

**NETTING ANALYSER LIBRARY**

The Futures and Options Association  
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London  
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18 January 2013

Dear Sirs

**CCP Opinion in relation to Thailand Clearing House Company Limited**

You have asked us to give an opinion in respect of the laws of Thailand ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to Thailand Clearing House Company Limited (the "**Clearing House**") as between the Clearing House and its clearing members (each a "**Member**").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "**this opinion**" are to the opinion given in Section 3.

**1. TERMS OF REFERENCE**

- 1.1 The opinions given in Section 3 are in respect of a Member's powers under the Clearing House Documentation as at the date of this opinion. We express no opinion on any provisions of the Rules other than those on which we expressly opine.
- 1.2 Where Contracts are governed by laws other than the laws of this jurisdiction, the opinions contained in Section 3 are given in respect of only those Contracts which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions of the Netting Provision.
- 1.3 The opinions given in Section 3.7 are given only in relation to Non-cash Collateral comprising securities credited to an account.

#### **1.4 Definitions**

In this opinion, unless otherwise indicated:

- (a) **"Assessment Liability"** means a liability of a Member to pay an amount to the Clearing House for a purpose of being a security of the clearing system, excluding:
  - (i) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to the Contracts open at that time;
  - (ii) membership fees, fines and charges;
  - (iii) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
  - (iv) indemnification for any taxation liabilities;
  - (v) payment or delivery obligations under the Contracts; or
  - (vi) any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty.
- (b) **"Clearing House Documentation"** means the Clearing Housing Membership Application and Rules;
- (c) **"Clearing House Membership Application"** means a standard form of application for membership of the Clearing House as available in the website of the Clearing House and to be entered into by each Member attached as Annex 1 hereto;
- (d) **"Client Account"** means an account opened for purpose of derivatives trading by a Member's client;

- (e) **"Contract"** means a derivatives contract used on TFEX as approved by the SEC, whereby the contract specification shall be as prescribed by TFEX's regulations<sup>1</sup>;
- (f) **"House Account"** means an account opened for purpose of derivatives trading by a Member;
- (g) **"Netting Provision"** means in relation to a derivatives contract, a provision which entitles a non-defaulting party to receive or be obliged to pay only the net sum of the positive and negative mark-to-market values of the included individual derivatives contract, together with other losses or gains referable to the derivatives ccontract;
- (h) **"Non-cash Collateral"** means the non-cash collateral provided to the Clearing House as margin under the Clearing House Documentation;
- (i) **"Party"** means the Clearing House or the relevant Member;
- (j) **"Rules"** means the rules and procedures of the Clearing House governing derivatives transactions in force as at the date of this opinion [attached as Annex 2 hereto];
- (k) **"SEC"** means the Office of the Securities and Exchange Commission of Thailand;
- (l) **"Set-off Provision"** means in relation to a derivatives contract, a provision which allows that any and all amounts owed by one party to the counterparty may be set off against any such amounts owed by the counterparty to the first mentioned party;
- (m) **"THB"** denotes the lawful currency of Thailand;
- (n) **"TFEX"** means Thailand Futures Exchange Public Company Limited;
- (o) references to the word **"enforceable"** and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in

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<sup>1</sup> A form of the Contract is not available for our review and we have been informed by an officer at the Clearing House that the Contract is recorded on a computer system. Accordingly, a reference to Contracts under this Opinion Letter is based on the specifications of the Contracts as prescribed under TFEX's regulations.

accordance with their terms and without risk of successful challenge.  
We do not opine on the availability of any judicial remedy;

- (p) a reference to "**Derivatives Act**" is to the Derivatives Act B.E. 2546;  
and
- (q) references to a "**section**" or to a "**paragraph**" are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

## **2. ASSUMPTIONS**

We assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this opinion letter, the Clearing House Documentation and the Contracts are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Clearing House Documentation and the Contracts; to perform its obligations under the Clearing House Documentation and the Contracts; and that each Party has taken all necessary steps to execute and deliver and perform the Clearing House Documentation and the Contracts.
- 2.3 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Clearing House Documentation and the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- 2.4 That each Member has properly executed the Clearing Housing Membership Application.
- 2.5 That the Clearing House Documentation has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.
- 2.6 That each Party acts in accordance with the powers conferred by the Clearing House Documentation and the Contracts; and that each Party performs its obligations under the Clearing House Documentation and each Contract in accordance with their respective terms.

- 2.7 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Clearing House Documentation as of the date hereof, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Clearing House Documentation.
- 2.8 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.9 That the obligations assumed under the Clearing House Documentation and the Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and are each solely entitled to the benefit of obligations owed to it.
- 2.10 That no provision of the Clearing House Documentation that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect.

### **3. OPINION**

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinions.

#### **3.1 Insolvency Proceedings**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- (a) business rehabilitation procedures including an automatic stay of execution against the bankrupt party in the Bankruptcy Act of Thailand B.E. 2483 as amended (the "**Bankruptcy Act**"); and
- (b) bankruptcy procedures described in the Bankruptcy Act.

These procedures are together called "**Insolvency Proceedings**".

#### **3.2 Special provisions of law**

The Derivatives Act is the specific law applicable to the Contracts by virtue of the fact that the Contracts are, or relate to, exchange-traded derivative products and are cleared through a central counterparty.

### **3.3 Recognition of choice of law**

The choice of Thai law as the governing law of the Clearing House Documentation would be recognised under the laws of this jurisdiction, even if the Member is not incorporated, domiciled or established in this jurisdiction.

### **3.4 Netting and Set-off: General**

Neither the Netting Provision nor the Set-off Provision in relation to the Clearing House's default are included in the Clearing House Documentation and the specifications of the Contract as prescribed by TFEX's regulations.

Under the laws of this jurisdiction, the set-off right is available (i) under Section 341 of the Civil and Commercial Code of Thailand ("CCC") subject to qualifications under Section 4.1 (*availability of set-off*) and (ii) during the Insolvency Proceedings, under Section 90/33<sup>2</sup> (in relation to the business rehabilitation process) and Section 102<sup>3</sup> (in relation to the bankruptcy proceeding) of the Bankruptcy Act; even though, in the case where the debtor is subject to a court order for business rehabilitation or receivership under the Insolvency Proceedings, the relevant debts have not yet become due but provided that such debts are incurred prior to the date on which court issues an order for business rehabilitation or receivership under the Insolvency Proceedings.

### **3.5 Set-Off: House Accounts and Client Accounts**

Where a Member has exercised a set-off right available to it under the CCC or the Bankruptcy Act, an amount payable/receivable on any Client Account of a Member would not be aggregated with the amount payable/receivable on any House Account of the Member for purpose of setting off against the Clearing House.

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<sup>2</sup> Section 90/33 of the Bankruptcy Act: If the creditor who is entitled to apply for repayment of debt for business reorganization is indebted to the debtor at the time of issue of business reorganization order, such creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues a business reorganization order.

<sup>3</sup> Section 102 of the Bankruptcy Act: If a creditor who is entitled to claim for repayment of his debt is indebted to the debtor when the court issues the order placing the asset under receivership, even if the grounds for the indebtedness of each of the two parties are not the same, or are subject to conditions or terms as to time, such debts may be set off against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset.

This is because the first paragraph of Section 33<sup>4</sup> and Section 34 (1)<sup>5</sup> of the Derivatives Act require that a Member shall segregate its client's assets from its assets and may use each of its clients' assets for only for the purposes of derivatives transactions for such client.

