

Derivative Act, B.E. 2546 (2003)

As amended by Derivative Act B.E. 2551 (2008)

Translation

BHUMIBOL ADULYADEJ, REX.,

Given on the Day of 3rd July, B.E. 2546;

Being the 58th Year of the Present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to have a law on derivatives;

Whereas this Act contains provisions relating to the restriction of rights and liberties of the persons which Section 29 together with Section 35, Section 36, Section 39, Section 48, and Section 50 of the Constitution of the Kingdom of Thailand allow to be done by virtue of provisions of law;

Be it, therefore, enacted by his Majesty the King by and with the advice and consent of the National Assembly, as follows:

Section 1

This Act shall be called the "Derivatives Act, B.E. 2546 (2003)"

Section 2

This Act shall come into force after one hundred and eighty days from the date of its publication in the Government Gazette.

Section 3

In this Act:

"goods" means any securities, gold, crude oil, or any other property as specified in the notification of the Securities and Exchange Commission ("SEC") with the approval of the Cabinet, excluding currency.

"variable" means any foreign exchange rate, interest rate, financial index, securities index or any other variable as specified in the notification of the SEC with the approval of the Cabinet.

"derivatives" means any contract having any one or any combination of the following characteristics:

- (1) a contract in which one party is obliged to deliver a certain amount of goods as specified in the contract to the other party at a given time in the future, and the other party, in turn, is obliged to make payment for such goods at a price specified therein;
- (2) a contract in which one party is obliged to make payment to the other party, or *vice versa*, in the amount which is equivalent to the difference between the price or value of goods or variable specified in the contract and the price or value of goods or variable prevailing at a given time or period of time in the future as specified in the contract;
- (3) a contract in which one party is entitled to demand the other party to deliver goods, or make payment for goods, or make payment in the amount which is equivalent to the difference between the price or value of goods or variable specified in the contract and the price or value of such goods or variable prevailing

at a given time or period of time in the future as specified in the contract, or to demand the other party to enter into a contract under sub-Section (1) or (2).

“derivatives business” means the undertaking of the following businesses:

- (1) being a derivatives agent;
- (2) being a derivatives dealer;
- (3) being a derivatives advisor;
- (4) being a derivatives fund manager;
- (5) any other businesses relating to derivatives as specified in the notification of the SEC.

“derivatives agent” means any person who, in the ordinary course of business, engages or holds himself out to the general public as being ready to engage as an agent in business of trading in derivatives with others, and has been licensed or registered under this Act, excluding those derivatives agents with the characteristics specified in the notification of the SEC.

“derivatives dealer” means any person who, in the ordinary course of business, holds himself out to the general public as being ready to engage as a counter-party in derivatives with any person who intends to trade in derivatives, by entering or offering to enter into such contract, and has been licensed or registered under this Act, excluding any person trading in or offering to trade in derivatives for his own account on any derivatives exchange licensed under this Act or those derivatives dealers with the characteristics specified in the notification of the SEC.

“derivatives advisor” means any person who, in the ordinary course of business, provides advice to others, or holds himself out to the general public as being ready to provide advice to others, whether directly or indirectly, as to derivatives or advisability of trading in derivatives, and has been licensed or registered under this Act, excluding any persons whose provision of such advice is solely a part of or an incidental to the conduct of his business as a derivatives agent or a derivatives dealer, or any other persons who provides such advice in a manner as specified in the notification of the SEC.

“derivatives fund manager” means any person who, in the ordinary course of business, engages in business of managing funds for others, or holds himself out to the general public as being ready to manage funds for others, in order to seek benefit from derivatives, and has been licensed or registered under this Act, excluding those derivatives fund managers with the characteristics specified in the notification of the SEC.

“derivatives exchange” means any center or network through which derivatives trading is carried out, in the ordinary course of business, whether by way of matching orders or arranging for counterparts, or by way of providing a trading facility or facilitating for those having intention to trade in derivatives to be able to agree upon or enter into a contract, and has been licensed or registered under this Act, excluding any center or network with the characteristics specified in the notification of the SEC.

“derivatives clearing house” means any center or network where services for clearing and settlement of obligations under derivatives trading are provided as an ordinary course of business, and has been licensed or registered under this Act, excluding any center or network with the characteristics specified in the notification of the SEC.

“to trade in derivatives” means to enter into derivatives.

“derivatives position” means an obligation or right of a person arising from derivatives trading.

“to close out a derivatives position” means to discharge an obligation or terminate rights under an existing derivatives by way of trading in another derivatives which results in an offsetting position or by any other means under the rules of a derivatives clearing house.

"securities" means securities under the Securities and Exchange Act.

"securities exchange" means the Stock Exchange of Thailand under the Securities and Exchange Act.

"securities trading center" means the securities trading center under the Securities and Exchange Act.

"securities clearing house" means the securities clearing house under the Securities and Exchange Act.

"institutional investor" means any investor which is a financial institution under the Commercial Banking Act, a securities company, a non-life insurance company, a life insurance company, a statutory company, a mutual fund, a private fund, the Government Pension Fund, a provident fund or any other legal entities as specified in the notification of the SEC.

"competent officer" means a person appointed by the Minister to execute the duties under this Act.

"Capital Market Supervisory Board"⁽²⁾ means the Capital Market Supervisory Board under the Securities and Exchange Act.

"SEC Office" means the Office of the Securities and Exchange Commission under the Securities and Exchange Act.

"SEC" means the Securities and Exchange Commission under the Securities and Exchange Act.

"Minister" means the Minister in charge of this Act.

Section 4

This Act shall not apply to the followings:

- (1) any off-exchange derivatives which the obligation on payment is calculated from any foreign exchange rate or interest rate;
- (2) any contract to purchase or sell a securities with a simultaneously agreement to sell back or buy back such securities;
- (3) any contract or any trade as specified in the notification of the SEC.

Section 5

Any derivatives entered into with or through a derivatives business operator, a derivatives exchange or a derivatives clearing house shall constitute a contract having a legal binding and creating an obligation enforceable under the provisions of law.

Section 6⁽²⁾

Unless otherwise specified by the provisions of this Act, the SEC, the Capital Market Supervisory Board and the SEC Office shall issue a notification to the general public stipulating the period for consideration and making of order with respect to issuance of license, acceptance for registration and grant of approval under this Act.

Section 7⁽²⁾

All rules, regulations, notifications, directives or stipulations issued under this Act by the SEC, the Capital Market Supervisory Board or the SEC Office which are of general application shall come into force upon their publication in the Government Gazette.

Section 8

The Minister of Finance shall be in charge of this Act and shall have the power to issue notifications and appoint competent officers to perform the duties under this Act.

Such notifications shall come into force upon publication in the Government Gazette.

CHAPTER 1
SUPERVISION OF DERIVATIVES TRADING

Section 9

The SEC shall have the power and duty to formulate policies to promote and develop, as well as to supervise, matters concerning derivatives, derivatives business, derivatives exchange, derivatives clearing house, derivatives regulatory association and the prevention of unfair derivatives trading practices. Such power and duty shall include:

- (1) the issuance of rules, regulations, notifications, orders, directives or stipulations under this Act;
- (2) the determination of application fees, license fees, registration fees, approval fees or the operational fees;
- (3) the determination of the scopes and practices for subcommittee members and relevant officers under this Act in order to discharge their duties;
- (4) the prescribing of a guideline on handling any problems which may arise from the enforcement of this Act.

Section 10

In cases where it is necessary to maintain the economic stability or protect the public interest or investors, the SEC shall have the power to impose additional conditions to be complied with by derivatives business operators, derivatives exchanges and derivatives clearing houses.

Section 11

The SEC shall have the power to appoint a subcommittee to perform any matter as assigned.

The subcommittee under the first paragraph shall comprise of a chairman and at least four other qualified members with knowledge and expertise in relation to the assigned matters.

Section 12

At least half of the subcommittee members shall form a quorum.

In the subcommittee's meeting, if the chairman does not present at the meeting or is unable to perform his duty, the subcommittee members present at the meeting shall elect one of them to be the chairman of the meeting.

Final resolutions of the meeting shall be made by majority vote. Each subcommittee member is entitled to one vote. In the event of a tied vote, the chairman of the meeting shall have a casting vote.

Section 13

The subcommittee member shall receive remuneration as specified by the Minister.

Section 14

The SEC Office shall have the power and duty to perform any acts necessary for the implementation of the SEC's resolutions and to perform any other acts under the provisions of this Act.

Such power and duty of the SEC Office under the first paragraph shall include:

- (1) the receipt of administrative fines imposed or fees charged under this Act;
- (2) the issuance of notifications or orders pursuant to the provisions of this Act.

All fines and fees received under Sub-Section (1) shall belong to the SEC Office.

Section 15⁽²⁾

To protect the public interest or investors, the SEC Office or the person designated by the SEC Office shall have the duty to disclose information concerning any derivatives trading, derivatives business operator, derivatives exchange, derivatives clearing house, regulatory association of derivatives business operators or information relating to any violation and penalty imposed on the violators under this Act, including any other information obtained in the performance of duties under this Act, subject to the rules specified in the notification of the Capital Market Supervisory Board.

CHAPTER 2 DERIVATIVES BUSINESS

DIVISION 1 SUPERVISION OF DERIVATIVES BUSINESS

Section 16

Derivatives business operator shall be a limited company or a public limited company, except for a derivatives advisor which shall also be an individual, and shall be allowed to undertake a derivatives business only after a license from the SEC has been obtained.

Any derivatives business operator which is a legal entity under Section 17 and engages in derivatives business only with institutional investors shall register with the SEC Office, unless it engages in derivatives fund manager business for a mutual fund under the Securities and Exchange Act, then a license from the SEC is required under the first paragraph.

