

Unofficial Translation

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- Statement -

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SEC clarifies the channels for foreign business operators to provide services to Thai investors, the scope of eligible business operations and the guidelines for facilitating Ease of Doing Business and supporting Thailand’s goal of becoming a financial hub

Increasingly, Thai investors¹ tend to gain more interest in investing in foreign products² to diversify their investments and seek more opportunities to generate returns. As a result, securities companies and derivatives business operators (“business operators”) including those from foreign countries³ show growing interest in providing such foreign products to Thai investors as well.

In this regard, the Securities and Exchange Commission (SEC) would like to communicate and enhance the understanding of foreign business operators interested in providing services to Thai investors about the applicable channels and the scope of services as well as the guidelines for Ease of Doing Business to support the government’s policy of promoting Thailand as a financial hub. The key points for clarification are as follows:

1. In case of applying for a license to operate securities / derivatives business

An applicant must register for the establishment of a company in Thailand and must have the qualifications as specified, for example, having a paid-up registered capital, having

¹ Thai investors refer to investors in Thailand.

² Foreign products refer to products in the capital market denominated in foreign currency and issued or offered for sale in foreign countries.

³ Foreign business operators refer to juristic persons established under foreign law and permitted to operate securities or derivatives business in foreign countries.

appropriate personnel without prohibited characteristics, and having operating systems for service provision, etc. In this regard, the Minister of Finance, upon recommendation of the SEC Board, considers granting a securities business license to the applicant, while the SEC Board considers granting a derivatives business license. The SEC will examine whether the operating systems are properly put in place before the license holder is allowed to commence business operation which will be supervised on a continuing basis. This is to ensure that business operators are able to comply with relevant regulations and professional standards. The license holder is permitted to provide investment services to Thai investors directly and comprehensively according to the scope of the granted license.

Furthermore, the SEC has laid out guidelines for facilitating business operations in Thailand or Ease of Doing Business whereby the licensing process will be streamlined through a fast-track method on the condition that the applicant has the qualifications and readiness at a certain level, as follows:

(1) Using the work systems of a company in the same group that has been operating securities and/or derivatives business for at least five consecutive years as the primary work systems for the business applying for a license. Additionally, it must be demonstrated that such company above does not have any untrustworthy characteristics for business operation;⁴

(2) The company under (1) is regulated by a regulatory agency of a country to which the SEC has granted a securities or derivatives business license and such regulatory agency must be a member of the International Organization of Securities Commissions (IOSCO) and a Signatory A to the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (MMOU) (IOSCO MMOU);

(3) It must be demonstrated that the business model benefits investors and the capital market as a whole by, for example, offering new service models or enhancing investment service efficiency, expanding the investor base, and stimulating appropriate competition in the industry to promote innovation development, etc.

⁴ Considering the factors such as financial position, nature of operations, and the regulator's inspection outcomes, etc.

In addition, the SEC has proposed to the Ministry of Commerce that a waiver be granted for the provision of services by businesses that are relevant, supportive or necessary for the undertaking of securities / derivatives businesses. For example, services for calculating or verifying the Net Asset Value (NAV) of mutual funds, provision of news and information and training on capital market products, etc., should be excluded from the List 3 attached to the Foreign Business Act B.E. 2542 (1999)⁵. This allows foreign companies to apply for an approval with the SEC, as a one-stop service, similar to Thai companies.

2. In case of obtaining a waiver of application for a license to operate securities / derivatives business

A foreign business operator may establish operation in Thailand to support its foreign business operation in the following manners:

2.1 Application for registration as a derivatives dealer: A foreign juristic person wishing to provide services exclusively to institutional investors can apply for registration as a

⁵ Pursuant to the Foreign Business Act B.E. 2542 (1999), Section 4, “foreigner” means:

- (1) a natural person who is not of Thai nationality;
- (2) a juristic person not registered in Thailand;
- (3) a juristic person registered in Thailand, being of the following descriptions:

(a) being a juristic person at least one half of capital shares of which are held by persons under (1) or (2) or a juristic person in which investment has been placed by the persons under (1) or (2) in the amount at least equivalent to one half of the total capital thereof;

(b) being a limited partnership or a registered ordinary partnership where the managing partner or the manager of which is the person under (1);

