

Executive summary

SEC Thailand public hearing on proposed requirements for derivatives business operators under the Derivatives Act B.E. 2546 (2003) to ensure clearer management of customer assets

The Securities and Exchange Commission, Thailand (SEC) is seeking public comments on proposed requirements for treatment and protection of customer assets under derivatives brokers to ensure that customer assets are safe and complete, and that the assets are allocated back to customers fairly in the event that derivatives brokers become insolvent.

Currently, SEC regulations stipulate that a derivatives broker shall segregate customers' assets from their own and ensure that the customers' assets are not affected in the event that the derivatives broker experiences financial difficulties. In this regard, the derivatives broker shall maintain a separate account of each customer's assets segregated from its assets to ensure that the assets which are considered to be owned by the customers are easily identifiable and protected by law.

In order to act as an derivatives broker, there may be cases where the derivatives broker has to pay for a customer, which incurs debts to the derivatives broker in the customer's account. In addition, there may be cases where the derivatives broker becomes insolvent, which raises an issue of protection of the customer's assets.

The main focuses of the proposed requirements are as follows:

1. **Where the derivatives broker has advanced its own asset to secure or satisfy the obligations incurred incidental to, or resulted from, a derivatives transaction for the account of a customer,** the derivatives broker shall prepare an account, within the same working day, from which their own asset has been advanced to secure or satisfy the obligations incurred incidental to, or resulted from, the derivatives transaction for the account of the customer. Such account shall contain at least the specified details. The derivatives broker shall keep the information and documents relating to its account of such advances for at least five years.

The derivatives broker shall comply with these requirements within three months after the notification of the Capital Market Supervisory Board comes into force.

2. A derivatives broker may become a debtor by judgment or a debtor under receivership. Under such circumstances, in managing assets deemed to be owned by customers, **the customers who are not associated with the derivatives broker in the manner as specified in the notification of the Capital Market Supervisory Board shall be entitled to receive the allocated assets prior to others.** Therefore, the determination of definitions in notifications relating to the referred customers shall at least include the following terms:

- 2.1 Director or executive of the derivatives broker
- 2.2 Major shareholder of the derivatives broker
- 2.3 Controlling person of the derivatives broker
- 2.4 Parent company
- 2.5 Subsidiary

In this regard, the aforementioned requirements shall be applied to securities brokerage companies as well.

For further details of this public hearing, please visit www.sec.or.th/hearing. Stakeholders and interested parties are welcome to submit comments and suggestions through the website or email: corporat@sec.or.th The public hearing ends on 4 May 2023.