### **3.6 Cash Collateral**

Payments made by a Member to the Clearing House as cash margin constitute a transfer of cash to be under the name of the Clearing House (for the benefit of the Member) and, in the event that the Clearing House becomes a debtor by judgment or is subject to a receivership order under the Insolvency Proceedings, such cash would not be treated as the property of the Clearing House available to its creditors generally.

This is because by virtue of Section 35<sup>6</sup> of the Derivatives Act under which the Clearing House may request the Member to transfer the collateral into its name for the benefits of the Member and under Section 88<sup>7</sup> and 43<sup>8</sup> of the Derivatives Act, in the

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<sup>4</sup> The first paragraph of Section 33 of the Derivatives Act: A derivatives business operator shall segregate its customers' assets from its own, and shall prepare and keep account of each customer's assets separately from the account of its own, in accordance with the rules specified in the notification of the Capital Market Supervisory Board.

<sup>5</sup> Section 34 of the Derivatives Act. A derivatives business operator shall not use its customers' assets for any purpose other than the following:

(1) a customer's assets shall only be used for derivatives transactions, or for any other purposes incidental to or resulted from derivatives transactions, of such customer;

(2) .....

<sup>6</sup> Section 35 of the Derivatives Act: In cases where the customer asset is securities, the derivatives business operator may request the customer to transfer such securities into its account to be held 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.

(We have been advised by an officer of the SEC that Section 35 of the Derivatives Act is also applicable to a derivatives contract between the Clearing House and the Members.)

<sup>7</sup> Section 88 of the Derivatives Act: 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

case where the Clearing House is a debtor by judgment or is subject to a receivership order, the assets (including cash) of the Members shall not be regarded as assets subject to seizure or attachment in the civil case and shall not be regarded as forming part of the bankruptcy estate which may be distributed among creditors of the Clearing House in bankruptcy procedures under the Insolvency Proceedings.

The cash margin would be returnable to the Members subject to the terms and condition prescribed under the Rules and the Derivatives Act. This is because Section 506<sup>9</sup> of the Rules provides the rights to the Member to request for return of its

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 asset 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 asset received by or had in possession of the derivatives clearing house under Section 82.

- <sup>8</sup> Section 43 of the Derivatives Act: When a derivatives business operator becomes a debtor by judgment or a debtor under receivership, the asset deemed to be owned by customer shall not be regarded as an asset subject to seizure or attachment in the civil case and shall not be regarded as forming part of 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 assets deemed to be owned by customer including the following powers in accordance with the rules as specified in the notification of the SEC by consultation with the Minister of Justice:

- (1) gather and allocate assets deemed to be owned by customers in order to return them to the customers;
- (2) transfer account and asset deemed to be owned by customers to other derivatives business operator;
- (3) close out the derivatives position of customers in cases where the transfer of account and asset to other derivatives business operator cannot be made;
- (4) settle, bring legal proceedings, undertake legal defense, or take any other acts to complete the management of the asset deemed to be owned by customers. 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.

- <sup>9</sup> Section 506 of the Rules Return of Margin: The Member may apply for the return of the margin which has been deposited with the Clearing House, when consideration in accordance with the rules relating to depositing the margin is made, and it appears that the margin placed with the Clearing House is higher than the rate or the value of margin required under the Rules. In this regard, the Member may apply for the return of the part of the margin that is in excess only. The Member shall give notice to the Clearing House in advance, within the time specified by the Clearing House, and the Clearing House shall return the same type of assets that were deposited as the margin by the Member with the Clearing House. The Clearing House may not grant approval to such application if it has reasonable cause, or the Clearing House may agree with the Member, upon additional conditions, with regard to the application for the return of the margin.

The Member may request for the return of margin under paragraph one only in respect of the excess portion thereof which remains after the deduction of any debts and margin management fee which the Member



collateral from the Clearing House and, pursuant to Section 43 of the Derivatives Act, in the event of a receivership of the Clearing House under the Insolvency Proceedings, the official receiver and the SEC have the authority to return collateral to the Members.

### **3.7 Non-cash Collateral**

Any securities provided to the Clearing House as cover for margin and constituting Non-cash Collateral would be treated as the property of the the Clearing House (holding for the benefit of the Member)<sup>10</sup> and would be returnable to the Member, even in the event that the Clearing House is subject to a receivership order under the Insolvency Proceedings, subject to the Member satisfying its obligations to the Clearing House and the terms and conditions prescribed under the Rules and the Derivatives Act.

This is based on the same reasons as given in paragraphs 2 and 4 of the Section 3.6 (*Cash Collateral*).

### **3.8 Members' Assessment Liabilities**

A Member's Assessment Liability is as follows.

A Member has an obligation to contribute assets to the Clearing House as security for clearing system protection against damages that may be caused by the default of clearing or other damage that may arise from an act of the Members in connection with the clearing system. Such security assets may be in the form of cash, government bonds, treasury notes or other types of assets prescribed by the Clearing House and are divided into two categories as follows:

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owes to the Clearing House according to the rules, procedures and conditions prescribed by the Clearing House.

<sup>10</sup> Based on our consultation with an officer at the Clearing House and the SEC, we have been informed that, as a matter of current practice, the collateral is provided by way of asset transfer only. The provision of collateral by way of pledge has not been adopted because the enforcement process of pledge is more complicated and time consuming.

- (a) a **security deposit**<sup>11</sup> with the value of at least THB 5 million for the Member who is allowed to clear all types of derivatives, or THB 4 million for the Member who is allowed to clear only one type of derivatives.

The Clearing House may call for additional security deposits from the Members as deemed appropriate and may require the security deposits from some Members at a higher value than that from the other Members based on the risk from the act of each relevant Member that may cause damages to the clearing system of the Clearing House; and

- (b) **clearing fund**<sup>12</sup> comprising (i) an initial contribution of at least THB 5 million for the Member who is allowed to clear all types of derivatives, or THB 1 million for the Member who is allowed to clear only one type of derivatives (the Clearing House may change the value of such contribution and call for additional contribution from the member as considered appropriate) and (ii) a monthly contribution in the amount not less than THB 1,000 (the Clearing House may adjust the value of the monthly contribution of the clearing fund, and may require the monthly contribution from some Members at the value higher than that from the other Members based on the risk from the act of each relevant Member that may cause damages to the clearing system of the Clearing House).

In the case that damages are caused to the clearing system of the Clearing House and the amount of contributions to the clearing fund in (i) is not sufficient to cover fully the damage that may arise, the Clearing House may require Members to place additional contribution to the clearing fund in an amount not exceeding 1 times the current value of the initial contribution plus total monthly contributions of the respective Members. The Member is required to make the additional contribution within the period of time prescribed by the Clearing House; otherwise, it shall be deemed that such Member is in default.

A Member who is in default or causes damages to the clearing system has the obligation to provide additional security assets to replace the security assets used by

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<sup>11</sup> Defined under the Rules as "*the assets which a Member must provide for the security of the derivatives clearing system in accordance with the rate or value prescribed by the Clearing House.*"

<sup>12</sup> Defined under the Rules as "*the assets which a Member must deposit for the security of the clearing system according to the exchange traded derivatives traded by the Member or the derivatives position held by the Member in accordance with the rules, rate or value prescribed by the Clearing House.*"

the Clearing House to remedy such default/damages and provide compensation to the Clearing House in the case where the Clearing House has used other assets to remedy such default/damages.

The Clearing House may demand damages or penalties for the use of security assets or other assets from the Member who is in default or causes damage to the clearing system of the Clearing House in accordance with the Rules.

#### **4. QUALIFICATIONS**

The opinions in this opinion letter are subject to the following qualifications.