(4) a juristic person registered in Thailand which at least one half of the capital shares of which are held by persons under (1), (2) or (3) or a juristic person in which investment has been placed by the persons under (1), (2) or (3) in the amount at least equivalent to one half of the total capital thereof;

For the purpose of this definition, shares of a limited company represented by share certificates issued to bearers are deemed as shares held by foreigners, unless otherwise specified by the Ministerial Regulations.

derivatives dealer with the SEC⁶ (light touch) instead of applying for a license from the SEC Board, which requires more stringent qualifications and supervision. The applicant must be a derivatives dealer under the law of its country and must have the qualifications, as specified⁷, such as having conducted such business abroad for at least 10 consecutive years and being regulated by a regulatory agency that is an IOSCO member with regulatory standards not inferior to those specified under the Derivatives Act B.E. 2546 (2003).

2.2 Provision of advisory service not considered an undertaking of securities business in the category of investment advisory: An application for a securities business license for investment advisory services is not required if the advisory service meets the qualification conditions as specified in the governing regulations⁸, for example:

- Giving advisory service in Thailand or from Thailand to not more than 15 investors during any 12-month period without presenting oneself to provide services as an investment advisory;
- Giving advisory service from Thailand to investors abroad by presenting oneself to such investors as an investment advisory service provided under the law of such foreign country;
- Giving investment advice to companies in the same group⁹;

⁶ The application is considered and approved by the SEC Office.

⁷ Notification of the Securities and Exchange Commission No. Kor Thor. 11/2553 Re: Registration as Derivatives Business Operator in the Categories of Broker and Dealer, dated 15 July 2010.

⁸ Notification of the Securities and Exchange Commission No. Kor Thor. 1/2560 Re: Determination of the Characteristics of Providing Advice to the Public Not Deemed to Be an Undertaking of Securities Business in the Category of Investment Advisory, dated 12 January 2017.

⁹ (a) a company that is affiliated with a company providing advisory services through a shareholding structure, either directly or indirectly, exceeding 50% of the outstanding shares of such company;

- Giving investment advice exclusively to institutional investors;
- Giving advice to investors by a foreign securities business operator or an issuer or offeror of foreign securities with the characteristics as specified in 2.3;
- Giving general advice¹⁰ by a juristic person established under foreign law and approved by the SEC.

2.3 Provision of services by a foreign business operator to a Thai business operator who gives assistance for clients to invest in foreign products¹¹: In this regard, the Thai business operator must provide investment services to clients within the scope of the granted license. For example, conducting a Know-Your-Client process and giving investment advice, etc. In any case, if the personnel of the foreign business operator wish to give information/advice related to foreign investment products to Thai investors, such personnel may do so only on a necessary and temporary basis, under the responsibility of the Thai business operator. The Thai business operator must notify the SEC in advance of the information on the issuer or the offeror or the foreign business operator prior to the provision of information / advice to clients, and the personnel who provide information / advice to clients to the SEC within seven business days from the date thereof. Additionally, the Thai business operator must supervise to ensure that the foreign personnel do not violate the law or fail to comply with relevant regulations.

(b) a company that is affiliated with a company providing advisory service through power of mutual control;

(c) a company whose controlling person is the same person who controls the advisory service company.

The term “control” under (c) is the same as “control” defined under Section 89/1 of the Securities and Exchange Act B.E. 2535 (1992).

¹⁰ General advice means providing advice without consideration of investment suitability, investment objectives, financial position or specific needs of any particular individual.

¹¹ Notification of the Capital Market Supervisory Board No. Tor Thor. 1/2560 Re: Provision of Services to Clients for Investment in Capital Market Products Denominated in Foreign Currency, dated 17 January 2017.

3. In case of no requirement for an application for a license / registration for operating securities / derivatives business

A foreign business operator can proceed in the following manners without the need to apply for a license / registration for operating securities / derivatives business:

3.1 Establishment of a representative office of a foreign securities business operator¹²: A foreign securities business operator can establish a representative office in Thailand to act on its behalf on the condition that such act shall not fall under the characteristics of securities business, securities offering or provision of services to Thai investors. For example, collecting information related to financial business, analyzing the collected data, providing opinions and reports to the head office for business decision-making purposes. To establish a representative office, an application for approval must be submitted to the SEC¹³ together with a clearly outlined scope of operations.