The application for a license or registration, and the issuance of a license or the acceptance for registration shall be made pursuant to the rules specified in the notification of the SEC.

Section 17

The derivatives business operator dealing only with institutional investors [and is eligible to register with the SEC Office] under the second paragraph of Section 16 must be a legal entity in any of the following categories:

- (1) a commercial bank under the Commercial Banking Act;
- (2) a finance company or a credit foncier under the Undertakings of Finance Business, Securities Business and Credit Foncier Business Act;
- (3) a securities company under the Securities and Exchange Act;
- (4) any other legal entity as specified in the notification of the SEC.

Section 18⁽²⁾

In order to protect customers, maintain stability of the financial system or control the risks arising from derivatives, the Capital Market Supervisory Board shall have the power to specify in its notification the rules with which derivatives business operators shall comply.

Section 19

The SEC Office shall have the power to order the derivatives business operator to submit report or any other document relating to its derivatives business periodically or from time to time as specified by the SEC Office. The SEC Office shall also have the power to require the derivatives business operator to submit any additional explanation or further elaboration on such report or document.

Section 20

Any derivatives business operator which intends to cease operation in derivatives business of the category so licensed or registered shall submit an application for permission to cease such operation to the SEC Office or the SEC, as the case may be.

In giving permission, the SEC Office or the SEC may impose any conditions with which the applicant shall comply.

DIVISION 2

REGULATIONS FOR LICENSED DERIVATIVES BUSINESS OPERATOR

Section 21

The provisions in this Division shall apply to any derivatives business operator which is licensed under Section 16.

Section 22

Derivatives business operator shall not engage in any other business unless approved by the SEC Office.

Upon receipt of an application for approval under the first paragraph, the SEC Office shall consider the application and notify such derivatives business operator of the outcome of its consideration within sixty days from the date of receipt of such application together with all valid and complete supplementary documents as required by the notification of the SEC Office.

Upon the lapse of time as specified in the second paragraph, if the SEC Office does not notify such derivatives business operator of the outcome of its consideration or does not give any order otherwise, it shall be deemed that the SEC Office has granted its approval of such application.

Section 23⁽²⁾

In cases where the derivatives business operator is an individual, such individual shall not have any of the following prohibited characteristics:

- (1) being a person under receivership or a bankrupt;
- (2) being an incompetent or quasi-incompetent person;
- (3) having disreputable background or managing any business in a manner indicating a lack of professional accountability or due care as specified in the notification of the Capital Market Supervisory Board. In making consideration, the SEC Office shall take into account the degree of seriousness of such prohibited characteristics;
- (4) being a government official or an official in any state agency in charge of the supervision of derivatives businesses or financial institutions;
- (5) being a person not having educational qualification, working experience, or other qualifications as specified in the notification of the Capital Market Supervisory Board.

Section 24⁽²⁾

In cases where the derivatives business operator is a legal entity, the appointment or authorization of any person to be or act as a director, manager, or holder of any position as specified in the notification of the Capital Market Supervisory Board shall be made only with an approval of the SEC Office, provided that such person does not have any of the prohibited characteristics as prescribed in Section 23.

In cases where it is subsequently found that the person acting as a director, manager, or holding a position under the first paragraph has any of the prohibited characteristics as prescribed in Section 23, the SEC Office shall have the power to instruct the derivatives business operator to suspend such person from acting in that position and rectify such non-compliance or the SEC Office may revoke its approval on such person.

The provisions of the first and second paragraphs shall apply, *mutatis mutandis*, to any person with whom the derivatives business operator enters into an agreement authorizing such person as well as those who work for such person to have full or partial power of management in its derivatives business.

Section 25⁽²⁾

Unless an approval of the SEC Office has been obtained, no person can hold shares or be a beneficial owner of shares of any derivatives business operator exceeding ten percent of all shares with voting rights.

The approval under the first paragraph shall be granted only if such person, or in cases where such person is a legal entity, the directors, managers or partners of such person, have no prohibited characteristics as prescribed in Section 23 (3) or any other prohibited characteristics as specified in the notification of the Capital Market Supervisory Board.

In cases where it is subsequently found that the person approved by the SEC Office has any of the prohibited characteristics under the second paragraph, the SEC Office shall have the power to revoke its approval on such person, the prohibited characteristics are those subsequently specified by the notification of the Capital Market Supervisory Board, the case in which, such approved person shall comply with the notification within the period specified by the SEC Office. After the lapse of such period, if such person fails to comply therewith, the SEC Office shall have the power to revoke its approval.

For the purpose of this Section, a beneficial owner of shares shall mean any person with direct or indirect power to:

- (1) direct or control the exercise of voting rights in a derivatives business operator;
- (2) direct or control the acquisition, disposal or creation of encumbrance over shares issued by a derivatives business operator; or
- (3) direct or control any other matters as specified in the notification of the Capital Market Supervisory Board, irrespective of whether such power arises from any agreement, understanding, relationship or else, and whether such power arises from the acquisition or holding of shares by such person or by any other persons.

Section 26

In cases where there is any person, without an approval of the SEC Office under Section 25, holding shares of a derivatives business operator exceeding ten percents of all shares with voting rights, the derivatives business operator shall neither pay dividend or any other benefits with respect to the portion of shares exceeding ten percents to such person nor allow such person to exercise the voting rights with respect to the portion of shares exceeding ten percents in any shareholders' meeting.

Section 27

A derivatives business operator shall prepare its accounts stating true and current business operation and financial condition in conformity with the accounting standard as specified by law and any additional regulations as specified in the notification of the SEC.

The provision of the first paragraph shall not apply to a derivatives advisor.

Section 28

A derivatives business operator shall prepare and submit financial statements to the SEC Office. Such financial statement shall be made available at the office of the derivatives

business operator for public access and also be published in at least one local daily newspaper in accordance with the rules specified in the notification of the SEC.

The financial statements under the first paragraph shall be prepared under the criteria as specified in the notification of the SEC and shall be audited with an opinion rendered thereon by a certified public auditor.

The provision of the first paragraph shall not apply to a derivatives advisor.

Section 29

In cases where the auditor under Section 28 finds that the derivatives business operator has produced any false working papers or disclosed inaccurate or incomplete information in the financial statement or failed to comply with Section 27, such auditor shall disclose his finding or render his opinion and clarify consequences material to the financial statement in his audit report.

Section 30

The auditor under Section 28 shall be a certified public auditor approved by the SEC Office and shall not be a shareholder, a beneficial owner in shares under the fourth paragraph of Section 24, a director, an officer or an employee of such derivatives business operator. Furthermore, the auditor shall also adhere to the ethical code of auditors and perform the audit under the provisions of the law governing auditors and any additional regulations specified in the notification of the SEC.

The approval of the auditor under the first paragraph shall be made in accordance with the rules as specified in the notification of the SEC.

DIVISION 3

TREATMENT OF CUSTOMER PROPERTY

Section 31⁽²⁾

The provisions of this Division shall apply to derivatives agent licensed under Section 16. The Capital Market Supervisory Board may, if appropriate, promulgate the notification to extend the applicability of the provisions of this Division to any other categories of derivatives business operators.

Section 32⁽²⁾

In this Division,

- (1) "customer" means any person who uses the service provided by a derivatives business operator;
- (2) "customer asset" means:
 - (a) asset which a derivatives business operator received or held as performance bond for derivatives transaction for the account of a customer;
 - (b) profit or any other benefit resulted from derivatives transaction for the account of a customer;
 - (c) warehouse receipt, bill of lading, or any other instruments which represent entitlement in property held on trust by a derivatives business operator for its customer with a view to delivery or as a result of acceptance of delivery under derivatives transaction for the account of a customer;
 - (d) cash, securities, or any other property which a customer has deposited with a derivatives business operator for the purpose of payment for goods to be

received under derivatives transaction for the account of such customer, or which a derivatives business operator has received for or on behalf of a customer in return for delivery of goods under derivatives transaction for the account of a customer;

- (e) proceeds remain from the sale of customer's securities held by a derivatives business operator for the account of such customer as a result of his default pursuant to Section 36;
- (f) any other liquid asset as specified in the notification of the Capital Market Supervisory Board.

Section 33⁽²⁾

A derivatives business operator shall segregate the customer asset from its own, and shall prepare and keep account of customer asset for each customer separately from the account of its own, in accordance with the rules specified in the notification of the Capital Market Supervisory Board.

In cases where the derivatives business operator has advanced its own asset to secure or satisfy the obligations incurred incidental to or resulted from derivatives transaction for the account of a customer, it shall, in compliance with the rules specified in the notification of the Capital Market Supervisory Board, prepare and keep account of such advances.

The item and amount of asset as indicated in the account under the first and second paragraph are presumed to be correct, unless proven otherwise.

Section 34⁽²⁾

A derivatives business operator shall not use the customer asset for any purpose other than the followings:

- (1) customer asset shall only be used for derivatives transaction, or for any other purposes incidental to or resulted from derivatives transaction, of the customer whose asset is accounted for;
- (2) where the customer asset is cash, the derivatives business operator may use such cash to seek other benefit rather than the purpose specified in subsection (1), provided that the derivatives business operator has obtained consent from the customer and complied with the rules as specified in the notification of the Capital Market Supervisory Board. Should there be any interest or benefit arising there from, an agreement made between the derivatives business operator and the customer shall determine the allocation of such proceeds.

Section 35

In cases where the customer property is securities, the derivatives business operator may request the customer to transfer such securities into its account to be held on trust for such customer.

When the derivatives business operator is required to transfer the securities under the first paragraph to the customer, it may transfer the securities of the same class, series and type issued by the same issuer or mutual fund project in the equivalent amount to such customer.