##### **4.1 *Availability of set-off***

Under the CCC, an obligation of a debtor can be discharged by means of set-off, if the two parties are bound to each other by obligations having subjects of the same kind, when both of such obligations are due, unless<sup>13</sup> (1) the nature of at least one of the obligations does not admit such set-off; (2) the parties have declared a contrary intention; (3) there is a defence against a claim; (4) an obligation arises from an unlawful act; (5) a claim is not subject to judicial attachment e.g. the right to maintenance (i.e. child support or alimony); (6) certain obligations are not permitted by law to be set-off (e.g. the payment for shares in a company); or (7) an obligation is unenforceable. Such intention in (2), however, cannot be set up against a third person acting in good faith. By virtue of set-off, the obligations of the parties can be discharged only up to the extent to which the amounts of such obligations correspond.

It is uncertain under Thai law whether it is possible to exercise set-off in respect of contingent liabilities.

##### **4.2 *Meaning of enforceable***

This opinion is not to be taken to imply that any obligation would necessarily be capable of enforcement in all circumstances in accordance with its terms. In particular:

- 4.2.1 a Thai court will not necessarily grant any remedy the availability of which is in the discretion of the court. In particular, orders for specific performance and injunctions are, in general, discretionary remedies under Thai law and

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<sup>13</sup> Sections 341, 344, 345, 346, 1119 and 411 of the CCC, respectively.

specific performance is not available when damages are considered by the court to be an adequate alternative remedy;

- 4.2.2 claims may become barred under laws imposing limitation periods within which suits, actions or proceedings can be brought or may be or become subject to defence of set-off or counterclaims;
- 4.2.3 where obligations are to be performed in a jurisdiction outside Thailand, they may not be enforceable in Thailand to the extent that performance would be illegal under the laws, or contrary to the exchange control regulations, of the other jurisdiction;
- 4.2.4 the enforcement of the obligations of the Parties may be limited by the provisions of Thai law applicable to agreements held to have been frustrated by events happening after their execution;
- 4.2.5 provisions vesting a discretion in any party or making opinions or determinations or accounts maintained by any party conclusive and/or binding are subject to requirements of good faith, reasonableness and/or proof of correctness; and
- 4.2.6 enforcement of obligations may be invalidated by reason of fraud.

#### **4.3    *General limitations on enforceability***

The enforceability of the Contracts will be subject to and limited by provisions of law of general application relating to or affecting generally the enforcement of parties' rights and remedies by the provisions of any applicable law relating to bankruptcy, insolvency, reorganisation or moratorium, as discussed below.

In particular pursuant to the Bankruptcy Act, (i) an automatic stay applies to any civil action in any law court or any submission to arbitration or any bankruptcy action; (ii) the bankrupt debtor is forbidden to dispose of, distribute, transfer, let, repay its debt, create debt or do any act which creates encumbrances over his asset except where such act is essential so that the debtor may carry on his business as normal, unless otherwise ordered by the court with whom the petition is filed; and (iii) a moratorium affecting creditors' rights (including, explicitly, the right to enforce security unless the court approval is granted) comes into force from the date on which the court of jurisdiction accepts a business rehabilitation petition and lasts until the scheduled date for completion of the business rehabilitation plan or actual completion of the plan, or the date of dismissal or discharge of the petition or cancellation of the business rehabilitation order or the date on which the receivership order is cancelled.

**4.4    *No opinion on taxation***

No opinion is expressed with respect to law and regulations relating to taxation.

**4.5    *Foreign exchange approval***

Prior to remittance to a paying Party outside Thailand of any amount payable in foreign currency by a Party under the Contracts, such Party must apply for foreign exchange approval from the Bank of Thailand or the authorised persons of the Bank of Thailand (i.e. commercial banks).

**4.6    *Interest on late payment***

A Thai court will reserve to itself a discretion to review any provision charging interest with respect to late payment of any amounts in the event that the court considers such a provision to be penal in nature in which event the court may decide to reduce the amount payable to the amount considered reasonable by the court.

**4.7    *Interest on interest***

The charging of interest on interest is prohibited, except where a lender and a borrower have agreed in writing that interest on a loan due for not less than one year shall be added to the capital, and that the whole shall bear interest at a specified rate, and where the charging of compound interest is allowed pursuant to commercial usage for the calculation of compound interest on current accounts (for example, overdraft accounts in the case of commercial banks) as well as in other similar commercial transactions.

**4.8    *Claims for interest in bankruptcy***

In a bankruptcy action, it is provided under Section 100 of the Bankruptcy Act that interest or other charge in lieu of interest after the date of the court's control order shall not be a debt for which payment can be claimed.

**4.9    *Validity of exclusion clauses***

Provisions seeking to exclude liability for the consequences of a party's own acts or of facts which such party knew and concealed may not be upheld by a Thai court and provisions exonerating a party in advance for such party's fraud or gross negligence are void.

**4.10 *Exercise of discretions***

Where a party to the Contracts is vested with discretion or may determine a matter in its opinion, Thai law may require that such discretion is exercised reasonably or that such opinion is based upon reasonable grounds.

**4.11 *Validity of submission to foreign courts***

Thai law is silent on the effect of the irrevocable submission to the jurisdiction of a foreign court, of the appointment of agents for service of process for the purposes of proceedings before such court and of the waiver to objection of venue.

Any term in the Contracts which prohibits or restricts the right of a party to take action in court for the preservation and enforcement of its rights thereunder may be held by the courts of Thailand to be against public order and, therefore, may be invalid and unenforceable.

**4.12 *Need for Thai translation in Thai proceedings***

In any proceedings in a Thai court a Thai translation may be required to accompany any document produced in a foreign language.

**4.13 *Admissibility of documents in court***

A Thai court generally requires that original documents be submitted to the court before they can be admitted in evidence. By way of exception, copies of documents may be submitted by a party to legal proceedings before a Thai court either (a) where the parties to the dispute agree to accept such copy for the purposes of the proceedings or (b) where it can be proven that the original cannot be submitted to the court because it has been damaged by force majeure or lost or due to other causes which are not the circumstances that such party is responsible for or the court deems that it is necessary and in the interests of justice to admit such copied document. In respect of the document to be submitted to the courts of Thailand which is required to be stamped under the Thai Revenue Code and where the copy does not indicate that the original was stamped, then the general requirement is for the copy to be stamped in order to be admitted, although we are aware of a number of Supreme Court decisions which have accepted copies without evidence of stamping.

**4.14 *Double proceedings not permitted***

The taking of proceedings in one court in Thailand may preclude the taking of proceedings in any other court in Thailand on the same subject matter.

**4.15 *Enforceability of claims for legal and court costs***

A Thai court has power to award to the parties to a court case legal fees and court costs in its discretion. Accordingly the validity of any provisions of the Contracts in respect of a Party's obligations to reimburse legal fees and other costs in the event of a court case in Thailand is uncertain.

**4.16 *Judgment in foreign currency***

A judgment in a Thai court may be expressed in the currency in which the debt is then outstanding with provision for payment in Baht equivalent thereof at the average commercial bank selling rate prevailing on the date of judgement, or failing that prevailing immediately prior thereto. However, Section 196 of the CCC states that where a money obligation is expressed in a foreign currency, payment of such sum may be made in Baht, by using the rate of exchange at the time and in the place of payment. We express no opinion as to the enforceability of any provision under which any person is required to give a judgement currency indemnity.

**4.17 *Need for proof of damage***

The award of damages requires proof of loss, which must be the direct or reasonably foreseeable consequence of the breach.

