

(UNOFFICIAL TRANSLATION)

Codified up to No. 2
As of 20 February 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 Securities and Exchange Commission

No. KorThor. 2/2560

**Re: Prescribing Natures of Giving Advice to Public Not Being Regarded as
Engagement in the Derivatives Business in the Category of
Derivatives Advisor**

By virtue of Section 3 and Section 9 of the *Derivatives Act B.E. 2546 (2003)*, the SEC hereby issues this Notification with details as follows:

Clause 1 The following Notifications shall be repealed:

(1) *Notification of the Securities and Exchange Commission No. KorKhor. 11/2547 Re: Prescribing Natures of Giving Advice to Public Not Being Regarded as Engagement in the Derivatives Business in the Category of Derivatives Advisor dated 23 January 2004;*

(2) *Notification of the Securities and Exchange Commission No. KorKhor. 45/2546 Re: Prescribing Natures of Giving Advice to Public Not Being Regarded as Engagement in the Derivatives Business in the Category of Derivatives Advisor (No. 2) dated 27 December 2006;*

(3) *Notification of the Securities and Exchange Commission No. KorKhor. 29/2552 Re: Prescribing Natures of Giving Advice to Public Not Being Regarded as Engagement in the Derivatives Business in the Category of Derivatives Advisor (No. 3) dated 25 November 2009;*

(4) *Notification of the Securities and Exchange Commission No. KorNor. 14/2553 Re: Prescribing Natures of Giving Advice to Public Not Being Regarded as Engagement in the Derivatives Business in the Category of Derivatives Advisor (No. 4) dated 26 August 2010;*

Clause 2 In this Notification:

“*giving advice*” means direct or indirect provision of advice to the public on the value of derivatives or appropriateness of the investment in such derivatives or on sale or purchase of any derivatives.

“institutional investor” means

- (1) Bank of Thailand;
- (2) commercial bank;
- (3) financial institution established under a specific law;
- (4) securities company;
- (5) derivatives intermediary;
- (6) life insurance company;
- (7) non-life insurance company;
- (8) mutual fund;
- (9) private fund;
- (10) provident fund;
- (11) Government Pension Fund;
- (12) Social Security Fund;
- (13) company listed on the Stock Exchange of Thailand;
- (14) any juristic person which is registered under Thai law and has assets reported in the financial statements from five billion baht;
- (15) any other person permitted by the Bank of Thailand to make investment in overseas derivatives as stipulated by the SEC Office.

“Notification on Standard Conduct of Business” means the *Notification of the Capital Market Supervisory Board concerning Standard Conduct of Business, Management Arrangement, Operating Systems and Providing Services to Clients of Securities Companies and Derivatives Intermediaries.*

“Notification on Undertaking of Derivatives Business” means the *Notification of the Securities and Exchange Commission concerning Registration of Derivatives Business Operator In the Category of Derivatives Broker and Derivatives Dealer.*

“Notification on Operating Managing Derivatives Investment” means the *Notification of the Capital Market Supervisory Board concerning Rules on Managing Derivatives Investment by Registered Derivatives Investment Management Company.*

“Notification on Investment in Capital Market Products Denominated in Foreign Currency” means the *Notification of the Capital Market Supervisory Board concerning Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency.*

Clause 3¹ Giving advice in any of the following manners shall not be deemed as engagement in derivatives business in the category of derivatives advisor:

(1) **giving advice** in or from Thailand to no more than fifteen investors in any twelve-month period without presenting itself, in any manner, as being ready to provide any derivatives advisory services;

(2) **giving advice** in or from Thailand to investors abroad by presenting itself as providing derivatives advisory services in the name of any person providing the derivatives advisory services under the law of such country;

(3) **giving advice** to *institutional investors* only;

(4) **giving advice** to conglomerate companies having the relationship with the advisory company in any of the following manners:

(a) being a company associated with the advisory company through direct or indirect cross-holding of over fifty percent of the sold shares of such companies;

(b) being a company associated with the advisory company through cross control;

(c) being a company controlled by the same person as the advisory company.

The “**control**” under Paragraph 1(c) shall have the same meaning as defined in Section 89/1 of the *Securities and Exchange Act B.E. 2535 (1992)*;

(5) giving general advice to investors by any juristic person under foreign law which is approved by the SEC Office under the *Notification of the Securities and Exchange Commission concerning Granting Approval to Juristic Persons under Foreign Laws for Providing General Advice to Investors*.

The “**general advice**” under Paragraph 1 shall mean advice which does not specifically consider the appropriateness and purpose of investment, financial position or requirement of any specific person;

(6) **giving advice** to investors by a foreign derivatives company with the following natures:

¹ Amended by the *Notification of the Securities and Exchange Commission No. KorThor. 9/2560 Re: Prescribing Nature of Giving Advice to Public Not Being Regarded as Engagement in Derivatives Business in the Category of Derivatives Advisor (No. 2)* dated 20 February 2017 (effective from 1 March 2017).

(a) the advice is given by a foreign derivatives company obtaining the derivatives business license issued by any of the following overseas derivatives regulatory organizations:

(1) a regulatory organization being a member of the International Organization of Securities Commissions (“IOSCO”) and the Signatory A to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“MMOU”) (“IOSCO MMOU”);

(2) the regulatory organization of a member country of the Organization for Economic Co-operation and Development (“OECD”);

(3) the regulatory organization of a member country of the ASEAN Economic Community (“AEC”);

(b) the advice is given through a derivatives company which has notified the SEC Office of the names of the foreign personnel to provide such advice under the *Notification on Standard Conduct of Business*, the *Notification on Undertaking of Derivatives Business*, the *Notification on Managing Derivatives Investment*, or the *Notification on Investment in Capital Market Products Denominated in Foreign Currency*, as the case may be;

(7) ***giving advice*** on radios, televisions, newspapers or any other printed material with all of the following characteristics:

(a) the provided advice is not focused on the purpose of investment, financial position and requirement of any specific person;

(b) the advice is widely and generally distributed and easily accessible by an interested person without subscribing for membership;

(c) the main purpose is not ***giving advice*** on the value of derivatives or appropriateness of investment on such derivatives or sale or purchase of any specific derivatives. The consideration thereof shall be based on the quantity of content of the advice under the criteria and procedures stipulated by the SEC Office.

(8) ***giving advice*** through media or seminars arranged by the owner of the media, program, column, web address, not by the derivatives company, with the following natures:

(a) in case of ***giving advice*** to ***institutional investors***, the advice shall be provided to the ***institutional investors*** only;

(b) in case of ***giving advice*** other than (a) above, the personnel in capital market business approved by the SEC Office under the *Notification of the Capital Market Supervisory Board concerning Rules on Personnel in the Capital Market*

Business or the overseas personnel whose name are notified under (6), as the case may be, shall be procured to provide advice under supervision of the derivatives company.

Clause 4 This Notification shall come into force from 16 February 2017.

Notified this 12th day of January 2017.

(Mr. Voravidh Champheeratana)
Chairman
Securities and Exchange Commission