

(UNOFFICIAL TRANSLATION)

*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 Office of the Securities and Exchange Commission  
No. SorThor. 84/2558  
Re. Provisions for Licensed Derivatives Brokers in Case of  
Having Failed to Maintain Financial Condition**

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By virtue of Section 50 of the *Derivatives Act, B.E. 2546 (2003)*, the SEC Office hereby issues the following regulations:

**Clause 1** In this Notification:

“*derivatives broker*” means a person obtaining derivatives business license in the category of derivatives brokerage with duty to maintain financial condition in accordance with the *Notification concerning Maintenance of Financial Condition*;

“*Notification concerning Maintenance of Financial Condition*” means the *Notification of the Securities and Exchange Commission Re: Maintenance of Financial Condition of Licensed Derivatives Broker*.

**Clause 2** A *derivatives broker* who has failed to maintain net capital in accordance with the *Notification concerning Maintenance of Financial Condition* shall:

(1) submit a correction plan to maintain net capital to the SEC Office within thirty days from the first day since the *derivatives broker* has failed to maintain net capital unless the *derivatives broker* would be able to maintain net capital in accordance with the *Notification concerning Maintenance of Financial Condition* for at least seven business consecutive days before the submission period ends;

(2) proceed according to the correction plan which has been submitted to the SEC Office under subclause (1) in order to regain the ability to maintain net capital in accordance with the *Notification concerning Maintenance of Financial Condition* within the determined period in such plan, but no more than ninety days from the first day since the *derivatives broker* has failed to maintain net capital.

In case there is any necessary and appropriate circumstance, the *derivatives broker* may request for extension of such determined period to the SEC Office by submitting a requisition in writing and demonstrate the reason in advance at least ten business days prior to the end of the determine period under Paragraph 1.

**Clause 3** A *derivatives broker* which has failed to maintain net capital shall not proceed with the following actions until the *derivatives broker* would be able to maintain net capital in accordance with the *Notification concerning Maintenance of Financial Condition* and would obtain an approval notice from the SEC Office to resume normal business operation:

(1) increase of the credit limit of derivatives trading to clients;  
(2) provide derivatives trading services without deposit of initial margin in full amount before transmitting client’s orders sending derivatives trading orders of clients;

(3) provide derivatives trading services or open derivatives trading account for new clients;

- (4) increase of investment portfolio unless such investment is:
- (a) the investment in bank deposit or units of domestic money market fund;
  - (b) hedging of the investment or obligation of the company which have already been existence on the first day since the *derivatives broker* has failed to maintain net capital in accordance with *Notification concerning Maintenance of Financial Condition*;
  - (c) the investment resulted from commitment as a market maker in derivatives trading which the *derivatives broker* has already hedged against such investment risk in full amount;
  - (d) the investment resulted from an error in transmitting derivatives trading orders of clients (error port);
- (5) endorsement, granting an aval or acceptance of bills of exchange or being a guarantor in any transaction in relation to the *derivatives broker*'s business for the client, unless the client has pledged cash as collateral in full amount with the *derivatives broker*;
- (6) engaging in any other action, as specified by the SEC Office, which is the cause of increasing risk to its financial status, operation, or the performance under the agreements with clients.

**Clause 4** In case there is any of the following circumstances, a *derivatives broker* which has failed to maintain net capital in accordance with the *Notification concerning Maintenance of Financial Condition* shall comply with Clause 5:

- (1) unable to submit a correction plan to the SEC Office within the period as determined in Clause 2(1) and Paragraph 2 of Clause 2, as the case may be;
- (2) unable to resolve the failure of maintenance of net capital problem in accordance with the plan and within the time, as specified in Clause 2(2) and Paragraph 2 of Clause 2, as the case may be;
- (3) having net capital below zero for more than five consecutive business days;
- (4) defaulting to the clearing house or clients.

**Clause 5** A *derivatives broker* which falls into any circumstance in Clause 4 shall:

- (1) suspend business until the *derivatives broker* would be able to maintain net capital in accordance with the *Notification concerning Maintenance of Financial Condition* and would obtain an approval notice from the SEC Office to resume normal business operation. In this regard, such suspension does not include [i] the entering into any transaction relating to hedging overall investment risk of the *derivatives broker* or [ii] the proceeding of remaining obligation;
- (2) close out its derivatives position, unless:
  - (a) entering into such derivatives contracts for the purpose of hedging against investment risk or obligations of the *derivatives broker*;
  - (b) such derivatives position does not increase any additional charge or obligation afterward;
- (3) transfer assets and derivatives positions of clients to the other *derivatives broker* which is predetermined by clients within ten business days from the date any circumstance in Clause 4 takes place unless the SEC Office has provided extension of

the determined period as deemed necessary and appropriate. The *derivatives broker* shall be responsible for any expenses, if any, incurred from the proceeding;

(4) notify in writing to clients immediately with respect to the proceeding  
Sub-clause (1) or (3), as the case may be;

(5) perform or omit to perform any other act as specified by the SEC Office in order that the derivative broker would be able to regain maintenance of net capital in accordance with the *Notification concerning Maintenance of Financial Condition*.

**Clause 6** This Notification shall come into force from 16 December 2015.

Notified this 2<sup>nd</sup> day of December 2015.

(Mr. Rapee Sucharitakul)  
Secretary-General  
Office of the Securities and Exchange Commission