**4.18 *Revocation of powers of attorney and authorisations***

Under Thai law the appointment or authorisation of an agent, which would include the grant of a power of attorney, may be revoked at any time by the appointor giving notice to the agent or attorney, regardless of whether the appointment is expressed to be irrevocable or granted by way of security. Furthermore, under Thai law all such appointments or authorisations (including but not limited to powers of attorney or authorisations expressed to be irrevocable) granted expressly or by implication terminate by law and without notice upon the bankruptcy of the grantor.

**4.19 *No recognition of trusts***

The concept of "trust" under Thai law is only mentioned in Section 1686 of the CCC; such Section 1686 prohibits the creation of a trust by any will or by any juristic act. Accordingly, the obligation of a person to hold anything in trust for any other person may not be enforceable under Thai law, although analogous rights are recognised in certain transactions. However, such unenforceability would not in itself affect the recognition of the validity of the particular transaction to which the person acting as trustee was a party.

**4.20 *Effect of oral amendments and waivers***

We express no view on any provision (if any) in the Contracts requiring written amendments and waivers of any of the provisions of such document in so far as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon or granted by or between the parties or implied by the course of conduct of the Parties.

**4.21 *Unfair Contract Terms Act***

Under the Unfair Contract Terms Act B.E. 2540, a provision in an agreement that is found by Thai courts to be unfair as characterized in such Act would be enforceable only to the extent that it is fair and reasonable. As the determination of unfair terms is at the discretion of the courts, we express no view as to whether any provision in any of the Contracts might be unfair.

**4.22 *Meaning of references to Thai law***

Insofar as the opinion expressed herein refers to the law or laws of Thailand, such references include Royal Decrees, Ministerial Decrees, Ministerial Regulations and Notifications, and Supreme Court judgments and are limited to those which are published and available to the public as of the date hereof.

**4.23 *Derivatives Contracts under the Derivatives Act***

Certain parties (including individuals) may not fall within the types of parties with which a derivatives broker/dealer registered with/licensed by the SEC is permitted to deal in respect of derivatives contracts entered in Thailand pursuant to the Derivatives Act.

Derivatives contracts which may be cleared through the Clearing House are only derivatives contracts defined under the Derivatives Act and traded on TFEX.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.



This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully

*Clifford Chance (Thailand) Limited*

**CLIFFORD CHANCE (THAILAND) LIMITED**

**Annex 1: Form of Clearing House Membership Application**

บริษัท สำนักหักบัญชี (ประเทศไทย) จำกัด  
Thailand Clearing House Co., Ltd.



# คำขอเป็นสมาชิกสำนักหักบัญชี

เอกสารฉบับนี้ประกอบด้วย 4 ส่วน ได้แก่

1. คำขอเป็นสมาชิกสำนักหักบัญชี บริษัท สำนักหักบัญชี (ประเทศไทย) จำกัด
2. เอกสารแนบ 1: ข้อมูลตามที่สำนักหักบัญชีกำหนด
3. เอกสารแนบ 2: เอกสารประกอบการยื่นใบสมัครเข้าเป็นสมาชิกของสำนักหักบัญชี
4. เอกสารแนบ 3: ข้อมูลด้าน นโยบาย และระบบบริหารความเสี่ยง ของบริษัท

#### คำอธิบาย

1. ผู้สมัครสามารถจัดพิมพ์คำขอเป็นสมาชิกสำนักหักบัญชี และข้อมูลด้านนโยบายและระบบบริหารความเสี่ยง (รายละเอียดตามที่ปรากฏในเอกสารแนบ 3 ) ได้ใหม่ โดยต้องมีรูปแบบและข้อความที่ครบถ้วนตามคำขอฯ และข้อมูลด้านนโยบายและระบบบริหารความเสี่ยงตามที่สำนักหักบัญชีกำหนด
2. คำขอเป็นสมาชิกสำนักหักบัญชี และเอกสารประกอบคำขอเป็นสมาชิกสำนักหักบัญชีที่เป็นต้นฉบับต้องลงนาม โดยกรรมการผู้มีอำนาจลงนามผูกพันนิติบุคคลผู้สมัครสมาชิกสำนักหักบัญชีทุกหน้า กรณีเป็นเอกสารสำเนาต้องลงนามรับรองความถูกต้องทุกหน้า
3. ในกรณีที่ยื่นข้อมูลหรือนำส่งเอกสารไม่ครบ โปรดระบุข้อมูลและวันที่คาดว่าจะนำส่งได้
4. ผู้สมัครจะต้องนำส่งสำเนาของเอกสารที่ลงนาม หรือ รับรองสำเนา โดยผู้มีอำนาจลงนามผูกพันนิติบุคคลของผู้สมัครสมาชิก ในรูปแบบของ CD 1 ชุดให้แก่สำนักหักบัญชี

**คำขอเป็นสมาชิกสำนักหักบัญชี**  
**บริษัท สำนักหักบัญชี (ประเทศไทย) จำกัด**

วันที่.....เดือน.....พ.ศ. ....

เรียน คณะกรรมการ บริษัท สำนักหักบัญชี (ประเทศไทย) จำกัด

ข้าพเจ้า บริษัท.....(ต่อไปนี้จะเรียกว่า “บริษัท”) มีชื่อเป็นภาษาอังกฤษว่า ..... โดย..... ซึ่งเป็นผู้มีอำนาจกระทำการแทน และผูกพันบริษัทสำนักงานตั้งอยู่เลขที่..... หมายเลขโทรศัพท์.....หมายเลขโทรสาร..... มีความประสงค์จะสมัครเข้าเป็นสมาชิกกับบริษัท สำนักหักบัญชี (ประเทศไทย) จำกัด (“สำนักหักบัญชี”) เพื่อใช้บริการชำระหนี้ตามสัญญาซื้อขายล่วงหน้าซื้อขายในบริษัท ตลาดอนุพันธ์ (ประเทศไทย) จำกัด (มหาชน) (“ตลาดอนุพันธ์”) ในประเภทสมาชิกสามัญ (General Clearing Member) ซึ่งได้แก่ สมาชิกของตลาดอนุพันธ์ประเภทตัวแทนซื้อขายสัญญาซื้อขายล่วงหน้าที่ได้รับอนุญาตจากสำนักหักบัญชีให้ใช้บริการชำระหนี้ตามสัญญาซื้อขายล่วงหน้าตามที่สำนักหักบัญชีจัดให้มีขึ้นเพื่อบัญชีของสมาชิก หรือเพื่อบัญชีของลูกค้าของสมาชิก หรือเพื่อบัญชีของสมาชิกรายอื่นที่สมาชิกทำหน้าที่ชำระหนี้แทน ดังต่อไปนี้

- ☐ สมาชิกสามัญใช้บริการชำระหนี้ทุกสินค้าอ้างอิง
- ☐ สมาชิกสามัญใช้บริการชำระหนี้ตามประเภทสินค้าอ้างอิง  
(โปรดระบุสินค้าอ้างอิง.....)

