

UNOFFICIAL TRANSLATION

Codified up to No. 4
As of 14 December 2016

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. Kor Thor. 66/2547

Re: Maintenance of Financial Position of Licensed Derivative Brokers

By virtue of Section 9 and Section 49 of the *Derivatives Act B.E. 2546 (2003)*, the Securities and Exchange Commission hereby issues the following regulations:

Clause 1 In this Notification:

(1)³ “*derivatives broker*” means a person licensed to undertake derivative business in the category of derivatives brokerage, excluding a commercial bank under the law on financial institution business;

(2) “*net capital*” means *liquid capital* deducted by *risk haircuts*;

(3) “*liquid capital*” means *liquid assets* deducted by *total liabilities*;

(4) “*liquid assets*” means the total sum of the following assets:

(a) cash and bank deposits;

(b) securities purchased under reverse repurchase agreement with accrued interests;

(c) promissory notes and bills of exchange issued by financial institutions under the law on interest on loan of financial institutions¹;

(d) investments in securities, derivatives and other financial instruments;

(e) receivables of securities purchased to order;

(f) receivables of margin loan and receivables of securities borrowing;

(g) receivables of pledging account;

³ As amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 13/2559 Re: Maintenance of Financial Position of Licensed Derivative Brokers (No. 4)* dated 14 December 2016, which came into force on 16 January 2017.

¹ The law on interest on loan of financial institutions means *The Interest on Loan of Financial Institutions Act B.E. 2523 (1980)*.

(h) any other asset as stipulated by the Notification of the Office of the Securities and Exchange Commission.

(5) “**general liabilities**” means **total liabilities** deducted by **qualified liabilities**.

(6) “**total liabilities**” means:

(a) all of the liabilities shown in the financial statements, excluding the following liabilities;

1. subordinated liabilities being unsecured which have the remaining maturity period of more than one year as from the calculating date, and have not determined the condition to repay before the maturity date within one year, unless such condition has been waived by the SEC Office;

2. the financial lease contract which a *derivatives broker*, as lessee, is entitled to prematurely terminate without the condition to buy the leased properties, except the penalty from premature termination;

3. other particulars as stipulated by the Notification of the Office of the Securities and Exchange Commission;

(b) other contingent liabilities of a *derivatives broker* not shown in financial statements, which are:

1. contingent liabilities arising from guarantee, [or] certifying or aval on bills of exchange;

2. contingent liabilities which the *derivatives broker* shall pay by cash or other assets when the specified incidents occur;

3. other contingent liabilities as stipulated by the Notification of the Office of the Securities and Exchange Commission.

(7)² “**qualified liabilities**” means:

(a) liabilities which have the remaining maturity period of more than one year as from the calculating date, only in the portion not exceeding the value of the collateral. In this regard, such liabilities shall not have any condition of repayment before the maturity date within one year, regardless of the term of a put or call option or any other similar condition, unless such condition has been waived by the SEC Office;

² As amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 31/2552 Re: Maintenance of Financial Position of Licensed Derivative Brokers (No. 3)* dated 15 December 2009, which came into force on 1 March 2010;

(b) contingent liabilities which are clearly specified in a contract that the creditor has no rights to call for repayment within one year as from the calculating date, only in the portion not exceeding the value of the collateral;

(c) the total sum of the following liabilities:

1. payables with obligations to return the borrowed securities, only in the portion not exceeding the value of the collateral;
2. payables under the pledged assets;
3. payable for a client account;
4. payable under a securities repurchase agreement;

(d) other liabilities as stipulated by the Notification of the Office of the Securities and Exchange Commission.

(8) “*risk haircuts*” means risk haircuts with respect to the undertaking of derivatives business or any other operation of a *derivatives broker*;

(9)¹ “*collateral*” means the total sum of the pledged assets for exposure to derivatives according to the rate or value as stipulated by the Notification of the Office of the Securities and Commission;

(10)¹ repealed.

Clause 2¹ A *derivatives broker* shall maintain its *net capital* of not less than fifteen million baht and [net capital ratio] of not less than seven percent of the *general liabilities* and *collateral* at the end of any business day.

The calculation of the *net capital* [and net capital ratio] under Paragraph 1 shall be in accordance with the Notification of the Office of the Securities and Exchange Commission.

¹ As amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 19/2549 Re: Maintenance of Financial Position of Licensed Derivative Brokers (No. 2)* dated 2 May 2006, which came into force on 16 May 2006;

¹ As repealed by the *Notification of the Securities and Exchange Commission No. Kor Thor. 19/2549 Re: Maintenance of Financial Position of Licensed Derivative Brokers (No. 2)* dated 2 May 2006, which came into force on 16 May 2006.

¹ As amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 19/2549 Re: Maintenance of Financial Position of Licensed Derivative Brokers (No. 2)* dated 2 May 2006, which came into force on 16 May 2006;

Clause 2/1¹ The provision as prescribed in Clause 3 shall not be applicable to a *derivatives broker* which has ceased operation of its derivative business and already informed the cessation thereof in writing to the SEC Office.

The SEC Office shall have the authority to require the *derivatives broker* under Paragraph 1 to submit any necessary document or report in the interest of the consideration of the *derivatives broker*'s ability to maintain its *net capital* during such period as it deems appropriate.

Clause 3 A *derivatives broker* shall not reduce its paid-up capital to the extent that its shareholders' equity is decreased unless permission is granted by the SEC.

Clause 4 This Notification shall come into force from 16 January 2005.

Notified this 22nd day of December 2004.

(Mr. Somkid Jatusripitak)

Minister of Finance

Chairman

Securities and Exchange Commission

¹ As amended by the *Notification of the Securities and Exchange Commission No. Kor Thor. 19/2549 Re: Maintenance of Financial Position of Licensed Derivative Brokers (No. 2)* dated 2 May 2006, which came into force on 16 May 2006.