In transferring such securities to the customer, the derivatives business operator shall also deliver all interests or any benefit arising from such securities to such customer unless agreed otherwise.

The provisions of the second and third paragraph shall apply *mutatis mutandis* to the transfer of securities which the derivatives business operator deposits with another person.

Section 36

In cases where a customer defaults on an obligation under derivatives trading, the derivatives business operator shall give notice to the customer to settle such obligation within a reasonable period of time. If the customer fails to do so within such period of time, the derivatives business operator may sell the securities held on trust for the account of such customer in the market where such securities are normally traded. If, however, the sale in such market is unable to consummate, the derivatives business operator may sell such securities by any other means which fair price can be achieved.

The proceeds obtained from the sale of such securities shall be used to satisfy the obligations under the first paragraph and reimburse the expenses necessarily incurred incidental to such sale. The remaining proceeds, if any, shall be credited into the account of the customer.

Section 37

In cases where a court orders to accept a customer's petition for business reorganization or orders the receivership of a customer in a bankruptcy case, the official receiver shall give notice to the derivatives business operator and the SEC Office without delay, in which case, the derivatives business operator shall:

- (1) close out the customer's derivatives position, which remain open on the date on which the court so ordered, in accordance with the rules of the derivatives clearing house;
- (2) enforce the performance of customer's obligation against such customer's property, regardless of whether such property is in the custody of the derivatives business operator or is placed or deposited by the derivatives business operator with any other person, provided that, the obligation is incurred incidental to or resulted from derivatives traded before or on the date on which the court so ordered, or is incurred from the closing out of the customer's derivatives position under sub-Section (1).

In selling customer property to repay such customer's indebtedness, if the property to be sold is securities, the derivatives business operator shall sell such securities in the market where such securities are normally traded. If, however, the sale in such market is unable to consummate, the derivatives business operator shall sell such securities by any other means which fair price can be achieved;

- (3) set off the obligation of the customer incurred incidental to or resulted from the derivatives traded for the account of such customer before or on the date on which the court so ordered, or incurred from the closing out of the customer's derivatives position under sub-Section (1), against the obligation of the derivatives business operator, which remain unsettled at the time the court so ordered, even if the objects thereof are not the same, or the obligations are subject to conditions or terms as to time, or the derivatives business operator becomes entitled to the claim underlying such obligation after the date on which the court so ordered.

In cases where the obligation owed by the customer to the derivatives business operator is subject to condition precedent, when the derivatives business operator requests to set off against such obligation, the derivatives business operator shall provide collateral for the amount requested for set off to the administrator of the customer estate appointed under the Bankruptcy Act.

Section 38

After the derivatives business operator has taken steps under Section 37, should there remain any customer property; the derivatives business operator shall deliver such property to the administrator of the customer estate appointed under the Bankruptcy Act.

Section 39

In cases where the court orders the business reorganization of a customer or the receivership of a customer, the provisions of the second paragraph of Section 90/40, Section 90/41, Section 114, and Section 115 of the Bankruptcy Act, B.E. 2483 (1940), as the case may be, shall not apply to the settlement of obligation under derivatives, the acquisition or holding of property to secure such customer's obligation under derivatives, or the closing out of such customer's derivatives position, unless the planner, the plan administrator, or the official receiver can prove that the derivatives business operator is aware of the fact that the customer has taken or connived in such action with a view to preventing other creditors of the customer from receiving repayment of indebtedness, either in whole or in part, or that the derivatives business operator has failed to comply with business conventions in taking such action.

Section 40

In proceeding under Section 37, if the customer property is insufficient to cover all indebtedness owed to the derivatives business operator, the derivatives business operator shall be entitled to file a claim for the deficient amount under the business reorganization proceedings or bankruptcy proceedings where the customer is the debtor. Such claim shall, however, be submitted within the time specified in Section 90/26 or Section 91 of the Bankruptcy Act, B.E. 2483 (1940), as the case may be.

DIVISION 4

PROTECTION OF CUSTOMER PROPERTY

Section 41⁽²⁾

The provisions of this Division shall apply to any derivatives broker licensed under Section 16. The Capital Market Supervisory Board may, if necessary, promulgate the notification to extend the applicability of the provisions of this Division to any other categories of derivatives business operator.

Section 42⁽²⁾

In this Division,

- (1) "customer" means:
 - (a) any person who uses the service provided by a derivatives business operator and holds a net claim against such derivatives business operator arising out of derivatives transaction with such derivatives business operator; or
 - (b) any person other than person in subparagraph (a) who holds a net claim against such derivatives business operator arising out of derivatives transaction, closing out of derivatives positions, or adjustment in outstanding derivatives position of such person in subparagraph (a).
- (2) "asset deemed to be owned by customer" means the following asset, unless otherwise specified in the notification of the Capital Market Supervisory Board:
 - (a) customer asset under Section 32 (2) including any interest or benefit arising therefrom;
 - (b) open derivatives position of the customer;
 - (c) asset segregated from that of the derivatives business operator under Section 33;

- (d) over-collateralized portion of asset placed by the customer with a derivatives business operator as collateral for a loan granted for derivatives trading;
- (e) securities or any other financial instrument held by a derivatives business operator in its own account, which are of the same class, series and type issued by an issuer or mutual fund project as those owned by the customer, provided that, the amount of which shall be limited to that required for return to satisfy the claim of the customer against the derivatives business operator;
- (f) any other asset as specified in the notification of the Capital Market Supervisory Board.

Section 43

When a derivatives business operator becomes a debtor by judgment or a debtor under receivership, the property deemed to be owned by customer shall not be regarded as property subject to seizure or attachment in the civil case and shall not be regarded as the bankruptcy estate which may be distributed among creditors of the derivatives business operator in the bankruptcy case.

In cases where the derivatives business operator is under receivership under the first paragraph, the official receiver and the SEC Office shall have the power to segregate and manage property deemed to be owned by customer in accordance with the rules as specified in the notification of the SEC by consultation with the Minister of Justice. Such power shall include:

- (1) gather and allocate property deemed to be owned by customer in order to return them to the customer;
- (2) transfer account and property deemed to be owned by customer to other derivatives business operator;
- (3) close out the derivatives position of customer in cases where the transfer of account and property to other derivatives business operator is incapable;
- (4) compromise, sue, try the case, or take any other acts to complete the management of the property deemed to be owned by customer.

In proceeding under the second paragraph, the official receiver and the SEC Office may authorize any other person to take such acts on their behalf.

Section 44⁽²⁾

In managing asset deemed to be owned by customer under Section 43, the customers who are not associated with the derivatives business operator in a manner as specified in the notification of the Capital Market Supervisory Board shall be entitled to receive the allocated asset prior to others.

Section 45

In cases where the court orders the receivership of a derivatives business operator, and the management of property deemed to be owned by customer under Section 43 has been finalized, should any customer has acquired the property partially, such customer shall be entitled to file a claim for the deficient amount in the bankruptcy proceedings where the derivatives business operator is the debtor. Such claim shall, however, be submitted within the time specified in Section 91 of the Bankruptcy Act, B.E. 2483 (1940).

Section 46

When a derivatives business operator is ordered by the government or any regulatory body under any other laws to suspend its business either in whole or in part, such derivatives business operator shall notify the SEC Office of such fact without delay.

When the event under the first paragraph has been occurred, the property deemed to be owned by customer shall not be regarded as property subject to the restriction of distribution, disposal or transfer effectuate by due and legal order suspending wholly or partially of business operation of the derivatives business operator.

DIVISION 5

SETTLEMENT OF DISPUTES BY ARBITRATION

Section 47

For the purpose of providing customer protection as well as providing expeditious and fair alternative dispute resolution, the customer may request the SEC Office to arrange the arbitration for the settlement of civil dispute occurred incidental to or resulted from the derivatives business. In making such request, the customer shall give the derivatives business operator a notice expressing his intent to settle the dispute by means of arbitration. Upon the derivatives business operator's receipt of such notice, it shall be deemed that both parties have agreed to enter into an arbitration agreement to settle the dispute so occurred.

The disputes to be referred to arbitration under the first paragraph shall represent the amount in dispute not more than that specified in the notification of the SEC.

Section 48

The Arbitration Act shall apply to the settlement of disputes under Section 47 *mutatis mutandis*.

DIVISION 6

MEASURES TO PROTECT CUSTOMER PROPERTY AND SETTLEMENT SYSTEM FOR DERIVATIVES

Section 49

The derivatives business operator shall maintain the financial condition as required under the notification of the SEC.

Section 50

In cases where there is evidence that a derivatives business operator fails to maintain the financial condition as required under the notification of the SEC pursuant to Section 49, or operates its business in any manner which may cause damage to customer property or to the settlement system for derivatives, or there is any event which may materially affect the derivatives business operator's financial condition or operation, the SEC Office shall have the power to order such derivatives business operator to:

- (1) refrain from trading in derivatives unless such trading is for the purpose of closing out derivatives position;
- (2) transfer derivatives position of customer and customer property to other derivatives business operator;
- (3) close out derivatives position of customer if the transfer thereof to other derivatives business operator is incapable;

- (4) close out derivatives position of the derivatives business operator;
- (5) undertake or refrain from undertake any action as the SEC Office deems appropriate.

If any event under the first paragraph occurs and there is an urgent need to protect or alleviate potential damage or if the derivatives business operator fails to comply with the order under the first paragraph, the SEC Office shall have the power to order the derivatives business operator to suspend its business operation either in whole or in part and shall also be empowered to proceed with sub-Section (2), (3) or (4).

Section 51

In cases where the SEC Office orders suspension of the operation of a derivatives business operator either in whole or in part under the second paragraph of Section 50, the SEC Office may authorize any derivatives clearing house to proceed with Section 50 (2), (3) or (4) on its behalf.