โดยที่ในปัจจุบัน บริษัท

- ☐ เป็นสมาชิกสามัญใช้บริการชำระหนี้ตามประเภทสินค้าอ้างอิง  
(โปรดระบุสินค้าอ้างอิง.....)
- ☐ ไม่เป็นสมาชิกบริษัท สำนักหักบัญชี (ประเทศไทย) จำกัด

ทั้งนี้ เพื่อประโยชน์ในการพิจารณาของสำนักหักบัญชี บริษัทขอแนบส่งเอกสารดังต่อไปนี้

1. ข้อมูลตามที่สำนักหักบัญชี กำหนด จำนวน.....ชุด (รายละเอียดตามเอกสารแนบ 1)
2. เอกสารประกอบการยื่นใบสมัครเข้าเป็นสมาชิก จำนวน.....ชุด (รายละเอียดตามเอกสารแนบ 2)
3. ข้อมูลด้านนโยบาย และระบบบริหารความเสี่ยงของบริษัทโดยละเอียด จำนวน.....ชุด (รายละเอียดตามเอกสารแนบ 3)

เพื่อให้การบริการชำระหนี้เป็นไปโดยถูกต้องและลุล่วงไปด้วยดี บริษัทตกลงที่จะปฏิบัติตามเงื่อนไขดังต่อไปนี้

1. บริษัทตกลงและยินยอมจะชำระค่าเข้าเป็นสมาชิก ค่าธรรมเนียม ค่าใช้จ่ายต่างๆ และตกลงวางทรัพย์สินเพื่อความมั่นคง ได้แก่ หลักทรัพย์เพื่อความมั่นคง (Security Deposit) และทรัพย์สินสมทบกองทุนทดแทนความเสียหาย (Clearing Fund) แก่สำนักหักบัญชี ตามหลักเกณฑ์และเงื่อนไขที่สำนักหักบัญชี กำหนด

บริษัททราบและตระหนักว่าบริษัทมีหน้าที่ต้องชำระหนี้ที่เกิดจากการซื้อขายสัญญาซื้อขายล่วงหน้า และ/หรือเกิดจากการถือครองสัญญาซื้อขายล่วงหน้า การวางหลักประกันรักษาสภาพ (Maintenance Margin) หลักประกันผันแปร (Variation Margin) หลักประกันส่วนเพิ่ม (Additional Margin) และหลักประกันอื่น รวมทั้งการปรับมูลค่าหลักประกัน (Mark to Market) หรืออาจต้องวางหลักประกันระหว่างวัน (Intra-day Margin) ตามหลักเกณฑ์และเงื่อนไขที่สำนักหักบัญชีกำหนด

2. บริษัทตกลงและยินยอมให้สำนักหักบัญชี เป็นผู้มีอำนาจในการบริหารจัดการหลักทรัพย์เพื่อความมั่นคง (Security Deposit) ทรัพย์สินสมทบกองทุนทดแทนความเสียหาย (Clearing Fund) และหลักประกันตามข้อ 1 รวมทั้งหลักประกันหรือทรัพย์สินที่สำนักหักบัญชีเก็บรักษาส่วนที่เกินจากจำนวนหลักประกันที่สำนักหักบัญชีกำหนดให้สมาชิกต้องวาง (Excess Margin) โดยสำนักหักบัญชีจะจัดสรรดอกผลหรือผลประโยชน์อื่นที่ได้จากการบริหารจัดการหลักทรัพย์ ทรัพย์สิน และหลักประกันดังกล่าวข้างต้นตามนโยบายการลงทุนในข้อบังคับของสำนักหักบัญชี โดยสำนักหักบัญชีจะเรียกเก็บค่าธรรมเนียมในการบริหารจัดการตามหลักเกณฑ์และเงื่อนไขที่สำนักหักบัญชี กำหนด

3. บริษัทยินยอมให้ความร่วมมือพร้อมทั้งอำนวยความสะดวกให้แก่เจ้าหน้าที่ของสำนักหักบัญชี และ/หรือผู้ที่ได้รับมอบหมายจากสำนักหักบัญชีเข้าตรวจสอบระบบปฏิบัติการและการดำเนินงานหลังการซื้อขายและวิธีปฏิบัติในการบริหาร ติดตาม และควบคุมความเสี่ยงและเรียกเอกสารสมุดบัญชีและหลักฐาน หรือข้อมูลอื่นๆ ของบริษัท ตลอดจนสอบถามข้อเท็จจริงจากกรรมการ พนักงาน ลูกจ้าง หรือผู้สอบบัญชีของบริษัทได้ พร้อมกันนี้บริษัทรับทราบและยินดียินยอมส่งข้อมูลและเอกสารเพิ่มเติมตามที่สำนักหักบัญชีร้องขอ รวมทั้งยินยอมให้สำนักหักบัญชีเปิดเผยข้อมูลของบริษัทหรือที่เกี่ยวข้องกับบริษัทให้แก่หน่วยงานอื่นทราบ เช่น ตลาดอนุพันธ์ สำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์ ("สำนักงาน ก.ล.ต.") ตลาดหลักทรัพย์แห่งประเทศไทย ธนาคารแห่งประเทศไทย และบริษัท ศูนย์รับฝากหลักทรัพย์ (ประเทศไทย) จำกัด เป็นต้น

4. บริษัทตกลงและยินยอมให้สำนักหักบัญชี หักเงินจากหรือนำเงินเข้าบัญชีธนาคารตาม ข้อมูลที่ได้ระบุในข้อ 2.3 ของเอกสารแนบ 1 เพื่อการชำระหนี้และการวางหลักประกันในส่วนที่เป็นเงินสด โดยบริษัทจะเป็นผู้รับผิดชอบค่าธรรมเนียมและค่าใช้จ่ายใดๆ ของธนาคารที่เกิดจากการ ส่งคำสั่งจ่ายเงินหรือรับเงินของสำนักหักบัญชีเพื่อการชำระหนี้ การรับชำระหนี้ และการวาง หลักประกันดังกล่าวต่อธนาคารโดยตรง

บริษัทขอรับรองว่า ข้อความที่ได้แจ้งไว้ในคำขอนี้ รวมทั้งข้อมูลและเอกสารที่น่าส่งให้แก่ สำนักหักบัญชี เป็นความจริงทุกประการ และขอรับรองว่า เมื่อบริษัทได้รับอนุมัติให้เข้าเป็นสมาชิก แล้ว บริษัทจะปฏิบัติตามกฎหมายว่าด้วยสัญญาซื้อขายล่วงหน้า ข้อกำหนด หนังสือเวียน และคำสั่ง ของสำนักหักบัญชี และตลาดอนุพันธ์ ทั้งที่มีผลใช้บังคับในขณะยื่นคำขอนี้และที่จะมีการออกใช้ บังคับในอนาคต ในกรณีที่บริษัทฝ่าฝืนหรือไม่ปฏิบัติตามกฎหมายว่าด้วยสัญญาซื้อขายล่วงหน้า ข้อกำหนด หนังสือเวียน และคำสั่งดังกล่าว บริษัทยินยอมให้ สำนักหักบัญชี ดำเนินการใดๆ ภายใต้ กฎหมายว่าด้วยสัญญาซื้อขายล่วงหน้า ข้อกำหนด หนังสือเวียน และคำสั่งของสำนักหักบัญชี รวมทั้งยินยอมชดเชยค่าเสียหายใดที่อาจเกิดขึ้นจากการฝ่าฝืนหรือไม่ปฏิบัติตามดังกล่าว

ลงชื่อ \_\_\_\_\_ ผู้มีอำนาจทำการแทนบริษัท

( )

ประทับตราบริษัท (ถ้ามี)

ข้อมูลตามที่สำนักหักบัญชีกำหนด

|   |                    |
|---|--------------------|
| รายชื่อผู้ประสานงานสำหรับการสมัครสมาชิกสำนักหักบัญชีจนกระทั่งเริ่มสมาชิกภาพ |                    |
| .....   |                    |
| ตำแหน่ง.....  | ฝ่าย.....          |
| หมายเลขโทรศัพท์.....  | หมายเลขโทรสาร..... |
| E-mail.....   |                    |

**1. ข้อมูลบริษัท**

1.1 ชื่อผู้ขอรับใบอนุญาต (ภาษาไทย).....  
(ภาษาอังกฤษ) .....

