

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 Capital Market Supervisory Board
No. Tor Thor. 30/2559
Re: Rules for Operation of Derivatives Exchange**

By virtue of Section 55 and Section 73 of the *Derivatives Act B.E. 2546 (2003)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 July 2017.

**Chapter 1
General Provisions**

**Part 1
Objectives of the Supervision of Derivatives Exchange**

Clause 2 A derivatives trading system on derivatives exchanges is a fundamental system which has connection to the clearing and settlement system of derivatives clearing houses and other relevant systems. Meanwhile, an information technology system is necessary for achieving the set goals. Hence, the determination of regulations on supervision of *derivatives exchanges*, efficient use of information technology (IT governance), and implementation of appropriate risk management and resource allocation by their board of directors and *executives* that is practical and meets the standards established by an international organization concerning capital market supervision is crucial and necessary. The regulations under this Notification set a standard for operation of *derivatives exchanges* so that their services are efficient, transparent, and examinable, in a bid to promote confidence towards, and integrity and security of, the overall financial system, and to improve the competitiveness and image of the Thai capital market.

**Part 2
Subject Matters of this Notification**

Clause 3 This Notification establishes regulations on the supervision of *derivatives exchanges*, as follows:

- (1) General Regulations for Operation as Derivatives Exchange, as detailed in Chapter 2;
- (2) Business Continuity Management and Security of Information Technology Systems, as detailed in Chapter 3;
- (3) Retention of Information and Documents, as detailed in Chapter 4.

Part 3 The SEC Office's Power

Clause 4 In order for this Notification to be complied with, the SEC Office may specify regulations or guidelines, as follows:

(1) establish rules in clear detail to enable *derivatives exchanges* to practice in a consistent manner;

(2) establish detailed guidelines of practice that are proper and in compliance with this Notification, with which conformity to be deemed as compliance with the relevant regulations under this Notification;

(3) require *derivatives exchanges* to submit reports or any particular documents to the SEC Office periodically or from time to time, to allow the SEC Office to monitor compliance with this Notification, within a time period specified by the SEC Office, provided that the requirement does not cause unreasonable burden to *derivatives exchanges*.

Part 4 Definitions

Clause 6 In this Notification:

“derivatives exchange” means any licensed derivatives exchange according to the *Law on Derivatives*;

“derivatives clearing house” means any licensed derivatives clearing house according to the *Law on Derivatives*;

“securities clearing house” means any securities clearing house according to the *Law on Securities and Exchange*;

“Stock Exchange” means the Stock Exchange of Thailand according to the *Law on Securities and Exchange*;

“beneficial owner of derivatives traded by a client” means:

(1) an owner or co-owner of benefits from a client's derivatives trading;

(2) a person with the controlling power over a client's derivatives trading; or

(3) a financial supporter of a client for the benefit of trading or clearing and settlement related to or because of a client's derivatives trading.

The benefits, the controlling power or the financial support under Paragraph 1 may arise from an agreement, an understanding or a relationship in any aspect or any other circumstances.

“executive” means a manager, deputy manager, assistant manager, department director, or any person who holds a position equivalent to any of the above regardless of the title, and includes any person who has full or partial authorization under an agreement of management;

“member” means any member of a *derivatives exchange*.

Chapter 2

General Regulations for Operation as Derivatives Exchange

Clause 6 A *derivatives exchange* shall have sufficient funding to support its operation and manage potential risks from their business operation, which shall be available promptly and in a timely manner for covering risks.

Clause 7 In providing trading services, a *derivatives exchange* shall establish a clearing and settlement system that is operated by a *derivatives clearing house* under the *derivatives exchange* or by a third party. In this regard, the *derivatives exchange* shall guarantee the clearing and settlement according to each derivatives contract immediately upon execution of trading orders, and the guarantee obligation shall end after the *derivatives clearing house* becomes bound or replace itself as a counterparty. The *derivatives exchange* shall notify the *derivatives clearing house* of relevant trading transactions rapidly upon execution of such transactions.