Section 52

The derivatives business operator shall be bound to the actions undertaken by the SEC Office under Section 50 or by the derivatives clearing house under Section 51 as if such derivatives business operator has undertaken such actions by itself. Any expenses incurred thereby shall be paid out of such derivatives business operator's property.

Section 53

The actions undertaken in good faith under Section 50 (2), (3), (4), and (5) or Section 51 shall be deemed to have legal binding and shall not be subject to Section 113, Section 114 and Section 115 of the Bankruptcy Act B.E. 2483 (1940), and Section 237, Section 349 and Section 350 of the Civil and Commercial Code. However, if the action taken is the transferring of derivatives position of customer or customer property to other derivatives business operator, such action shall in no way prejudice the customers' right under the second paragraph of Section 308 of the Civil and Commercial Code.

CHAPTER 3

DERIVATIVES EXCHANGE

DIVISION 1

SUPERVISION OF DERIVATIVES EXCHANGE

Section 54

Derivatives exchange shall be a public limited company and shall be allowed to provide services thereof only after a license from the SEC has been obtained.

Derivatives exchange which provides services only for institutional investors to trade in derivatives for their own accounts shall be a limited company or a public limited company and shall be allowed to provide services thereof only after a registration with the SEC has been made.

The application for a license or registration, and the issuance of a license or the acceptance for registration shall be made pursuant to the rules specified in the notification of the SEC.

Section 55⁽²⁾

In order to protect investors, maintain the stability of the financial system or control risks arising from derivatives, the Capital Market Supervisory Board shall have the power to specify in its notification the rules with which the derivatives exchange shall comply.

DIVISION 2 REGULATIONS FOR DERIVATIVES EXCHANGE

Section 56

Except for Section 70, the provisions of this Division shall not apply to the derivatives exchange under the second paragraph of Section 54.

Section 57

A derivatives exchange shall have:

- (1) sufficient financial resources for the proper performance of its operation and for the assumption of any risks associated with the operation of the derivatives exchange;
- (2) system for settlement of obligations under derivatives provided by a derivatives clearing house of its own or other derivatives clearing house;
- (3) measures to promote and maintain the standard of integrity, reliability as well as fairness in relation to derivatives trading;
- (4) efficient system to record and disseminate information regarding price quotation and derivatives trading;
- (5) contingency plan to accommodate any emergency which may affect derivatives trading or settlement of obligations under derivatives;
- (6) efficient arrangement for the handling of complaints or disputes in connection with the derivatives trading on the derivatives exchange or in respect of the use of services provided by the derivatives exchange;
- (7) rules for the admission of members which shall take into consideration the fitness and status of the applicants; and
- (8) rules applicable to members and arrangement for the monitoring and enforcement of compliance by members with its rules and code of ethics in undertaking derivatives business.

Section 58⁽²⁾

A derivatives exchange shall take steps to ensure that its members enter into a commitment to comply with the rules of the derivatives exchange and agree to be subject to disciplinary actions imposed by the derivatives exchange for any contravention of or noncompliance with such rules.

Subject to the rules specified in the notification of the Capital Market Supervisory Board, the derivatives exchange rules under the first paragraph shall provide procedural due process to members and shall include a system, in form of a committee, for consideration of appeals filed by the members against the disciplinary sanction.

The Capital Market Supervisory Board rules promulgated under the second paragraph shall specify the committee members' qualifications, the procedures on appeal submission, and consideration thereon.

Section 59

In cases where there is any person holding more than five percents of the total number of shares of a derivatives exchange, such derivatives exchange shall neither pay dividend or any other benefits with respect to the portion of shares exceeding five percents to such person nor allow such person to exercise the voting right with respect to the portion of shares exceeding five percents in any shareholders' meeting, unless a waiver thereof has been given by the SEC.

Section 60

At least two fifth of the board of directors of the derivatives exchange shall be the persons capable of performing the duties to protect the interest of members, investors or stakeholders of the derivatives market with appropriate combination of representation as specified in the notification of the SEC.

Section 61

Other than qualifications and prohibited characteristics as specified by the Public Limited Companies Act, directors of a derivatives exchange shall not have any of the following prohibited characteristics:

- (1) having disreputable background or managing any business in a manner indicating a lack of professional accountability or due care as specified in the notification of the SEC;
- (2) being a political official;
- (3) being a government official or an official in any state agency in charge of the supervision of derivatives exchange or financial institution;

Section 62

Other than the cause of vacating from the office as specified by the Public Limited Companies Act, a director of the derivatives exchange shall be vacated from his office upon:

- (1) possession of any prohibited characteristics under Section 61;
- (2) removal by the SEC due to his gross incompetent in the performance of his duty or misconduct.

Section 63⁽²⁾

The rules of the derivatives exchange shall be enforceable only upon approval of the Capital Market Supervisory Board.

In cases where the rules under the first paragraph may affect the business operations or interest of members, investors or stakeholders of the derivatives exchange, the derivatives exchange shall arrange a hearing from such persons and submit a report on such hearing to the Capital Market Supervisory Board in support of the consideration for approval on the proposed rules.

The Capital Market Supervisory Board's approval under the first paragraph and the hearing of opinions under the second paragraph shall not apply to any rules relating to the derivatives exchange's internal administration or any other rules as specified in the notification of the Capital Market Supervisory Board.

Section 64⁽²⁾

When a derivatives exchange has proposed rules for the Capital Market Supervisory Board's approval, the Capital Market Supervisory Board shall consider such rules and notify such derivatives exchange of the outcome of its consideration within forty five days from the date of receipt of such proposed rules together with all valid and complete supplementary documents as required by the notification of the SEC Office.

The Capital Market Supervisory Board shall approve rule of the derivatives exchange unless such rules:

- (1) are not consistent with the requirements specified in Section 57 or are not adequate to ensure the fulfillment of the requirements specified in Section 57; or
- (2) are not fair and equitable to members, investors or stakeholders of the derivatives exchange.

Upon the lapse of time as specified in the first paragraph, if the Capital Market Supervisory Board does not notify such derivatives exchange of the outcome of its consideration or does not give a notice instructing amendment of such rules to the derivatives exchange, it shall be deemed that the Capital Market Supervisory Board has granted its approval of such rules.

Section 65

In cases where there is any change of facts and circumstances, the SEC shall have the power to order the derivatives exchange to issue additional rules, or revoke or amend the existing rules, and shall also be empowered to order the derivatives exchange to undertake any other actions as the SEC deems appropriate.

Section 66⁽²⁾

Where it is necessary, a derivatives exchange may, without following the procedures under Section 63, issue rules that are of temporary nature, provided however that, the derivatives exchange has complied with the rules as specified in the notification of the Capital Market Supervisory Board.

If the Capital Market Supervisory Board is of the opinion that the actions taken by the derivatives exchange under the first paragraph was not made in good faith, was made without reasonable cause, or fails to comply with the rules as specified under the first paragraph, the Capital Market Supervisory Board shall have the power to order the derivatives exchange to revoke or amend such rules or undertake any other actions as the Capital Market Supervisory Board deems appropriate.

Section 67

A contract of derivatives may be traded only after the derivatives exchange has submitted the form and terms of such derivatives to the SEC Office and the SEC Office has granted its approval in material substances thereon.

Upon the receipt of an application for approval of the form and terms of a derivatives, the SEC Office shall consider the application and notify such derivatives exchange of the outcome of its consideration within forty five days from the date of receipt of such application together with all valid and complete supplementary documents as required by the notification of the SEC Office. However, if there is a necessity which causes it unable to conclude its consideration within the period so specified, such notice period shall be extended to not more than thirty days from the prior expiration date.

The derivatives exchange may apply for revocation of or amendment to the form and terms of the derivatives approved under the first paragraph, in which case, the provisions of the first and second paragraph shall apply *mutatis mutandis*.

Section 68

In cases where it is subsequently found that the derivatives approved under Section 67 does not desirable to the current economic circumstances, the SEC Office shall have the power to revoke the approval granted.

Section 69

The SEC Office shall consult the Bank of Thailand prior to granting or revoking an approval under Section 67 and Section 68, if the goods underlying the derivatives are bond or treasury

bill, or the derivatives obligates the parties to make a payment in the amount calculated from foreign exchange rate or interest rate.

Section 70⁽²⁾

Where it is necessary to maintain the stability of the financial system, the economic of the country or the stability of the trading and settlement system of the derivatives market, the Capital Market Supervisory Board shall have the power to order the derivatives exchange to:

- (1) suspend derivatives trading unless such trading is for purposes of closing out derivatives positions;
- (2) instruct the closing out of derivatives positions;
- (3) limit the trading price range of derivatives;
- (4) amend or temporarily suspend the application of any rules issued by the derivatives exchange;
- (5) undertake or refrain from undertaking any action as the Capital Market Supervisory Board deems appropriate.

In proceeding under the first paragraph, if it is necessary for the derivatives exchange to amend or issue additional rules, the derivatives exchange shall not be required to propose such rules to the Capital Market Supervisory Board for approval under Section 63. Under this circumstance, the rules so amended or issued shall be deemed to have been approved by the Capital Market Supervisory Board.

Where the parties are obligated under derivatives transactions to make a payment in the amount calculated from foreign exchange rate which may affect the stability of the financial system, the economic of the country or the stability of the trading and settlement system of the derivatives market, the Bank of Thailand may notify the Capital Market Supervisory Board to take any actions as specified in the first paragraph.

Section 71

When a derivatives exchange has ordered any disciplinary sanction on its members, it shall inform the SEC Office of such action together with any relating documents without delay.