**1.2 ที่ตั้งสำนักงานใหญ่**

.....  
.....  
หมายเลขโทรศัพท์.....หมายเลขโทรสาร.....  
สาขา พร้อมรายละเอียดที่ตั้งและหมายเลขโทรศัพท์ (ถ้ามี) .....

1.3 ที่ตั้งสำนักงานที่ใช้ในการติดต่อ .....

.....  
.....  
หมายเลขโทรศัพท์ .....

1.4 ทุนจดทะเบียน.....บาท ทุนจดทะเบียนชำระแล้ว.....บาท

1.5 เงินกองทุน ณ วันที่.....

(1) เงินกองทุนสภาพคล่องสุทธิ.....บาท

(2) เงินกองทุนสภาพคล่องสุทธิคิดเป็นร้อยละ.....ของหนี้สินทั่วไปและทรัพย์สินที่เป็นหลักประกัน



1.6 ประวัติและข้อมูลการดำเนินธุรกิจที่แสดงถึงความเชี่ยวชาญหรือประสบการณ์เกี่ยวกับการทำธุรกรรมสินค้าอ้างอิงหรือตัวแปรอ้างอิงหรือธุรกรรมอนุพันธ์ (หากพื้นที่ไม่เพียงพอ โปรดแนบเอกสาร)

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.....

.....

1.7 ภายในระยะเวลา 3 ปีจนถึงวันที่ยื่นใบสมัคร บริษัทเคยหรืออยู่ระหว่างการถูกกล่าวโทษหรือลงโทษในฐานความผิดใดๆ จากสำนักงาน ก.ล.ต./ ตลาดหลักทรัพย์แห่งประเทศไทย/ ธนาคารแห่งประเทศไทย/ บริษัท ศูนย์รับฝากหลักทรัพย์ (ประเทศไทย) จำกัด/ ตลาดอนุพันธ์/ สมาคมผู้ประกอบวิชาชีพ หรือหน่วยงานอื่นที่เกี่ยวข้อง หรือเคยกระทำการ ผิดผิดกฎ ระเบียบ วิถีปฏิบัติ ประกาศ คำสั่งหรือหนังสือเวียนของหน่วยงานข้างต้นหรือไม่

- ☐ ไม่เคย
- ☐ เคย (โปรดให้รายละเอียด)

.....

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1.8 ข้อมูลการจัดอันดับความน่าเชื่อถือ (Credit Rating) (ถ้ามี)

| หน่วยงาน                    | Long - Term Rating | Short - Term Rating | ข้อมูล ณ วันที่ |
|-----------------------------|--------------------|---------------------|-----------------|
| Standard & Poor 's          |                    |                     |                 |
| Fitch                       |                    |                     |                 |
| Moody ' s Investors Service |                    |                     |                 |
| TRIS                        |                    |                     |                 |
| อื่นๆ                       |                    |                     |                 |

1.9 รายชื่อผู้ถือหุ้น 10 อันดับแรก ณ วันที่ ..... ดังตารางด้านล่างนี้

| ลำดับ | รายชื่อผู้ถือหุ้น | สัญชาติ | จำนวนหุ้น | ร้อยละของจำนวนหุ้น<br>ที่จำหน่ายได้ (%) |
|-------|-------------------|---------|-----------|---|
| 1     |                   |         |           |   |
| 2     |                   |         |           |   |
| 3     |                   |         |           |   |
| 4     |                   |         |           |   |
| 5     |                   |         |           |   |
| 6     |                   |         |           |   |
| 7     |                   |         |           |   |
| 8     |                   |         |           |   |
| 9     |                   |         |           |   |
| 10    |                   |         |           |   |
| อื่นๆ |                   |         |           |   |
| รวม   |                   |         |           | 100                                     |

1.10 ผู้บริหารและพนักงาน

1.10.1 รายชื่อคณะกรรมการ ณ วันที่ ..... (ไม่เกิน 3 เดือนนับจากวันที่ยื่น  
ใบสมัคร)

| ชื่อและชื่อสกุล<br>(ให้กรอกทั้งภาษาไทยและ<br>ภาษาอังกฤษ) | ตำแหน่ง | สัญชาติ | อำนาจกระทำการแทนบริษัทฯ<br>(มี/ไม่มี) |
|--|---------|---------|---------------------------------------|
|  |         |         |                                       |
|  |         |         |                                       |
|  |         |         |                                       |
|  |         |         |                                       |
|  |         |         |                                       |
|  |         |         |                                       |
|  |         |         |                                       |

1.10.2 รายชื่อผู้บริหารระดับผู้อำนวยการฝ่ายขึ้นไปที่เป็นผู้รับผิดชอบในส่วนการประกอบธุรกิจ การซื้อขาย และการปฏิบัติงานหลังการซื้อขาย ในตลาดอนุพันธ์ และประวัติของแต่ละท่าน ดังนี้

| ชื่อและชื่อสกุล<br>(ให้กรอกทั้งภาษาไทย<br>และภาษาอังกฤษ) | ประวัติ<br>การทำงาน | ประวัติการศึกษา<br>และการอบรม | จำนวนหุ้น<br>ที่ถือ (ถ้ามี) | อำนาจกระทำ<br>การแทนบริษัท |
|--|---------------------|-------------------------------|-----------------------------|----------------------------|
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |
|  |                     |                               |                             |                            |

นอกจากนี้หากบุคคลดังกล่าว ตาม 1.10.1 และ 1.10.2 มีประวัติเกี่ยวกับการถูกกล่าวโทษหรือถูกดำเนินคดี ตามกฎหมายว่าด้วยสัญญาซื้อขายล่วงหน้า กฎหมายว่าด้วยหลักทรัพย์และตลาดหลักทรัพย์ กฎหมายฟอกเงิน กฎหมายอาญาที่เกี่ยวกับทรัพย์ หรือกฎหมายเกี่ยวกับธุรกิจการเงินอื่นใด หรือมีประวัติเสียหายหรือดำเนิน กิจการใดที่มีลักษณะที่แสดงถึงการขาดความรับผิดชอบหรือความรอบคอบเยี่ยงผู้ประกอบการวิชาชีพ ให้บริษัทส่งรายละเอียดดังกล่าวให้แก่สำนักหักบัญชี ด้วย

1.11 การประกอบธุรกิจอยู่ภายใต้การกำกับดูแลของทางการหรือหน่วยงานที่ทำหน้าที่กำกับดูแลสัญญา ซื้อขายล่วงหน้าโดย (ระบุได้มากกว่า 1 ตัวเลือก)

- ☐ ได้รับอนุญาตให้ประกอบธุรกิจสัญญาซื้อขายล่วงหน้าประเภทการเป็นตัวแทนซื้อขาย สัญญาซื้อขายล่วงหน้าตามประกาศคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์ เกี่ยวกับการทำธุรกรรมและการให้บริการด้านสัญญาซื้อขายล่วงหน้าของบริษัท หลักทรัพย์ซึ่งออกตามความในพระราชบัญญัติสัญญาซื้อขายล่วงหน้าพ.ศ. 2546 แล้ว ตามหนังสือของสำนักงาน ก.ล.ต. ที่.....ลงวันที่.....