Clause 8 A *derivatives exchange* shall establish sufficient measures for promoting and maintaining security, credibility, transparency and fairness in derivatives trading, as follows:

(1) procure a derivatives trading system capable of supporting expected trading volume and expanding capacity to support possible increase in trading volume in the future, provided that the rules and guidelines for prioritizing and matching trading orders are disclosed;

(2) procure an information recording system with respect to derivatives trading, especially pre-trade information and post-trade information in order to support monitoring and examination after derivatives trading (audit trail);

(3) procure an efficient market surveillance system which shall include at least the following requirements:

(a) an information recording system that provides accurate and up-to-date unique identification of clients and the *beneficial owners of derivatives traded by clients* in accordance with the information obtained from *members*. Such identification may be recorded in the form of Identification Card Number, Registration Number of Juristic Person, or any other types of identification numbers as specified by the *derivatives exchange*;

(b) a derivatives position processing system for monitoring the derivatives position of each member and client;

(c) a monitoring and reporting system with respect to derivatives positions of *members* and clients whose positions reach the level specified by the *derivatives exchange* [large trader], and changes to the derivatives positions of such persons;

(d) a real-time derivatives trading surveillance system.

Clause 9 A *derivatives exchange* shall establish sufficient measures for preventing and suppressing unfair acts related to derivatives and inappropriate derivatives trading behavior, which shall meet at least the following requirements:

(1) establish the rules that empower the *derivatives exchange* to take the actions on derivatives trading executed by *members* for themselves or for their clients:

(a) suspend derivatives trading unless such trading is for closing out derivatives positions;

(b) instruct the closing out of derivatives positions;

- (c) limit derivatives positions;
- (d) limit derivatives trading volume.

(2) establish the rules requiring *members* to obtain a written consent from clients for the appointment of *members* as derivatives trading agent whereby the clients agree to [i] inform and provide *members* with information that allows unique identification of the clients and the *beneficial owners of derivatives traded by the clients*, [ii] allow *members* to deliver such information to the *derivatives exchange* and the SEC Office, [iii] allow *members* to temporarily suspend services of derivatives trading to clients, [iv] allow *members* to close derivatives trading accounts, limit derivatives positions or trading volume, and close out derivatives positions of the clients, in accordance with the orders of the derivatives exchange;

(3) establish the rules empowering the *derivatives exchange* to disclose or share information on derivatives trading, *members*, offenses and punishments as well as any other information obtained from the operation as derivatives exchange, with derivatives clearing houses, securities clearing houses, the *stock exchange*, securities trading centers, the SEC Office, the Bank of Thailand, the Thai Bond Market Association and any other organizations that monitor and examine goods or variables for the benefit of supervision of derivatives, goods or variables.

Clause 10 In the case where a *derivatives exchange* provides server co-location services for *members* to facilitate speedy information transmission or trading orders or to provide information on market data feed, the *derivatives exchange* shall provide information related to such service provision and the opportunity for the use of such services for all *members* transparently and fairly.

Clause 11 A *derivatives exchange* shall procure an effective information recording and dissemination system with respect to price quotation and trading, which shall generally accommodate at least the following information categorized by the types of goods and variables:

- (1) price quotation and trading volume;
- (2) trading price;
- (3) trading volume;
- (4) open interest.

Clause 12 A *derivatives exchange* shall create a system for effective handling of complaints and disputes arising from trading services with respect to derivatives, or from use of its services, by taking at least the following actions:

- (1) set out written rules on handling of complaints and disputes, which also consider protection of complainants;
- (2) designate a unit or personnel to be responsible for handling of complaints and disputes;
- (3) monitor and examine handling of complaints and disputes, and inform complainants or disputants of the results of consideration of the complaints or disputes;
- (4) submit to the SEC Office a summary report on complaints and disputes every six months, which includes a summary of the relevant subject matters and the results of consideration or actions taken by the *derivatives exchange*.

Clause 13 For actions which the applicable laws or regulations do not specifically require a *derivatives exchange* to perform by itself, and which are necessary to enhance its business operation efficiency, the *derivatives exchange* may outsource that

service to an outsourced service provider, provided that its outsourced service provider is capable of providing that service in compliance with the applicable laws and regulations, and that by such outsourcing, it cannot be considered that the *derivatives exchange* does not operate its business.