Section 72⁽²⁾

In cases where a derivatives business operator which is a member of any derivatives exchange violates or fails to comply with any rules set forth by the derivatives exchange and such action amounts to the similar nature of any violation of or failure to comply with the rules as specified in the notification of the Capital Market Supervisory Board or the SEC Office, and the derivatives exchange has already imposed the disciplinary sanction on such member, the Capital Market Supervisory Board or the SEC Office may withhold its decision to impose any administrative sanction on such derivatives exchange's member if it is deemed that the appropriate sanction has already been imposed on such member.

Section 73⁽²⁾

In order to protect the public interest or investors, the derivatives exchange shall have the power to disclose information concerning derivatives transactions, members of the derivatives exchange or information relating to violations and disciplinary sanctions imposed on its members as well as any other information obtained from the operation of the derivatives exchange, subject to the rules specified in the notification of the Capital Market Supervisory Board.

In cases where any person is of the opinion that the derivatives exchange has not adequately disclosed the information, such person may propose the recommendation to the Capital Market Supervisory Board to promulgate rules imposing the derivatives exchange to disclose additional information.

Section 74

The provisions of Section 20, Section 22, Section 27 and Section 28 shall apply to the derivatives exchange *mutatis mutandis*.

The provisions of Section 29 and Section 30 shall apply to the auditor of the derivatives exchange *mutatis mutandis*.

CHAPTER 4 DERIVATIVES CLEARING HOUSE

DIVISION 1 SUPERVISION OF DERIVATIVES CLEARING HOUSE

Section 75

Derivatives clearing house shall be a limited company or a public limited company and shall be allowed to provide services thereof only after a license from the SEC has been obtained.

Derivatives clearing house which provides services only for clearing and settlement of derivatives traded for institutional investors to clear and settle derivatives traded for their own accounts shall be a limited company or a public limited company and shall be allowed to provide services thereof only after a registration with the SEC Office has been made.

The application for a license or registration, and the issuance of a license or the acceptance for registration shall be made pursuant to the rules specified in the notification of the SEC.

Section 76⁽²⁾

In order to protect investors, maintain the stability of the financial system or control risks arising from derivatives, the Capital Market Supervisory Board shall have the power to specify in its notification the rules with which the derivatives clearing house shall comply.

DIVISION 2 REGULATIONS FOR DERIVATIVES CLEARING HOUSE

Section 77

Except for Section 79, the provisions of this Division shall not apply to the derivatives clearing house under the second paragraph of Section 75.

Section 78

A derivatives clearing house shall have:

- (1) sufficient financial resources for the proper performance of its operation and for the assumption of any risks associated with the operation of the derivatives clearing house;
- (2) system for settlement of obligations under derivatives to ensure that the obligations under derivatives shall be performed, including a clear procedure to deal with any default on obligations under derivatives;

- (3) contingency plan to accommodate any emergency which may affect settlement of obligations under derivatives;
- (4) rules for the admission of members which shall take into consideration the fitness and financial condition of the applicants;
- (5) rules applicable to members and arrangement for monitoring and enforcement of compliance by members with its rules; and
- (6) system to monitor and audit the members' financial condition and derivatives positions.

Section 79⁽²⁾

Where it is necessary to maintain the stability of the financial system, the economic of the country or the stability of the trading and settlement system of the derivatives market, the Capital Market Supervisory Board shall have the power to order the derivatives clearing house to:

- (1) instruct its members to place additional collateral;
- (2) alter the maximum level of the derivatives position which any members or its customers may hold;
- (3) close out derivatives position;
- (4) undertake or refrain from undertaking any action as the Capital Market Supervisory Board deems appropriate.

In proceeding under the first paragraph, if it is necessary for the derivatives clearing house to amend or issue additional rules, the derivatives clearing house shall not be required to propose such rules to the Capital Market Supervisory Board for an approval under Section 63 which applies *mutatis mutandis* to the derivatives clearing house by Section 89. Under this circumstance, the rules so amended or issued shall be deemed to have been approved by the Capital Market Supervisory Board.

Where the parties are obligated under the derivatives transactions to make a payment in the amount calculated from foreign exchange rate which may affect the stability of the financial system, the economic of the country or the stability of the trading and settlement system of the derivatives market, the Bank of Thailand may notify the Capital Market Supervisory Board to take any action as specified in the first paragraph.

Section 80⁽²⁾

Any obligations either as a counter-party or through novation in a derivatives transaction by the derivatives clearing house, the placement of collateral, the settlement of obligations, the closing out of the derivatives position, and the transfer of the derivatives position, if undertaken in accordance with the derivatives clearing house's rules as approved by the Capital Market Supervisory Board, shall be legally binding and enforceable by law.

Section 81

In cases where a derivatives clearing house is binding in or interposes as a counter-party in a derivatives, the derivatives clearing house shall, only to its members, be bound to the rights and obligations under the derivatives for which it provides settlement services, regardless of whether such members have traded in derivatives for their own accounts or for the accounts of others.

Section 82⁽²⁾

In cases where the derivatives clearing house receives any asset from its members or has in its possession such asset as collateral for derivatives transactions, as a result of derivatives

transactions of its members or its members' customers, asset placed with the derivatives clearing house by any member for purposes of maintaining the integrity of the trading and settlement system of the derivatives market, the derivatives clearing house shall segregate such asset from its own and shall prepare and keep accounts of the asset received or had in possession for each respective member separately from its own account.

In preparing and keeping the accounts of asset under the first paragraph, if asset of customers of the member are included, the derivatives clearing house shall also prepare and keep accounts of such customer asset separately from the accounts of members' asset.

Type of asset to be held as collateral for derivatives transaction, safekeeping of asset, preparation and keeping of the accounts of asset under the first and second paragraph shall be in accordance with the rules as specified in the notification of the Capital Market Supervisory Board.

The items and amounts of asset as shown in the accounts under the first and second paragraph are presumed to be correct, unless proven otherwise.

Section 83

The derivatives clearing house shall not use property received or had in possession under Section 82 for any purposes other than the followings:

- (1) customer property placed through a member or property received from the derivatives trading of customers of a member shall only be used to secure or settle the obligations incurred incidental to or resulted from derivatives trading of customers of that member or for withdrawal in order to return to customers of that member;
- (2) property of a member or property received from the derivatives trading of a member shall only be used to secure or settle the obligations incurred incidental to or resulted from derivatives trading of that member or customers of that member;
- (3) property placed with the derivatives clearing house by a member with a view to maintaining the integrity of the trading and settlement system of the derivatives market shall only be used to secure or settle the obligations incurred incidental to or resulted from derivatives trading of members or customers of members in accordance with the rules of the derivatives clearing house.

The provisions of Section 34 (2), Section 35 and Section 36 shall apply *mutatis mutandis* to property received by or had in possession of the derivatives clearing house.

Section 84

In cases where a petition is filed against a member in a bankruptcy court and the court issues a receivership order, the official receiver shall give notice to the derivatives clearing house and the SEC Office without delay, in which case, the derivatives clearing house shall:

- (1) close out derivatives position in the member's proprietary account, which remains open on the date of the receivership order, in accordance with the rules of the derivatives clearing house;
- (2) enforce the performance of the member's obligation against such member's property received by or had in possession of the derivatives clearing house under Section 82, regardless of whether such property is in the custody of the derivatives clearing house or is placed or deposited by the derivatives clearing house with any other person, provided that, the obligation is incurred incidental to or resulted from derivatives traded before or on the date of the receivership order, or is incurred from the closing out of the member's derivatives position under sub-Section (1), or

is incurred from the closing out of customer's derivatives position of such member under Section 43.

In selling member property to repay member's indebtedness, if the property is security, the derivatives clearing house shall sell such security in the market where such security is normally traded. If, however, the sale in such market is unable to consummate, the derivatives clearing house shall sell such security by any other means which fair price can be achieved;

- (3) set off the obligation incurred incidental to or resulted from the derivatives traded before or on the date of the receivership order, or incurred from the closing out of the member's derivatives position under sub-Section (1), or incurred from the closing out of customers' derivatives positions of such member under Section 43, against the obligation of the derivatives clearing house which remains unsettled at the time of the receivership order, even if the objects thereof are not the same, or the obligations are subject to conditions or terms as to time, or the derivatives clearing house becomes entitled to the claim underlying such obligation after the court orders receivership.

In cases where the obligation owed by a member to the derivatives clearing house is subject to conditions precedent, when the derivatives clearing house requests to set off against such obligation, the derivatives clearing house shall provide collateral for the amount requested for set off to the administrator of the member estate appointed under Bankruptcy Act.

Section 85

After the derivatives clearing house has taken steps under Section 84, if there remains any member's property, the derivatives clearing house shall deliver such property to the administrator of the member estate appointed under Bankruptcy Act.

Section 86

In cases where the court orders the receivership of a member, the provisions of Section 114 and Section 115 of the Bankruptcy Act, B.E. 2483 (1940) shall not apply to the settlement of obligations under derivatives, the acquisition or holding of property to secure performance under derivatives, or the closing out of derivatives positions, in connection with such member, unless the official receiver can prove that the derivatives clearing house which provided service for such member is aware of the fact that such member has taken or connived in such action with a view to preventing other creditors of such member from receiving repayment of indebtedness, either in whole or in part, or that the derivatives clearing house has failed to comply with business conventions in taking such action.

Section 87

In proceeding under Section 84, if the member's property acquired by or had in possession of the derivatives clearing house under Section 82 is insufficient to cover all indebtedness owed by the member to the derivatives clearing house, the derivatives clearing house shall be entitled to file a claim for the deficient amount under the bankruptcy proceedings where the member is the debtor. Such claim shall, however, be submitted within the time specified in Section 91 of the Bankruptcy Act, B.E. 2483 (1940).