- ☐ อยู่ระหว่างการยื่นขออนุญาตประกอบธุรกิจสัญญาซื้อขายล่วงหน้าประเภทการเป็นตัวแทน  
ซื้อขายสัญญาซื้อขายล่วงหน้าตามประกาศคณะกรรมการกำกับหลักทรัพย์และตลาด  
หลักทรัพย์เกี่ยวกับการทำธุรกรรมและการให้บริการด้านสัญญาซื้อขายล่วงหน้าของ  
บริษัทหลักทรัพย์ซึ่งออกตามความในพระราชบัญญัติสัญญาซื้อขายล่วงหน้า พ.ศ. 2546  
ตามหนังสือ..... ลงวันที่ .....
- \* ทั้งนี้ หากบริษัทไม่ได้รับอนุญาตประกอบธุรกิจสัญญาซื้อขายล่วงหน้าประเภทการ  
เป็นตัวแทนซื้อขายสัญญาซื้อขายล่วงหน้า สำนักหักบัญชี มีสิทธิปฏิเสธไม่รับพิจารณา  
คำขอเป็นสมาชิกสำนักหักบัญชีของบริษัทได้
- ☐ ได้รับอนุญาตให้ประกอบธุรกิจเป็นผู้ค้าสัญญาซื้อขายล่วงหน้าได้โดยไม่ต้องขอรับ  
ใบอนุญาตหรือขอจดทะเบียนจากหน่วยงานกำกับดูแล ตามหนังสือ  
..... ลงวันที่ .....
- (ผู้ค้าสัญญาซื้อขายล่วงหน้า หมายถึง ผู้ค้าสัญญาซื้อขายล่วงหน้าตามกฎหมายสัญญาซื้อขายล่วงหน้า)

1.12 แผนในการกำหนดขอบเขตการประกอบธุรกิจการเป็นตัวแทนซื้อขายสัญญาซื้อขายล่วงหน้า  
ภายในระยะเวลาประมาณ 5 ปี นับจากวันที่ยื่นคำขอนี้

- ☐ ไม่มี
- ☐ มี โดยให้ระบุขอบเขตดังต่อไปนี้
- ☐ ประเภทของสินค้าอ้างอิง หรือตัวแปรอ้างอิง (เช่น ตราสารทางการเงิน /  
commodity / อัตราดอกเบี้ย / ดัชนี เป็นต้น)
- .....
- .....
- ☐ ประเภทของกลุ่มสัญญา (เช่น ผู้ลงทุนทั่วไป / ผู้ลงทุนสถาบัน / สถาบันการเงิน  
 เป็นต้น)
- .....
- .....
- ☐ ลักษณะของการทำธุรกรรม (OTC / on exchange เป็นต้น)
- .....
- .....

- ☐ ประเภทของสัญญาซื้อขายล่วงหน้า ( futures / options / forwards / swaps เป็นต้น)

.....  
 .....

- ☐ อื่นๆ

.....

1.13 บริษัทอยู่ระหว่างถูกทางการหรือหน่วยงานที่ทำหน้าที่กำกับดูแลการเป็นตัวแทนซื้อขายสัญญาซื้อขายล่วงหน้า ตัวแทนซื้อขายสินค้าอ้างอิง หรือตัวแปรอ้างอิง ภาคทัณฑ์ หรือพักการประกอบธุรกิจเป็นตัวแทนซื้อขายสัญญาซื้อขายสัญญาซื้อขายล่วงหน้า ตัวแทนซื้อขายสินค้าอ้างอิง หรือตัวแปรอ้างอิง

- ☐ ใช่ (โปรดให้รายละเอียด)
- ☐ ไม่ใช่

## 2. การบริหารงาน

2.1 รายชื่อผู้มีอำนาจในการบริหารงานระดับผู้อำนวยการฝ่ายขึ้นไป หรือเทียบเท่า หรือผู้ที่ได้รับมอบหมายที่สำนักหักบัญชี สามารถติดต่อประสานงานได้

ฝ่ายปฏิบัติการระบบหลังการซื้อขายสัญญาซื้อขายล่วงหน้า.....  
 (Operation Department)

ตำแหน่ง.....หมายเลขโทรศัพท์.....

E- mail .....

ฝ่ายกำกับดูแลการปฏิบัติตามกฎระเบียบ.....

(Compliance Department)

ตำแหน่ง.....หมายเลขโทรศัพท์.....

E- mail .....

ฝ่ายตรวจสอบภายใน.....  
(Internal Audit Department)

ตำแหน่ง.....หมายเลขโทรศัพท์.....

E- mail .....

ฝ่ายบริหารความเสี่ยง .....

(Risk Management Department)

ตำแหน่ง.....หมายเลขโทรศัพท์.....

E- mail .....

ฝ่ายบัญชี.....

(Accounting Department)

ตำแหน่ง.....หมายเลขโทรศัพท์.....

E- mail .....

ฝ่ายคอมพิวเตอร์.....

(Information Technology Department)

ตำแหน่ง.....หมายเลขโทรศัพท์.....

E- mail .....

กรณีมีเหตุขัดข้องเกี่ยวกับการวางเงินประกัน.....

ตำแหน่ง.....ฝ่าย .....

หมายเลขโทรศัพท์.....E-mail.....

หมายเลขโทรศัพท์เคลื่อนที่.....

กรณีมีเหตุฉุกเฉินเกี่ยวกับระบบปฏิบัติการ.....

ตำแหน่ง.....ฝ่าย .....

หมายเลขโทรศัพท์.....E-mail.....

หมายเลขโทรศัพท์เคลื่อนที่.....

**หมายเหตุ กรณีบริษัทเปลี่ยนแปลงตัวบุคคลหรือรายละเอียดตามที่แจ้งไว้ บริษัทต้องแจ้งให้สำนักหักบัญชีทราบเป็นลายลักษณ์อักษรทันทีที่มีการเปลี่ยนแปลง**

## 2.2 ส่วนปฏิบัติการงานสนับสนุน (Back Office)

## 2.2.1 สถานที่ตั้งส่วนปฏิบัติการงานสนับสนุน

☐ ที่ตั้งบริษัท

☐ สถานที่อื่น

ตั้งอยู่เลขที่.....

หมายเลขโทรศัพท์..... หมายเลขโทรสาร.....

## 2.2.2 บริษัทว่าจ้างหรือให้บุคคลอื่นปฏิบัติงานส่วนปฏิบัติการงานสนับสนุน (Back Office) แทนบริษัทหรือไม่

☐ ไม่

☐ ใช่ (โปรดให้รายละเอียด)

ชื่อบุคคลที่ปฏิบัติงานส่วนปฏิบัติการงานสนับสนุน(Back Office) แทนบริษัท คือ

บริษัท.....

เลขที่.....

หมายเลขโทรศัพท์.....หมายเลขโทรสาร.....

E-mail .....

ชื่อผู้ติดต่อประสานงาน.....

หมายเลขโทรศัพท์.....E-mail.....

2.2.3 จำนวนและ Specification ของเครื่องคอมพิวเตอร์ ที่ใช้เพื่อรองรับระบบปฏิบัติงานหลังการ  
ซื้อขายสัญญาซื้อขายล่วงหน้า

.....

.....

.....

2.2.4 ระบุชื่อโปรแกรม Software Standard ของระบบปฏิบัติการ (Operating System) เช่น  
Window version, IE, etc และ software อื่นๆ ที่ใช้ในเครื่องคอมพิวเตอร์ในข้อ 2.2.1 หรือข้อ 2.2.2

.....

.....

.....

