

(UNOFFICIAL TRANSLATION)

Codified up to No. 2
As of 18 January 2012

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 Khor. 4/2553
Re: Rules on Undertaking Derivatives Business for
Licensed Derivatives Advisors**

By virtue of Section 18 of the *Derivatives Act B.E. 2546 (2003)*, which contains certain provisions in relation 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 hereby issues the following regulations:

Clause 1 In this Notification:

- (1) “*derivatives advisory company*” means a company licensed to undertake derivatives business in the category of derivatives advisory service;
- (2) “*derivatives investor contact*” means any person who performs duties in contacting, soliciting, giving advice or planning related to the purchase or sale or investment in derivatives for investors. There are two categories of investor contact which are Category A Derivatives Investor Contact who is allowed to conduct an analysis on the value or suitability of the purchase or sale or investment in derivatives, and Category B Derivatives Investor Contact who is not allowed to conduct an analysis on the value or suitability of the purchase or sale or investment in derivatives;
- (3) “*giving of advice*” means giving of advice, whether directly or indirectly, related to derivatives contracts or suitability for investing in such derivatives contracts;
- (4) “*client*” means a person who agrees to receive advisory services from a *derivatives advisory company*;
- (5) “*foreign derivatives business operator*” means any person who is allowed to undertake derivatives business by a foreign derivatives regulatory agency who is a member of the International Organization of Securities Commissions (IOSCO).

Clause 2 In acting as a derivatives advisor, a *derivatives advisory company* shall at least undertake the following actions:

- (1) providing work systems that are ready for the undertaking of derivatives advisory business as approved by the SEC Office, including an internal control system related to the *giving of advice* and a system for monitoring investments of the *derivatives advisory company* and its employees;
- (2) providing a compliance supervisor of the *derivatives advisory company* to be in charge of issuing rules related to prevention of conflicts of interest and internal control of such *derivatives advisory company*, as well as to supervise investor contacts to comply with the law, relevant notifications and standards of professional conduct. In cases where the *derivatives advisory company* intends to change the work systems as approved by the SEC Office under Paragraph 1, it shall give a prior notice in writing to the SEC Office. Unless the SEC Office gives an objection in writing within fifteen days from the date of receiving the notice, the *derivatives advisory company* may change such work systems.

Clause 3¹ *Repealed.*

Clause 4 In order to ensure that the *giving of advice* is corresponding to and consistent with the objectives and demands of *clients*, a *derivatives advisory company*, in contacting and soliciting *clients* to become a counterparty for advisory services related to the purchase or sale or investment in derivatives, shall:

(1) prepare *client*'s information and arrange for giving of appropriate advice by taking into account the *client*'s investment objective, knowledge and understanding related to investment, acceptable risks and other factors. The investment advisory company shall solicit such information from the *client* for making a consideration.

An agreement for provision of investment advisory services shall specify the *client*'s right to receive clear and sufficient information relating to the provision of investment advisory services. In addition, any term or condition which may cause any conflict of interest between the *client* and the *derivatives advisory company* and its related persons as prescribed by the SEC Office shall require the *client*'s consent.

(2) disclose or proceed to disclose the information necessary for making investment decisions sufficiently and within an appropriate period of time. In this regard, the information shall be correct and up-to-date and shall not have any characteristics that mislead or distort facts.

Clause 5 In cases where a *derivatives advisory company* arranges for *giving of advice* to *clients* by a *foreign derivatives business operator*, it shall proceed as follows:

(1) consider and select a foreign securities business operator which is competent and reliable in giving advice in compliance with the law governing business undertaking in such foreign country;

(2) inform the *foreign derivatives business operator* of the rules related to the *giving of advice* under the law governing derivatives;

(3) inform the name and address of such derivatives business operator in order to allow *clients* to make contact or enquiry related to the *giving of advice*; and

(4) comply with the rules related to the translation of analysis report as determined by a derivatives business-related organization which is acceptable to the SEC Office.

Clause 6 A *derivatives advisory company* shall keep documents and evidence related to the *giving of advice* on derivatives investment as follows:

(1) Documents and evidence related to the *giving of advice* on derivatives investment shall be kept for at least five years from the date on which they are given to *clients* in the manner which is immediately available upon the SEC Office's request for review or inspection. In cases where the *giving of advice* by a *foreign derivatives business operator* is provided, the *derivatives advisory company* shall keep the documents related to the *giving of advice* including analysis reports or any other documents supporting the *giving of advice* for at least five years from the date on which such advice is given in Thailand;

¹ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 7/2555 Re: Rules on Undertaking Derivatives Business for Licensed Derivatives Advisors (No. 2)* dated 18 January 2012 (effective on 1 April 2012).

(2) Audio recording tapes or electronic recording media related to the *giving of advice* shall be kept for at least three months from the date on which the advice is given. However, should there be any customers' complaint relating to the *giving of advice* whose proceeding has not been completed within such period, the *derivatives advisory company* shall maintain such audio recording tapes or electronic recording media until the handling of such complaint is completed.

Clause 7 This Notification shall come into force as from 1 February 2010.

Notified this 1st Day of February 2010.

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(Mr. Thirachai Phuvanatanubala)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board

Remark: The reason for the promulgation of this Notification is to: (1) stipulate the rules regarding the undertaking of derivatives business for licensed derivative advisors and the rules regarding the undertaking of investment advisory business to be consistent and (2) prescribe the guidelines for the arrangement of derivatives advisory companies for the giving of advice by foreign derivatives business operators to retail investors in Thailand.