

UNOFFICIAL TRANSLATION

Codified up to No. 4
As of 23 November 2020

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. 1/2560

**Re: Provision of Services to Clients regarding Investment in Capital Market
Products Denominated in Foreign Currency**

By virtue of Section 16/6 and Section 113 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, Section 114 and Section 116 of the *Securities and Exchange Act B.E. 2535 (1992)*, and Section 18 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 from 16 February 2017.

Clause 2 The following Notifications shall be repealed:

(1) *Notification of the Capital Market Supervisory Board No. Tor Thor. 6/2557 Re: Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency* dated 30 April 2014; and

(2) *Notification of the Capital Market Supervisory Board No. Tor Thor. 29/2557 Re: Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency (No. 2)* dated 24 September 2014.

Clause 3 In this Notification:

“*capital market product denominated in foreign currency*” means any securities or derivatives which require payment in foreign currency, as follows:

(1) *inbound product*;

(2) *outbound product*;

“*inbound product*” means a *capital market product denominated in foreign currency* in the category of *debenture denominated in foreign currency* and shall include units of a *foreign collective investment scheme*;

“outbound product” means a *capital market product denominated in foreign currency* which is issued or offered for sale in a foreign country;

“debenture denominated in foreign currency” means any debenture denominated in foreign currency and approved for an offering in the Kingdom of Thailand under the *Notification of the Capital Market Supervisory Board concerning Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* or under the *Notification of the Capital Market Supervisory Board concerning Application for and Approval of Offer for Sale of Newly-issued Debentures for Securitization*;

“unit of foreign collective investment scheme”² means the unit of a *foreign collective investment scheme*, which may be offered for sale in Thailand under the *Notification of the Capital Market Supervisory Board concerning Rules on Offering for Sale of Units of Foreign Collective Investment Schemes*;

“intermediary” means:

(1) a securities company licensed to undertake the securities business in the category of securities brokerage, securities dealing or securities underwriting;

(2) a person licensed to undertake the derivatives business in the category of derivatives agent or derivatives dealer;

*Repealed*³;

“Notification on Standard of Business Operation” 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*, as well as other notifications or guidelines issued under such Notification.

² Amended by the Notification of the Capital Market Supervisory Board No. Tor Thor. 9/2561 Re: Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency (No. 3) dated 17 January 2018 (Effective from 16 February 2018).

³ Repealed by the Notification of the Capital Market Supervisory Board No. Tor Thor. 67/2563 Re: Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency (No. 4) dated 23 November 2020 (Effective from 1 January 2021).

Clause 4 In providing services to clients regarding investment in *capital market products denominated in foreign currency*, the *intermediary* shall comply with not only the rules prescribed in the *Notification on Standard of Business Operation*, but also the rules prescribed in this Notification. In the case where the rules on providing services to clients regarding investment in *capital market products denominated in foreign currency* specifically prescribed by this Notification are different from the rules prescribed in the *Notification on Standard of Business Operation*, the *intermediary* shall comply with the rules prescribed in this Notification.

Clause 5 This Notification contains the provisions on providing services to clients regarding investment in *capital market products denominated in foreign currency* in the following matters:

- (1) General Provisions related to Providing Services shall be as set out in Chapter 1;
- (2) Specific Provisions related to Providing Services of *Inbound Products* which are *Debentures Denominated in Foreign Currency* shall be as set out in Chapter 2;
- (3) Specific Provisions related to Providing Services of *Outbound Products* shall be as set out in Chapter 3;
- (4) Service Personnel shall be as set out in Chapter 4.

Clause 6 The SEC Office may prescribe a detailed guideline of the provisions under this Notification to serve as a guideline which is appropriate and consistent with this Notification, and upon compliance with such guideline, the *intermediary* shall be deemed to have complied with the provisions prescribed in this Notification.

Chapter 1

General Provisions related to Providing Services

Clause 7 In providing services to clients regarding investment in a *capital market product denominated in foreign currency*, the *intermediary* shall comply with the following rules:

- (1) To provide services within the scope of each type of license granted to the *intermediary*;
- (2) To arrange for clients to access the information prepared by the foreign *intermediary* or the issuer or the offeror of such product in support of their investment decision making;
- (3) To disclose the fees charged to the clients by the *intermediary*.

Clause 8³ *Repealed.*

Chapter 2

Specific Provisions related to Providing Services of Inbound Products Which Are Debentures Denominated in Foreign Currency

Clause 9 In the case where the *intermediary* provides services related to *inbound products* which are *debentures denominated in foreign currency* in a public offering, the credit rating of the debentures, the issuers or the guarantors of those *debentures denominated in foreign currency* shall be of investment grade.

Chapter 3

Specific Provisions related to Providing Services of Outbound Products

Clause 10 In providing services to clients regarding investment in an *outbound product*, the *intermediary* shall put in place a procedure to ensure that the *outbound product* has the following characteristics:

³ Repealed by the Notification of the Capital Market Supervisory Board No. Tor Thor. 67/2563 Re: Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency (No. 4) dated 23 November 2020 (Effective from 1 January 2021).

(1) being a product issued or offered for sale abroad, and the issuer or the offeror has no intention to offer such product in Thailand;

(2) being a product with the characteristics as described under Clause 12 except for the cases specified under Clause 13 and Clause 14.

Clause 11 In the interest of Clause 10(1), any of the actions below shall be deemed that the issuer or the offeror of an *outbound product* has an intention to offer such product for sale in Thailand, regardless of whether such action is carried out by the *intermediary*, the *foreign intermediary* or the issuer or the offeror of such *outbound product*:

(1) organizing a roadshow for general investors to meet directors or executives of the issuer or the offeror of the *outbound product* to solicit the investors to invest in the *outbound product* which has not been listed or approved for trading on a foreign securities exchange or a foreign futures exchange, provided that such solicitation shall constitute a public offering;

(2) soliciting investors to invest in a newly-issued *outbound product* for a public offering in the primary market by any other manner specified by the SEC Office.