To outsource a service, a *derivatives exchange* shall establish at least the following matters:

(1) a written policy, scope, or definition of work to be outsourced, with approval, whether on a general or case-by-case basis, of the board of directors or the working group assigned by the board of directors;

(2) measures for appropriate and effective management of risks from outsourcing;

(3) measures for examination of services provided by outsourced service providers so that the outsourced services comply with the objectives of the *derivatives exchange*.

Paragraph 2 shall not apply to cases where the *Stock Exchange* holds more than fifty percent of the total paid-up capital of the *derivatives exchange* and the outsourced service provider is the *Stock Exchange* or is a company of which more than fifty percent of the total paid-up capital is held by the *Stock Exchange*.

Clause 14 A *derivatives exchange* shall establish transparent and fair membership criteria, which shall focus on the suitability, financial status, performances, readiness, capability and professional codes of ethics of the applicants.

Clause 15 A *derivatives exchange* shall establish the rules concerning *members*, measures for supervising *members* and persons registered with the *derivatives exchange* and working for *members* to comply with the rules and professional codes of ethics of derivatives business, and measures for taking actions against persons violating or failing to comply with the rules and professional codes of ethics. In this regard, the *derivatives exchange* shall evaluate compliance with the rules and professional codes of ethics of such persons at an appropriate period of time and prepare a report on the evaluation results and actions against the persons who violate the rules and professional codes of ethics to the SEC Office.

Clause 16 A *derivatives exchange* shall disseminate the rules and news relevant to the provision of services as *derivatives exchange* for the acknowledgment of *members* or involved persons of the derivatives exchange.

Clause 17 Derivatives exchanges shall establish adequate measures to prevent directors, *executives*, sub-committee *members*, advisors, staff members, employees, or persons who work for *derivatives exchanges* from unlawfully seeking benefits by using the information obtained during the performance of their duties, as well as adequate measures to keep information of *members* and their clients confidential.

Clause 18 To protect public interest and investors' rights, a *derivatives exchange* shall disclose information related to trading activities, *members*, commission of offenses of *members* and punishments as well as any other information obtained from the operation as *derivatives exchange* which is significant for investors' decision making or execution of transactions with *members*.

The information disclosure under Paragraph 1 shall be in a timely and adequate manner and equally accessible by the public. In this regard, the types of information, methods and terms of disclosure of such information shall be in accordance

with the rules specified by the *derivatives exchange* with the approval of the Capital Market Supervisory Board.

Chapter 3 Business Continuity Management and Security of Information Technology Systems

Clause 19 In this Chapter:

“computer system relating to trading services with respect to derivatives”

means an important computer system or network system relating to trading services with respect to derivatives under Clause 8(1) and (2), a lack of continuity of which would significantly affect the relevant *derivatives exchange* or any person related to the *derivatives exchange*.

Clause 20 This Chapter contains regulations on business continuity management and security of information technology systems in the following matters:

- (1) business continuity management, as detailed in Part 1;
- (2) review, monitoring, and examination of *computer systems relating to trading services with respect to derivatives*, as detailed in Part 2;
- (3) reporting on material changes in a *computer system relating to trading services with respect to derivatives*, as detailed in Part 3;
- (4) *incident* management, as detailed in Part 4;
- (5) establishment of policies and monitoring and analysis of information technology systems, as detailed in Part 5.

Part 1 Business Continuity Management

Clause 21 a *derivatives exchange* shall ensure their readiness in providing derivatives trading services. To that end, at least the following matters shall be produced in writing:

- (1) a business continuity policy, with approval of the board of directors or the working group assigned by the board of directors, in order to ensure that during a disruptive event, trading of derivatives can continue without interruption or can be resumed within reasonable time;
- (2) a business continuity plan that corresponds with the policy set out under (1), with approval of a manager or any person holding an equivalent position regardless of the title.