Section 88

In cases where a petition is filed against a derivatives clearing house in a bankruptcy court and the court issues a receivership order, or the derivatives clearing house becomes a debtor by judgment, or is ordered to suspend its business operation either in whole or in part by the government or any regulatory agency, for purposes of protecting the property of its members

and customers of its members or the settlement system for derivatives, the provisions of Section 43, Section 45, and Section 46 shall apply *mutatis mutandis* to the derivatives clearing house and property received by or had in possession of the derivatives clearing house under Section 82.

Section 89

The provisions of Section 20, Section 22, Section 27, Section 28, Section 61, Section 62, Section 63, Section 64, Section 65, Section 66, and Section 73 shall apply *mutatis mutandis* to the derivatives clearing house.

The provisions of Section 29 and Section 30 shall apply *mutatis mutandis* to the auditor of the derivatives clearing house.

In cases where the provisions under the first paragraph refer to Section 57, it shall be deemed that such provisions refer to Section 78. If the derivatives clearing house is a limited company, it shall be deemed that Section 61 and Section 62 refer to the provisions under Title 22, Partnerships and Companies, of the Civil and Commercial Code.

CHAPTER 5 DERIVATIVES REGULATORY ASSOCIATION

Section 90

In order to furtherance the supervision on derivatives business operators, the SEC shall have the power to grant approval for an association to be a derivatives regulatory association, if such association has the objectives to promote and supervise the derivatives business operators and the rules of the association are designed to assure that:

- (1) the criteria for election of its director provides a fair representation of its members;
- (2) the system for handling complaints filed by a customer of its member or the system for resolution of disputes arising from derivatives business operation either between members or between a member and its customer is efficient;
- (3) the arrangement for monitoring and enforcement of compliance by its members with the rules of the association and code of ethics in undertaking derivatives business is in place;
- (4) any other criteria as the SEC may prescribe by rule.

The application for approval and the granting of an approval shall be made in accordance with the rules specified in the notification of the SEC.

Section 91

The provisions of Section 71, Section 72 and Section 73 shall apply *mutatis mutandis* to the derivatives regulatory association.

CHAPTER 6 UNFAIR PRACTICES IN CONNECTION WITH DERIVATIVES TRADING

DIVISION 1

UNFAIR PRACTICES AFFECTING DERIVATIVES PRICE

Section 92

No person shall, either by himself or acting in concert with any other person, trade in derivatives or offer to trade in derivatives, purchase or sell or offer to purchase or sell goods or take any other action in connection with variable:

- (1) with an intent to maintain the price of any derivatives traded on a derivatives exchange at a level that is not consistent with the normal market condition, or with an intent to raising or lowering the price of any derivatives traded on a derivatives exchange to the level that is not consistent with the normal market condition; or
- (2) which has or likely to have the effect of maintaining, raising, or lowering the price of any derivatives traded on a derivatives exchange to a level that is not consistent with the normal market condition unless such action is undertaken in good faith to protect his rightful interest.

Section 93

The following actions or circumstances shall be presumed to be acting in concert under Section 92:

- (1) opening a joint bank account to make or receive payment incurred incidental to or resulted from derivatives trading, or purchase or sale of goods;
- (2) placing order to trade in derivatives, or purchase or sell goods, on behalf of each other;
- (3) delivering goods underlying derivatives on behalf of each other;
- (4) making or receiving payment under derivatives, or as a result of purchase or sale of goods, on behalf of each other;
- (5) placing cash or any other property as collateral for derivatives trading, or purchase or sale of goods on behalf of each other;
- (6) allowing other persons to use his bank account to make or receive payment incurred incidental to or resulted from derivatives trading, or purchase or sale of goods;
- (7) allowing other persons to receive the benefit from or be liable to payment incurred incidental to or resulted from derivatives trading, or from purchase or sale of goods, on his account.

Section 94

No person shall, with a view to unduly seek benefit from derivatives position, either for his own or for any other person, corner, dump, control or take any other actions, in connection with goods underlying any derivatives approved to be traded on a derivatives exchange which results in a significant increase or decrease in the amount of goods to be delivered under such derivatives.

Section 95

No person shall make or disseminate any statement or make promise which is false or likely to be misleading in materiality, in connection with derivatives, goods or variable, if by the time of making or disseminating such statement or making promise, he knows or should have known that such statement is false or likely to be misleading in materiality and that such act:

- (1) has induced or is likely to induce other persons to trade in derivatives on a derivatives exchange; or
- (2) has or likely to have the effect of raising, lowering, or maintaining the price of any derivatives traded on a derivatives exchange.

Section 96

No person shall make any forecast regarding derivatives, goods, or variable by distorting the fact or information which is the basis of such forecast, or knowingly using false information as the basis of such forecast, or disregarding as to whether the information used as the basis of such forecast is true or false, and such act:

- (1) has induced or is likely to induce other persons to trade in derivatives on a derivatives exchange; or
- (2) has or likely to have the effect of raising, lowering, or maintaining the price of any derivatives traded on a derivatives exchange.

Section 97

No person shall disseminate any statement to the effect that the price of any derivatives traded on a derivatives exchange will or is likely to rise or fall or be maintained because there has been certain derivatives trading or certain action relating to such derivatives which is conducted in a manner as specified in Section 92, Section 95 or Section 96 whereby such person:

- (1) is the one who trades in such derivatives or takes the action as described in Section 92, Section 95 or Section 96; or
- (2) has received or will receive any consideration or benefit in connection with the dissemination of such statement.

Section 98

Any person who commits an offence specified in Section 92 or Section 94 outside the Kingdom of Thailand shall be punishable in the Kingdom of Thailand. Even though the act of a person who commits, aids, abets or causes the offence is done outside the Kingdom of Thailand, it shall be deemed that such person has committed, aided, abetted or caused the offence in the Kingdom of Thailand; provided that the provisions of Section 10 of the Penal Code shall apply *mutatis mutandis*.

DIVISION 2

UNFAIR PRACTICES REGARDING USE OF INSIDE INFORMATION

Section 99

No director, subcommittee member, representative, agent, employee, staff, advisor, or any person working for a derivatives exchange, derivatives clearing house, derivatives regulatory association, the Securities Exchange of Thailand, securities trading center, securities clearing house or any agency entrusted by law to supervise derivatives, goods or variable, who learns of the material non-public information by virtue of his position, shall undertake any of the following acts:

- (1) trade in derivatives, or offer to trade in derivatives, or purchase or sell or offer to purchase or sell goods, in connection with such material information, for his own benefit or for the benefits of others; or
- (2) disclose such material information to another person whereby he knows or should have known that such person may take advantage of such information by trading in derivatives, or purchasing or selling goods.

The material information under the first paragraph means information which is material to changes in the price of derivatives or goods, or the figure of variable, or affects the decision of investors to trade in derivatives or purchase or sell goods.

Section 100

No person who learns of the material information as a result of the disclosure under Section 99 and knows or should have known that such information has been disclosed by the person specified in Section 99 and has not yet been made public, shall undertake any of the following acts:

- (1) trade in derivatives, or offer to trade in derivatives, or purchase or sell or offer to purchase or sell goods, in connection with such material information for his own benefit or for the benefits of others; or
- (2) disclose such material information to another person whereby he knows or should have known that such person may take advantage of such information by trading in derivatives, or purchasing or selling goods.

CHAPTER 7 SUPERVISION AND CONTROL

Section 101

The Minister shall have the powers and duties of overall supervision and control for implementation in accordance with the provisions of this Act.

Section 102

The Minister shall have the powers to order the SEC or the SEC Office to clarify any fact, present opinion or prepare and submit report on the supervision of the SEC or the SEC Office under this Act.

CHAPTER 8 COMPETENT OFFICER

Section 103

In the execution of his duties, a competent officer shall have the power to:

- (1) enter into the place of a derivatives business operator, a derivatives exchange, a derivatives clearing house, or the place where the data of such person is collected or processed, during the hours between sunrise and sunset, or during the business hours of such places, in order to examine the operations, property and liabilities of such person, including the relevant documents, evidence or information;
- (2) enter into a commercial bank or a financial institution during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts, documents, or evidence which may be related to the inspection or the execution under this Act;
- (3) search any place where there is a reasonable ground to believe that there is a commission of offence under this Act, during the hours between sunrise and sunset, or during the business hours of such place;

- (4) attach documents or evidence related to the commission of offences under the provisions of this Act for the purpose of inspection or taking legal action which shall not exceeding one hundred and eighty days;
- (5) order a derivatives business operator, a derivatives exchange, a derivatives clearing house, or any person who is authorized to collect or process the data of such person including director, officer, employee and the auditor to testify, deliver, or present accounts, documents, seals or other evidence related to the businesses, operations, assets and liabilities of such person mentioned above;
- (6) order any person who trades in derivatives or offers to trade in derivatives with or through a derivatives business operator or a member of a derivatives exchange to testify, deliver or present accounts, documents and other evidence related to derivatives trading or the offer to trade in derivatives;
- (7) order any person who may be of use in the execution of the duties of the competent officer to testify, deliver, or present accounts, documents, evidence or any objects related to or necessary for the execution of the duties of the competent officer.

After having entered and inspected under sub-Section (1) or (2) or undertaken the search under sub-Section (3), if it has not been completed, the competent officer may continue such inspection or search into the night or beyond the business hours of such place.

In the execution of duties under sub-Section (1) or (2), the competent officer shall not take any act in the nature of a threat or search under the Criminal Procedure Code.