Clause 12 The *outbound product* the services of which the *intermediary* may provide to the clients shall be fully qualified as follows:

(1) being an *outbound product* with the description and conditions similar to the capital market products which can be issued or offered for sale in Thailand, unless otherwise prescribed by the SEC Office;

(2) being an *outbound product* under the supervision of any of the following regulators and the trading of the *outbound product* is not subject to any prohibition order by the regulators:

(a) being a regulator which is a member of the International Organization of Securities Commissions (“IOSCO”) and is on the list of Signatory A of the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (“MMOU”) (“IOSCO MMOU”);

(b) being a regulator of any member country of the Organization for Economic Co-operation and Development (“OECD”);

(c) being a regulator of any member country of the ASEAN Economic Community (“AEC”).

(3) being an *outbound product* which is offered for sale by any of the following means:

(a) being an *outbound product* which is offered for sale in the countries wherein the regulators under (2) are located (skin in the game);

(b) being an *outbound product* which is a debt instrument approved to be offered for sale in a debt issuance program by the regulators under (2) for each specific investor (tailor-made product);

(c) any case other than (a) and (b), being an *outbound product* offered for sale to each specific investor.

Clause 13 In providing services to the following clients, the *intermediary* may provide other services regarding investment in *outbound products* in addition to those prescribed under Clause 12:

- (1) Bank of Thailand;
- (2) commercial banks;
- (3) financial institutions established under specific law;
- (4) securities companies;
- (5) derivatives *intermediary*;
- (6) life insurance companies;
- (7) non-life insurance companies;
- (8) mutual funds;
- (9) private funds;
- (10) provident funds;
- (11) Government Pension Fund;
- (12) Social Security Fund;
- (13) listed companies on the Stock Exchange of Thailand;
- (14) juristic persons incorporated under the law of Thailand with the assets of five billion baht or more in the financial statements;
- (15) any other person specified by the Bank of Thailand as having a permission to invest in *outbound products*, as prescribed by the SEC Office.

Clause 14³ In providing services to a client who is a juristic person incorporated under the law of Thailand, or a natural person who is domiciled in Thailand with the fund for investment in financial instruments or derivatives or deposits at the total amount of fifty million baht or more, the *intermediary* may provide services to such client regarding investment in *outbound products* in addition to those specified in Clause 12.

Chapter 4 Service Personnel

Clause 15 The *intermediary* shall assign the capital market business personnel who have been approved by the SEC Office under the *Notification of the Capital Market Supervisory Board concerning Rules on Capital Market Business Personnel* and have completed the training courses on foreign currency risk at any agency recognized by the SEC Office, to provide services to the clients regarding investment in the *capital market products denominated in foreign currency*.

Clause 16 In the case where the *intermediary* wishes to arrange for foreign personnel to give information or advice on investment in the *capital market products denominated in foreign currency* to clients, the *intermediary* shall inform the SEC Office of the names and details of such foreign personnel at least one business day before proceeding with the arrangement, except for the giving of information or advice to the clients under Clause 13.

The form and procedure for informing the names of the foreign personnel under Paragraph 1 shall be as set out on the website of the SEC Office.

³ Repealed by the Notification of the Capital Market Supervisory Board No. Tor Thor. 67/2563 Re: Provision of Services to Clients regarding Investment in Capital Market Products Denominated in Foreign Currency (No. 4) dated 23 November 2020 (Effective from 1 January 2021).

Clause 17 The foreign personnel under Clause 16 shall be fully qualified as follows:

(1) being reliable and highly capable of providing information or advice on the *capital market products denominated in foreign currency*, as well as being permitted to provide information or advice in accordance with the law which controls the business operation in the respective foreign country;

(2) there is no ground to believe that the foreign personnel is or used to be engaged in an inappropriate conduct or fails to comply with the rules on giving of information or advice on the *capital products denominated in foreign currency* to the clients in Thailand;

(3) having given information or advice on the *capital products denominated in foreign currency* in Thailand for no longer than ninety days in that particular calendar year.

Clause 18 The *intermediary* shall ensure that the foreign personnel under Clause 16 refrain from undertaking any act that may be unlawful or non-compliance with the relevant rules, and the *intermediary* shall take the following acts at a minimum:

(1) inform the foreign personnel of the scope of performance of duty;

(2) ensure that the giving of information or advice is restricted only to the *capital products denominated in foreign currency* for which the *intermediary* is allowed to provide services;

(3) inform the foreign personnel of the rules on giving advice under the law on securities and exchange or the law on derivatives;

(4) exercise prudence to ensure that the giving of information or advice will not be distorted, incorrect or misleading to the clients;

(5) in the case of giving information or advice to clients in a seminar, the requirements on giving investment advice at seminars shall be complied with as well.

Chapter 5

Transitional Provisions

Clause 19 The personnel in the capital market business who have performed the duty of providing services to clients regarding investment in *capital products denominated in foreign currency* prior to the date on which this Notification

comes into force may continue to perform their duty provided that the *intermediary* shall arrange for such personnel to attend a training course on foreign currency risk organized by an agency recognized by the SEC Office no later than 31 December 2019.

In the case where any personnel in the capital market business under Paragraph 1 fail to attend such training course within the specified period, the *intermediary* shall prohibit such personnel from providing services to clients regarding investment in *capital market products denominated in foreign currency*.

Notified this 17th day of January 2017.

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