Clause 22 A business continuity plan under Clause 21(2) shall include at least the following details:

- (1) measures to be implemented in the case of emergency which may affect the provision of services as *derivatives exchange* with a defined scope that covers possible emergency events, including a detailed procedure and the responsible person for adhering to each step of the procedure;

- (2) a list of *computer systems relating to trading services with respect to derivatives*;
- (3) evaluation of risks, and their probability, of discontinuity of a computer system relating to trading services with respect to derivatives, and Business Impact Analysis (BIA);
- (4) the recovery time objective;
- (5) the recovery point objective;
- (6) details of backup systems and alternative site which comply with the business continuity policy and business continuity plan.

Clause 23 A *derivatives exchange* shall establish measures for supervising and communicating with *members* so that the business continuity policy and business continuity plan can be carried out effectively.

Clause 24 To ensure that business continuity management is effective, each *derivatives exchange* shall take the following actions at least once a year:

- (1) conduct testing on the business continuity plan with *members* and involved persons;
- (2) have the results of the testing under subclause (1) evaluated by a person with required knowledge and skills who is independent from the persons who formulate or administer the plan;
- (3) report the evaluation results under subclause (2) to the board of directors and the SEC Office within ninety days from the day the testing is completed.

Clause 25 In cases where there is a change to a *computer system relating to trading services with respect to derivatives* to the extent that it affects the business operation of the *derivatives exchange*, the *derivatives exchange* shall review and revise its business continuity plan without delay.

Part 2

Review, Monitoring, and Examination of Computer Systems relating to Trading Services with respect to Derivatives

Clause 26 To ensure that steps or procedures concerning *computer systems relating to trading services with respect to derivatives* are effective, each *derivatives exchange* shall take the following actions:

- (1) have the steps or procedures concerning *computer systems relating to trading services with respect to derivatives* and market surveillance systems reviewed, monitored, and examined, according to an examination plan specifically designed to suit the level of risks for the *derivatives exchange*, by an independent person with required knowledge and skills, such as an internal or external auditor, and submit to the SEC Office once a year a report on said review, monitoring, and examination, together with an examination plan specifically designed to suit the level of risks for the *derivatives exchange* within sixty days from submission of said report to the board of directors or the working group assigned by the board of directors;

(2) complete penetration testing on all *computer systems relating to trading services with respect to derivatives* every three years, the order of systems tested being in accordance with their priority according to the results of risk evaluation, and submit to the SEC Office a report on said testing within the first quarter of the year following the year the testing is conducted.

Part 3

Reporting on Material Changes in Computer Systems relating to Trading Services with respect to Derivatives

Clause 27 To ensure that the overall business operation of a *derivatives exchange* is supervised in an orderly, effective, and timely manner, the *derivatives exchange* shall report to the SEC Office on any material changes in *computer systems relating to trading services with respect to derivatives* or market surveillance system within January of the following year.

Part 4

Incident Management

Clause 28 In this Part:

“incident” means:

- (1) an event which cause disruption or degradation of a *computer system relating to trading services with respect to derivatives*;
- (2) an event which cause a *computer system relating to trading services with respect to derivatives* to become non-compliant to any law, rules, regulations, or requirements set out by the Securities and Exchange Commission, the Capital Market Supervisory Board, the SEC Office, or the relevant *derivatives exchanges*;
- (3) an event which cause a *computer system relating to trading services with respect to derivatives* to be intruded.

Clause 29 When an *incident* occurs, the *derivatives exchange* shall collect relevant information to identify the cause of the problems, suggest solutions to the problems, report the *incident* to *executives*, and retain relevant evidence and documents available for viewing or inspection by the SEC Office upon request.

Clause 30 In order to accurately and effectively address an *incident* in a timely manner, the relevant *derivatives exchange* shall take at least the following actions:

- (1) create a written plan to be implemented when an *incident* occurs and adhere to that plan;
- (2) designate a unit or personnel as point of contact and report to *executives* or persons related to the *derivatives exchange* for escalation procedures.