In the case under sub-Section (3), a search warrant is required unless there is a reasonable ground to believe that by the time the search warrant is obtained, the document or evidence may be relocated, concealed, destroyed, or deformed, then the search, seizures, or attachment of documents or evidence relating to the commission of offences shall be undertaken without such search warrant. The search shall, however, comply with the search procedure under the Criminal Procedure Code and shall not be undertaken after sunset unless such period is business hour of such place.

The exercise of powers of the competent officer under the first paragraph shall be carried out against the person who is directly involved in the matter under inspection and for sub-Section (2), (3), (5), (6) or (7) shall require prior approval from the SEC Office and in case of sub-Section (5), (6) or (7), the competent officer shall specify a reasonable period for such person to comply with the order.

Section 104

In the execution of duties of the competent officer, the persons concerned shall provide reasonable assistance.

Section 105

Upon request of the authority with the power under the foreign Law on derivatives or other foreign laws of similar nature, the SEC Office shall have the power to provide assistance as to gathering or inspection of information or evidence necessary for determination whether there has been any action in violations of the law on derivatives or other laws of similar nature of the requesting country; provided that the assistance shall be subject to the following conditions:

- (1) the assistance shall not prejudice the public interest of Thailand or the preservation of national confidentiality;
- (2) the act which is the ground for such assistance would also constitute an offence under this Act;
- (3) the requesting foreign authority agrees or consents to provide reciprocal assistance to the SEC Office upon request.

For purposes of this Section, the provision of Section 103 shall apply *mutatis mutandis*.

Section 106

In the execution of his duties, the competent officer shall present his identification card to the persons concerned.

The identification card of the competent officer shall be in the form specified by the Minister.

Section 107

In the execution of his duties under this Act, the competent officer shall be an official under the Penal Code.

Section 108

Where there is evidence that a person has committed an offence under this Act which may cause damage to the public interest and the SEC Office has a reasonable ground to believe that the alleged person would remove or dispose of his property, or property in his possession, the SEC Office, with the SEC's approval, shall have the power to order seizure or attachment of such person's property, property in such person's possession, or the property which there is reasonable evidence to believe that they belong to such person. However, the period of seizure or attachment shall not exceed one hundred and eighty days unless an action is brought in court, then such seizure or attachment order shall remain effective until the court orders otherwise. Where circumstances render it impossible to bring the case to court within one hundred and eighty days, the court having jurisdiction may extend the period of seizure or attachment as requested by the SEC Office, but may not extend the period beyond another one hundred and eighty days.

The provisions of the Civil Procedure Code shall apply *mutatis mutandis* to the seizure and attachment of property under the first paragraph and the competent officer authorized by the SEC Office shall proceed with such seizure and attachment.

The seizure and attachment of property under the first paragraph shall take into account subsistence allowance for family members of the person whose property are seized or attached.

Section 109

In cases where the property so seized or attached under Section 108 is of a perishable nature or the storage cost thereof will exceed the value of such property or the value of such property will decline if retained for long, the SEC Office or the competent officer as authorized by the SEC Office may sell such property at an auction or manage such property in a proper way under the method as specified by the SEC Office. In this respect, the owner of such property shall be given the bid invitation.

Cash derived from the auction or management of the property under the first paragraph, after deduction of the cost of storage, the cost of disposal and related charges, shall be seized in lieu of such property.

Section 110

In cases where there is evidence that a person has committed an offence under this Act which may cause damage to the public interest and the SEC office has a reasonable ground to believe that such person will abscond from the Kingdom of Thailand, the SEC Office shall have a power to file a motion with the court for the issuance of an order prohibiting such person from leaving the Kingdom of Thailand, and in the case of extreme urgency, the SEC shall have a power to prohibit such person from leaving the Kingdom of Thailand on a temporary basis for a period not exceeding fifteen days.

CHAPTER 9
SANCTIONS AND STATUTE OF LIMITATION

DIVISION 1
ADMINISTRATIVE SANCTION

Section 111

The administrative sanctions include:

- (1) probation;
- (2) public reprimand;
- (3) administrative fine;
- (4) restriction of operation;
- (5) suspension of the operation so licensed, registered, or approved for a certain period;
- (6) revocation of the license, registration, or approval.

Section 112

The following persons shall have the power to impose administrative sanctions:

- (1) the SEC Office shall have the power to impose administrative sanction under Section 111 (1) or (2);
- (2) the administrative panel shall have the power to impose administrative sanction under Section 111 (1), (2), (3) or (4);
- (3) the SEC shall have the power to impose administrative sanction under Section 111 (1), (2), (3), (4), (5) or (6).

In the ordering of the administrative sanctions under Section 111, the competent authority shall have the power to impose any or several sanctions and shall also have the power to order the subject person to undertake or refrain from undertaking any action in order to rectify or prevent any violation or noncompliance with this Act, rules, orders or conditions specified under this Act.

Section 113

In the imposition of administrative fine, the amount of such fine shall not exceed two million Baht per count.

In cases where the person subject to the administrative fine under the first paragraph fails to pay such administrative fine, the provisions governing the administrative enforcement under the Administrative Procedure Act shall apply *mutatis mutandis*.

Section 114

Any derivatives business operator who contravenes or fails to comply with the rules, orders or conditions issued under Section 10, Section 18 or Section 19, or contravenes or fails to comply with the first paragraph of Section 20, or the provisions of Section 22, Section 23, Section 24, Section 26, Section 33, Section 34, Section 38, or the first paragraph of Section 46, shall be subject to the administrative sanctions under Section 111.

Section 115

Any derivatives exchange which contravenes or fails to comply with the rules, orders or conditions issued under Section 10, Section 55, Section 58, Section 65, Section 66, Section 70 or Section 73, or contravenes or fails to comply with the first paragraph of Section 20, or the provision of Section 22 which applies *mutatis mutandis* to the derivatives exchange by Section 74, or Section 59, Section 60, Section 63 or Section 71, shall be subject to the administrative sanctions under Section 111.

Section 116

Any derivatives clearing house which contravenes or fails to comply with the rules, orders or conditions under Section 10, Section 65, Section 66, or Section 73 which applies *mutatis mutandis* to the derivatives clearing house by Section 89, or Section 76, or contravenes or fails to comply with the first paragraph of Section 20, or the provision of Section 22, or Section 63 which applies *mutatis mutandis* to the derivatives clearing house by Section 89, or the first paragraph of Section 46 which applies *mutatis mutandis* to the derivatives clearing house by Section 88, or Section 79, Section 82, Section 83 or Section 85, shall be subject to the administrative sanctions under Section 111.

Section 117

Any derivatives regulatory association which contravenes or fails to comply with Section 71 which applies *mutatis mutandis* to the derivatives regulatory association by Section 91, or contravenes or fails to comply with the rules under Section 73 which applies *mutatis mutandis* to the derivatives regulatory association by Section 91, shall be subject to the administrative sanctions under Section 111.

Section 118

Any person who does not pay fees or does not pay fees in full amount as specified by Section 9 (2) shall be subject to the administrative sanctions under Section 111.

Section 119

In cases where a person who commits an offence under Section 114, Section 115, Section 116 or Section 117 is a legal entity, director, manager or person responsible for the operation of such legal entity, shall be subject to the administrative sanctions under Section 111, unless it can be proven that he has no involvement with the commission of offence by such legal entity.

Section 120

The SEC Office shall gather the facts relating to the commission of offence which falls under the administrative sanctions and shall also have the power to conduct an initial consideration in order to take any of the following actions:

- (1) if it is considered that the type of administrative sanction to be imposed on such alleged person falls within the SEC Office's authority, the SEC Office shall consider the imposition of such sanction.
- (2) if it is considered that the type of administrative sanction to be imposed on such alleged person falls within the authority of the administrative panel or the SEC, the SEC Office shall refer such matter to the administrative panel or the SEC, as the case may be, to consider the imposition of such sanction.

Section 121

In the ordering of an administrative sanction under Section 111, the competent authority shall take into consideration the circumstantial factors constituting the action, damage resulted from such action together with level of the sanction to be imposed on the subject person in accordance with the rules as specified in the notification of the SEC.

Section 122

Subject to the Administrative Procedure Act, the consideration and the issuance of the administrative sanction order shall comply with the rules as specified in the notification of the SEC.

Section 123

One or several administrative panels shall be established, provided that each panel shall comprise of no more than five persons appointed by the SEC.

The qualification of panelists and the procedure of appointment of panelists under the first paragraph shall be prescribed by the rules as specified in the notification of the SEC.

Section 124

The derivatives business operator, derivatives exchange, derivatives clearing house and derivatives regulatory association shall have the right to file an appeal with the SEC against the administrative sanctions ordered by the SEC Office or the administrative panel within fifteen days from the date such order is received, the procedure of which shall be in accordance with the rules as specified in the notification of the SEC.

The consideration and adjudication of appeals under the first paragraph shall be made in accordance with the rules as specified in the notification of the SEC.

The appeal under the first paragraph shall in no way stay the execution of the administrative sanction ordered by the SEC Office or the administrative panel.

