</sup>** In providing services as *derivatives dealer*, the *derivatives dealer* shall engage as a counter party in derivatives trading solely with the following clients:

- (1) *institutional investors*
- (2) other juristic persons who trade in derivatives for their own account for the purpose of hedging against changes in the price or value of assets, liabilities or contingent obligations that such juristic persons have or will have in the foreseeable future due to commercial operations.

## **Chapter 3**

### **Standards in Undertaking Derivatives Business**

**Clause 7** The provisions in this chapter shall set the minimum standard for the performance of *derivatives dealers* in order that the *derivatives dealers* perform their duties with care, prudence and in the best interest of the client.

**Clause 8** The *derivatives dealer* shall not disclose false information or conceal facts which should be revealed in order to deceive or materially mislead clients pertaining to derivatives, goods or variables.

**Clause 9<sup>2</sup>** In engaging in derivatives with clients, the *derivatives dealer* shall have a know-your-client and client due diligence procedure and ensure that the derivatives dealer is engaging solely with clients as defined in Clause 6. Additionally, the *derivatives dealer* shall provide a system for recording, examining and reviewing the clients' information so as to ensure that such information is correct complete and current throughout the period of derivatives trading.

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

**Clause 10<sup>3</sup>** The *derivatives dealer* shall enter into an agreement with the client in writing at the time agreed upon to provide services to the client to arrange for a dispute resolution by an arbitration process organized by the SEC Office in accordance with the rules and procedures prescribed by the SEC Office when requested by the client for the settlement of civil dispute incidental to or resulting from the derivatives business by means of arbitration by the SEC Office.

<sup>4</sup>The provisions of Paragraph 1 shall not apply to the case where the client is an *institutional investor*.

**Clause 11** In case the *derivatives dealer* has outsourced other persons to undertake the function of contacting, soliciting or giving advice relating to derivatives transaction or analyzing the value or advisability of the derivatives transaction and goods or variable and disseminates aforesaid analysis to its clients, the *derivatives dealer* shall inform the name and information of such person to the SEC Office within 7 days as from the outsourcing date.

**Clause 12<sup>5</sup>** Subject to Clause 12/1, the *derivatives dealer* shall take into account the suitability of proposing derivatives to the client. In any case, the types of the clients and the types of derivatives shall be categorized according to their level of risk. The *derivatives dealer* shall also consider the purpose of investment and determine the appropriate quantity of derivatives transaction of each client.

**Clause 12/1<sup>67</sup>** In providing services as a *derivatives dealer* to a client who is a juristic person as prescribed in Clause 6(2), the *derivatives dealer* shall engage in a derivatives contract for hedging the risk of client on the condition that such dealer has a risk profile opposite a client's hedged risks at the time of contracting, or the derivatives would be able to significantly decrease or constrain a client's risk at the time of contracting, and only when the derivatives will not cause additional risks unless it is the counterparty's risk arising from such derivatives itself.

In providing services under Paragraph 1, the *derivatives dealer* shall ensure that a chief executive officer or a person assigned by the client has already granted consent before the client engages in derivatives contract with the derivatives dealer.

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<sup>3</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

<sup>4</sup> Added by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

<sup>6</sup> Added by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

<sup>7</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 1/255 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No. 3)* dated 4 January 2013.

**Clause 13<sup>8</sup>** A *derivatives dealer* shall provide the procedure to ensure that the clients acknowledge and understand the information and risks relating to derivatives trading by minimum disclosure of the following information:

(1) information relating to the financial status, credibility and scope of the *derivatives dealer*'s business;

(2) detailed information pertaining to types, characteristics, structures, goods or variable and conditions of the derivatives;

(3) benefits or returns and profit or loss which the clients will receive from entering into derivatives transaction including the detailed procedure in calculating such profit, loss, benefits or returns;

(4) potential risks from entering into derivatives transaction including the factors causing risks and the range of damages in the worst case scenario;

(5) dispute resolution channel between clients and the *derivatives dealer* relating to the derivatives transaction.

<sup>9</sup>The provisions under Paragraph 1 shall not be applicable to the following clients:

(1) a *derivatives business operator* under Thai or foreign law;

(2) clients other than Subclause (1) who decline, in writing, to the *derivatives dealer*, to receive such information.

#### **Chapter 4 Authorities and Penalties**

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**Clause 14** In case it appears to the SEC Office that a *derivatives dealer* has breached or failed to comply with this Notification, or code of conduct announced by the *derivatives dealer* in compliance with this Notification, or has had an inappropriate behavior as a *derivatives dealer*, the SEC Office may order such person to amend, act or refrain to act in order to comply with this Notification.

**Clause 15** In case a *derivatives dealer* breaches this Notification, the *derivatives dealer* shall be liable to administrative sanction under Section 111 in conjunction with Section 114.

#### **Chapter 5 Effective date of this Notification**

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<sup>8</sup> Amended by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

<sup>9</sup> Added by the *Notification of the Capital Market Supervisory Board No. TorThor. 25/2554 Re: Rules for Undertaking Derivatives Business for Licensed Derivatives Dealer (No.2)* dated 6 September 2011.

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

Notified this 1st day of June 2010.

(Mr. Thirachai Phuvanatanarubala)  
Secretary-General  
Capital Market Supervisory Board