Clause 31 In the case of a *serious incident*, in addition to the actions under Clause 29 and Clause 30, the relevant *derivatives exchange* shall also report that *serious incident* to the SEC Office in accordance with the following rules:

(1) produce a report verbally or via an email immediately after that *serious incident* is known;

(2) produce a written investigation report after said *serious incident* has been resolved within thirty days from the day the *board of directors* or the working group assigned by the *board of directors* is reported of that *serious incident*, but no longer than ninety days from the day that *serious incident* takes place.

An investigation report under Paragraph 1(2) shall contain a detailed explanation of the *serious incident*, its effects on the *derivatives exchange* and its *members*, the root cause, steps taken to resolve the problems, and measures to prevent events of the same nature.

For the purposes of Paragraph 1, “*serious incident*” means:

(1) an *incident* that causes disruption to a *computer system relating to trading services with respect to derivatives*;

(2) an *incident* which affects a *computer system relating to trading services with respect to derivatives* to the extent that it may seriously affect the credibility of the organization.

Part 5 Establishment of Policies and Monitoring and Analysis of Information Technology Systems

Clause 32 To ensure that information technology systems of *derivatives exchanges* are effective and secured so that they can maintain confidentiality, accuracy, credibility of information, remain active for use, and properly monitor potential risks to *computer systems relating to trading services with respect to derivatives, derivatives exchanges* shall take at least the following actions:

(1) establish policies and measures to ensure security of information technology systems so that they meet standards acceptable to the SEC Office, or other standards accepted by the industry which also enable such objectives to be achieved, with approval of a manager or any person holding an equivalent position regardless of the title, and review and revise such policies and measures so that they are fit and suitable for current information technology risks;

(2) monitor and analyze potential risks to *computer systems relating to trading services with respect to derivatives* by recording and maintaining usage information and log files.

Chapter 4 Retention of Information and Documents

Clause 33 Each *derivatives exchange* shall retain information and documents for the time periods prescribed below:

(1) for information about derivatives trading, including the pre-and post-transaction information under Clause 8(2), for a period of not less than ten years from the day the information is obtained or relevant action taken;

(2) for information about the operation under Clause 8(3)(b)(c) and (d), for a period of not less than three years from the day such operation is undertaken;

(3) for evidence relating to a complaint or dispute and results of consideration under Clause 12(4), for a period of not less than three years from the day of settlement of said complaint or dispute.

(4) for evidence for examination of services provided by outsourced service providers under subclause (3) of Paragraph 2 of Clause 13 and other documents relating to outsourcing of services, for a period of not less than three years from the examination of outsourced services;

(5) for a business continuity plan under Clause 21(2), for a period of not less than three years from the day that plan is created;

(6) for an amended business continuity plan under Clause 25, for a period of not less than three days from the amendment;

(4) for evidence of usage information and log files from use of an information technology system under Clause 32(2), for a period of not less than that prescribed by the law on computer crime;

Regarding retention of information under Paragraph 1, the Capital Market Supervisory Board shall have the power to instruct otherwise, as it deems fit.

Retention of information, documents, and evidence under Paragraph 1 shall be in a manner that allows them to be available for viewing or inspection by the SEC Office upon request.

Chapter 5

Transitional Provisions

Clause 34 All notifications of the Office of the Securities and Exchange Commission, orders, and circulations which were issued by virtue of or set out guidelines in accordance with the provisions under the *Notification of the Capital Market Supervisory Board No. Tor Dor. 96/2552 Re: Rules for Operation of Derivatives Exchanges and Derivatives Clearing Houses* dated 28 October 2009 in the part related to the operation of derivatives exchange, which had been in effect prior to the effective date of this Notification, shall remain in full force to the extent that they are not contrary to nor inconsistent with this Notification until relevant notifications, orders, and circulations which are issued by virtue of or set out guidelines in accordance with this Notification come into force.

Clause 35 Any reference made in any other notifications to the *Notification of the Capital Market Supervisory Board No. Tor Dor. 96/2552 Re: Rules for Operation of Derivatives Exchanges and Derivatives Clearing Houses* dated 28 October 2009 in the part related to the operation of *derivatives exchange* shall mean reference to this Notification.

Notified this 3rd day of August 2016.

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