3.2 Outsourcing partial operation to companies/ personnel in Thailand for the undertaking of foreign securities business: A foreign business operator may hire companies or personnel in Thailand to perform certain tasks related to its business operation. For example, hiring Thai labor for back office tasks or research and

¹² Pursuant to Section 93 of the Securities and Exchange Act, any person wishing to act on behalf of a company established to undertake securities business under foreign law by setting up a representative office in the Kingdom shall obtain an approval from the SEC Office.

The representative under Paragraph 1 shall undertake only those businesses specified in the approval.

Pursuant to the Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 58/2558:

“foreign business” means a foreign business that undertakes securities business under foreign law.

“representative office” means an office for communicating and contacting the public by a representative acting on behalf of the business.

¹³ The application is considered and approved by the SEC Office.

development (R&D) related to securities business abroad. The foreign business operator can contact and render services to the clients abroad without the need to obtain an approval from the SEC.

4. Precautions on provision of services to Thai investors without obtaining a securities / derivatives license (Items 2 and 3)

In carrying out each of the aforementioned activities, foreign business operators and their personnel must exercise caution to ensure that their actions or omissions do not constitute operating a business without a license. For example:

- Presenting oneself or acting in a regular business manner to offer securities/derivatives business services, such as using or displaying a trade name or contact channels to the public or being associated with or linked to a securities/derivatives business operator, which is an affiliate company based in Thailand ("affiliate"). This includes, for example, advertisements, brochures, accessible websites, business cards, and establishing an office in Thailand as a contact point for services;
- Soliciting Thai investors to use investment services, either through one's own company or others, such as an affiliate, or having the affiliate provide a list of Thai investors. This includes inviting Thai investors to attend training organized by a foreign business operator;
- Accepting the opening of trading accounts, accepting and sending securities/derivatives trading orders, or managing funds;
- Offering for sale or providing information/advice regarding investment products or investments in securities/derivatives;
- Sharing service channels between Thai and foreign business operators, where Thai investors can directly access the services of the foreign business operator through such channels, such as websites or applications, without receiving services from the Thai business operator under the scope of its license. This includes providing a channel for the foreign business operator to offer services directly to Thai investors;

- Organizing seminars and promotional activities through various channels/media, including direct contact with Thai investors and online channels, or acting through Thai business operators with the intent to solicit Thai investors to use the services of foreign business operators directly;
- Organizing promotional activities in Thailand, whether conducted by the foreign business operator or in collaboration with other business operators, such as partnering with a Thai business operator to promote the use of services with the foreign business operator. This includes offering products from abroad, sold by the foreign business operator, or providing gifts/benefits that are jointly arranged or allowing clients to receive promotional activities similar to those offered to clients of the foreign business operator;
- Using a foreign website or application but facilitating access to service by using Thai language, allowing payments in Thai baht, or providing convenient channels for Thai investors to access services directly;
- Any other actions that involve soliciting direct engagement with foreign personnel/business operators, including receiving direct or indirect compensations from any part of the activities that fall under securities/derivatives business operations.

Additionally, any entities who jointly engage in business operation may be liable to be a co-principal or a supporter of wrongful activities in cases such as (1) acting as an agent or channel to help foreign business operators solicit Thai investors to open trading accounts or invest in foreign products or use investment services from foreign business operators as described above or (2) soliciting or (3) advising Thai investors to use services from foreign business operators. In case of operating business without license, upon finding violations as described above, the SEC will enforce the penalties under Section 90 in conjunction with Section 289 of the Securities and Exchange Act B.E. 2535 (1992), and Section 16 in conjunction with Section 125 of the Derivatives Act B.E. 2546 (2003).

For securities businesses, the penalties include imprisonment for a term of two to five years and a fine from 200,000 baht to 500,000 baht and a further fine not exceeding 10,000 baht for every day during which the contravention continues. For derivatives businesses, the penalties include imprisonment for a term of up to three years or a fine not exceeding 300,000 baht, or both, and a further fine not exceeding 10,000 baht for every day during which the contravention continues. Any Thai business operators or any individuals engaging in activities that may involve collusion to commit an offense are subject to penalties as specified by law for such offense. Additionally, aiding or facilitating unlicensed business activities is subject to a penalty of two-thirds of the prescribed penalty for the offense given assistance under the Criminal Code.