DIVISION 2

CRIMINAL SANCTION

Section 125

Any person operating business in a manner similar to derivatives business operation without license or registration under Section 16 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 126

Any derivatives business operator approved to cease its derivatives business operation contravenes or fails to comply with the conditions as specified under the second paragraph of Section 20 shall be liable to a fine not exceeding one hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

In cases where the derivatives business operator under the first paragraph is an individual, such person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 127

Any derivatives exchange which fails to comply with the conditions as specified under the second paragraph of Section 20 which applies *mutatis mutandis* to the derivatives exchange by Section 74 shall be liable to a fine not exceeding one hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 128

Any derivatives clearing house which fails to comply with the conditions as specified under the second paragraph of Section 20 which applies *mutatis mutandis* to the derivatives clearing house by Section 89 shall be liable to a fine not exceeding one hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 129

Any derivatives business operator who contravenes or fails to comply with Section 27 and Section 28 shall be liable to a fine not exceeding three hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 130

Any derivatives exchange which contravenes or fails to comply with Section 27 and Section 28 which apply *mutatis mutandis* to the derivatives exchange by Section 74 shall be liable to a fine not exceeding three hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 131

Any derivatives clearing house which contravenes or fails to comply with Section 27 and Section 28 which apply *mutatis mutandis* to the derivatives clearing house by Section 89 shall be liable to a fine not exceeding three hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 132

Any person operating business in a manner similar to derivatives exchange without license or registration under Section 54 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 133

Any derivatives exchange which contravenes or fails to comply with Section 67 shall be liable to a fine not exceeding three hundred thousand Baht and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 134

Any person operating business in a manner similar to derivatives clearing house without license or registration under Section 75 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 135

If a legal entity commits an offence under Section 126, Section 127, Section 128, Section 129, Section 130, Section 131, Section 133 or Section 138, the director, manager or any person responsible for the operation of such legal entity shall be liable to imprisonment for a term not exceeding one year or a fine as provided for such offences or both, unless it can be proven that such person has no involvement with the commission of offence by such legal entity.

Section 136

Any person who contravenes Section 92, Section 94, Section 95, Section 96 or Section 97 shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding one

million Baht or not exceeding two times the benefit received or should have been received by such person as a result of such contravention, whichever is higher, or both.

Any person who causes another person to commit an offence under Section 92, whether by way of instruction, force, threat, employment, aiding or abetting or by any other means, shall be liable to the sanctions as specified in the first paragraph.

Section 137

Any person who contravenes Section 99 or Section 100 shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million Baht or not exceeding two times the benefit received or should have been received by such person as a result of such contravention, whichever is higher, or both.

Section 138

Any person who contravenes or fails to comply with the administrative sanction under Section 111 (4) or (5) shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 139

Any person who obstructs or fails to comply with the order of or fails to give assistance to the competent officer who executes his duty under Section 103 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

Where the action under the first paragraph amount to use of violence or a threat to use violence, such person shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two hundred thousand Baht or both.

Section 140

Any person who removes, damages, destroys or renders useless any seal or mark which the competent officer has stamped or affixed on any object in the execution of his duty under Section 103 as evidence for the seizure or attachment, or the keeping of such object shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht or both.

Section 141

Any person who damages, destroys, conceals, takes away or loses, or renders useless any property or document which the competent officer has seized, attached, kept or ordered to be delivered as evidence under Section 103, and regardless of whether or not the competent officer would keep such property or document himself or would order such person or other persons to deliver or to keep it, shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht or both.

Section 142

Any person who gives false testimony to the competent officer, if the false testimony is material to the investigation or the proceeding under this Act, shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding fifty thousand Baht or both.

Section 143

Any auditor who contravenes Section 29 or Section 30 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 144

The term "customer" under Section 145, Section 146, Section 147 and Section 148 shall have the following meanings:

- (1) if the legal entity under such provisions is a derivatives business operator, it shall mean customer who is provided service regarding derivatives by such derivatives business operator;
- (2) if the legal entity under such provisions is a licensed derivatives fund manager who agrees to manage fund for the mutual fund established under the Securities and Exchange Act, it shall include securities company which establishes and manages such mutual fund;
- (3) if the legal entity under such provisions is a derivatives clearing house, it shall mean the derivatives clearing house's member who is provided service for clearing and settlement of obligations under derivatives.

Section 145

Any director, manager, staff, agent or person appointed to work for a derivatives business operator or derivatives clearing house who commits any of the following acts:

- (1) dishonestly deceives such legal entity's customer by the assertion of a falsehood or the concealment of fact concerning such legal entity's duty to be performed for the benefits of its customers which should have been revealed, and by such deception, obtains its customer property or caused its customer to execute, revoke or destroy a document of entitlement; or
- (2) misappropriates such legal entity's customer property acquired in the course of business under this Act for himself or a third party; or
- (3) dishonestly undertakes or refrains from taking any action by virtue of his position which causes damage to such entity's customer; or
- (4) dishonestly breaches his duty by any means which causes damage to the usefulness in the nature as being a property of such entity's customer; shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million Baht or both.

Section 146

Any derivatives advisor who is an individual commits any act under Section 145 (1), (3) or (4) against his customer shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million Baht or both.

Section 147

Any director, manager, staff, agent or person appointed to work for any derivatives business operator or derivatives clearing house, who takes away, damages, destroys, causes depreciation in value, or renders useless any property which such legal entity has the duty to look after or which is in the possession of such legal entity, if it is committed in order to cause damage to such legal entity's customer, shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million Baht or both.

Section 148

Any director, manager, staff, agent, or person appointed to work for any derivatives business operator or derivatives clearing house, who commits or permits another to act as follows so as to deceitfully deprive such legal entity's customer of their rightful benefit:

- (1) damages, destroy, alters, abridges or falsifies account or document of or prepared by such legal entity in the course of business under this Act; or
- (2) makes false entries or fails to enter any material statement in account or document of or prepared by such legal entity in the course of business under this Act; or
- (3) keeps incomplete, incorrect, out-of-date, or inaccurate account; shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million Baht or both.

Section 149

Any person who causes a director, manager, staff, agent, auditor or any person appointed to work for any derivatives business operator or derivatives clearing house to commit an offence under Section 143, Section 145, Section 146, Section 147 or Section 148, whether by way of instruction, force, threat, employment, aiding or abetting, or by any other means, shall be liable to the penalties as provided in such provisions.

Section 150

Any person who does any act to assist or facilitate a director, manager, staff, agent, auditor or any person appointed to work for any derivatives business operator or derivatives clearing house to commit an offence under Section 143, Section 145, Section 146, Section 147 or Section 148, whether before or at the time of the commission of the offence, shall be liable to the penalties as provided in such provisions unless the person committing the offences is not aware of such assistance or facilitation, the assisting or facilitating person shall be liable to two-third of the penalties as provided in respective provisions.

Section 151

In performing the audit work on the account of a derivatives business operator or a derivatives clearing house, either as the appointed auditor of such legal entity or as a person allowed to conduct the audit work of such legal entity, if the auditor discovers any suspicious circumstance that any director, manager, staff, agent or person appointed to work for such legal entity has committed an offence under Section 145, Section 147 or Section 148, the auditor shall notify the SEC Office of the circumstance of such offence.

Any auditor who contravenes or fails to comply with the first paragraph shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

Section 152

The SEC Office shall have the power to give a bounty not exceeding thirty percent of the fine which the wrongdoer pays to the court to the person giving information regarding the commission of offences under Section 92, Section 94, Section 99 and Section 100, depending upon the materiality of the information under the rules as specified in the notification of the SEC.

The order of the SEC Office shall be final.

Section 153

Any person who learns of the information of another person in the execution of his power or the performance of his duty under this Act which is the confidential information of the authorities or which should not be disclosed under normal circumstances, or any person who learns of such information as a result of the disclosure of the person so empowered, discloses such information to another person, he shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht, or both.

The provision of the first paragraph shall not apply to disclosure in the following cases:

- (1) disclosure in the execution of his power or the performance of his duty;
- (2) disclosure for the purpose of investigation or trial;
- (3) disclosure relating to the commission of offences under this Act;
- (4) disclosure for the purpose of rectifying the condition or operation of a derivatives business operator;

- (5) disclosure to an auditor of any person who has been granted a license or has been registered to operate the derivatives business, derivatives exchange or derivatives clearing house;
- (6) disclosure to the authority or domestic and international agency which is responsible for the supervision of derivatives, goods, variable or financial institution;
- (7) disclosure to any derivatives exchange, derivatives clearing house, derivatives regulatory association, the Securities Exchange of Thailand, securities trading center or securities clearing house, either domestic or international, which is responsible for the supervision of derivatives, goods or variable;
- (8) disclosure upon written consent of such person.

DIVISION 3

STATUTE OF LIMITATION AND SETTLEMENT COMMITTEE

Section 154

The statute of limitation of any offences under this Division which is subject to the administrative sanctions or is subject only to the criminal fine shall be expired, should there be no administrative sanction order, no lawsuit brought before the court, or no settlement by the settlement committee under Section 155 within one year from the date the competent officer determines that such offences have been committed or within five years from the date of commission of such offence.

Section 155

For the offences under Section 126, Section 127, Section 128, Section 129, Section 130, Section 131, Section 133, Section 135, Section 138, the first paragraph of Section 139, Section 142, Section 143 and the second paragraph of Section 151 which do not severely affect the customer, public, derivatives market, or financial system of the country, the Settlement Committee appointed by the Minister under the Securities and Exchange Act shall have the power to settle such offences in accordance with the rules as specified in the notification of the SEC.

When a case has been settled by the Settlement Committee and the alleged person has paid the fine as determined by the Settlement Committee within the period of time so specified, the right to bring a criminal lawsuit on ground of such offences against such alleged person shall be ceased.

CHAPTER 10

TRANSITIONAL PROVISION

Section 156

Any person who undertakes any derivatives business prior to or on the date this Act coming into force shall file an application for a license or registration under this Act within sixty days from the date this Act coming into force. Upon submission of such application for a license or registration, such person shall be enabling to continue the derivatives business until the application for such license or registration is rejected. In undertaking the derivatives business

under the first paragraph, the applicant shall comply with the provisions governing such business *mutatis mutandis*.

Countersigned by

General Chavalit Yongchaiyudh

Deputy Prime Minister

Note: (2) Amendments or additions by the Derivatives Act (No.2), B.E. 2551 (2008)

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