2.2.5 อธิบายถึงโครงสร้างระบบเชื่อมต่อ (Network Infrastructure) และลักษณะการเชื่อมต่อระหว่างบริษัทและสำนักหักบัญชี และระหว่างบริษัทกับสาขาของบริษัท พร้อมทั้งระบุแผนภาพแสดงจำนวนเครื่องคอมพิวเตอร์ทั้งหมด และการเชื่อมต่อดังกล่าว

.....

.....

.....

2.2.6 อธิบายถึงวิธี และระบบในการป้องกันความปลอดภัยทางคอมพิวเตอร์ (Security Policy)

.....

.....

.....

2.2.7 ระบุชื่อผู้ขายหรือผู้ให้บริการระบบปฏิบัติการ (Software Vendor)

.....

.....

.....

2.2.8 ระบุชื่อชุดคำสั่งระบบปฏิบัติการ (Software Application) และ Version

.....

.....

.....

2.3 การชำระหนี้และการวางหลักประกันเพื่อชำระหนี้ตามรายงานการชำระหนี้ตามสัญญาซื้อขายล่วงหน้า

บริษัทมีความประสงค์ให้สำนักหักบัญชี หักเงินจาก หรือ นำเงินเข้าบัญชีธนาคารตามข้อมูลด้านล่างนี้เพื่อการชำระหนี้ รับชำระหนี้ และการวางหลักประกันเพื่อชำระหนี้ ตามรายงานการชำระหนี้ตามสัญญาซื้อขายล่วงหน้า หรือตามความประสงค์ของสมาชิกในการขอลอนหลักประกันหรือทรัพย์สินที่สำนักหักบัญชีเก็บรักษาส่วนที่เกินจากจำนวนหลักประกันที่สำนักหักบัญชีกำหนดให้สมาชิกต้องวาง (Excess Margin) หรือเพื่อการคืนผลตอบแทนในหลักประกันของสมาชิก

☐ ธนาคารกรุงไทย จำกัด (มหาชน)

- บัญชีของบริษัท (House Account)

ชื่อบัญชี.....

บัญชีเลขที่ .....ประเภทบัญชี.....



สาขา.....เปิดบัญชีตั้งแต่วันที่.....

- บัญชีของลูกค้าของบริษัท (Client Account)

ชื่อบัญชี.....

บัญชีเลขที่ .....ประเภทบัญชี.....

สาขา.....เปิดบัญชีตั้งแต่วันที่.....

□ ธนาคารไทยพาณิชย์ จำกัด (มหาชน)

- บัญชีของบริษัท (House Account)

ชื่อบัญชี.....

บัญชีเลขที่ .....ประเภทบัญชี.....

สาขา.....เปิดบัญชีตั้งแต่วันที่.....

- บัญชีของลูกค้าของบริษัท (Client Account)

ชื่อบัญชี.....

บัญชีเลขที่ .....ประเภทบัญชี.....

สาขา.....เปิดบัญชีตั้งแต่วันที่.....

**หมายเหตุ**

1. ให้เลือกธนาคารใดธนาคารหนึ่ง โดยบัญชีของบริษัท (House Account) กับบัญชีของลูกค้าของบริษัท (Client Account) ต้องเป็นบัญชีของธนาคารเดียวกันเท่านั้น
2. ต้องเป็นบัญชีที่เปิดเพื่อการชำระหนี้สัญญาซื้อขายล่วงหน้าเท่านั้น และไม่เป็นบัญชีเดียวกับที่สมาชิกใช้ชำระราคาหรือชำระหนี้สำหรับการซื้อขายหลักทรัพย์
3. สำหรับการเปิดบัญชีของลูกค้าของบริษัท ต้องระบุชื่อบัญชีให้ชัดเจน ว่า “บริษัท.....เพื่อลูกค้า”

**3. การบริหารความเสี่ยง**

โปรดอธิบายขั้นตอนและวิธีการดำเนินการเกี่ยวกับการบริหาร การติดตาม และควบคุมความเสี่ยง ข้อมูลด้าน นโยบาย และระบบบริหารความเสี่ยงของบริษัท ตามเอกสารแนบ 2 และเอกสารแนบ 3 ซึ่งถือเป็นส่วนหนึ่งของคำขอสมัครเป็นสมาชิกสำนักหักบัญชี ฉบับนี้

**เอกสารประกอบการยื่นใบสมัครเข้าเป็นสมาชิกของสำนักหักบัญชี**

- 1) หลักฐานการจดทะเบียนกับกระทรวงพาณิชย์ สำเนาหนังสือรับรอง หนังสือบริคณห์สนธิ ข้อบังคับ บริษัทและบัญชีรายชื่อผู้ถือหุ้นซึ่งรับรองโดยกระทรวงพาณิชย์ไม่เกิน 3 เดือนก่อนวันที่ยื่นคำขอเป็นสมาชิก
- 2) สำเนาใบอนุญาตประกอบธุรกิจสัญญาซื้อขายล่วงหน้าประเภทตัวแทนซื้อขายสัญญาซื้อขายล่วงหน้าจากคณะกรรมการ ก.ล.ด. (ในกรณีที่ผู้บริษัทยู่ระหว่างการขอรับใบอนุญาตจากคณะกรรมการ ก.ล.ด. ให้แนบสำเนาเอกสารที่บริษัทใช้ประกอบการยื่นขอรับใบอนุญาตประกอบธุรกิจสัญญาซื้อขายล่วงหน้าประเภทตัวแทนซื้อขายสัญญาซื้อขายล่วงหน้าจากคณะกรรมการ ก.ล.ด. 1 ชุด มาแสดง พร้อมทั้งแจ้งวันที่นำส่งสำนักงาน ก.ล.ด.)
- 3) สำเนาหลักฐานที่แสดงได้ว่าบริษัทมีเจ้าหน้าที่ปฏิบัติการ (Operating Officer) เจ้าหน้าที่กำกับดูแลการปฏิบัติตามข้อกำหนด หนังสือเวียนและคำสั่งของสำนักหักบัญชี (Compliance Officer) เจ้าหน้าที่ตรวจสอบภายใน (Internal Auditor) และเจ้าหน้าที่บริหารความเสี่ยง (Risk Management Officer) ตามหลักเกณฑ์ที่สำนักหักบัญชี กำหนด หรือสำเนาหลักฐานที่แสดงได้ว่าบริษัทอยู่ในระหว่างพิจารณา รับสมัครบุคคลใดเพื่อปฏิบัติงานดังกล่าวตามหลักเกณฑ์ที่สำนักหักบัญชี กำหนด
- 4) สำเนาหลักฐานที่แสดงว่าบริษัทเป็นสมาชิกตลาดอนุพันธ์หรือหลักฐานที่แสดงว่าอยู่ในระหว่างยื่นคำขอเป็นสมาชิกของตลาดอนุพันธ์
- 5) สำเนาหลักฐานเกี่ยวกับฐานะการเงิน เช่น งบการเงินงวด 6 เดือน รายงานประจำปีฉบับล่าสุด ซึ่งต้องเป็นฉบับที่ได้รับการตรวจสอบจากผู้สอบบัญชี เป็นต้น
- 6) สำเนารายงานการคำนวณเงินกองทุนสภาพคล่องสุทธิ (Net Capital) หรืออัตราส่วนเงินกองทุนสภาพคล่องสุทธิต่อหนี้สินทั่วไป (Net Capital Ratio) และ/หรือ อัตราส่วนเงินกองทุนต่อสินทรัพย์เสี่ยง (BIS Ratio or Capital Adequacy Ratio) หรือดำรงเงินกองทุนอื่นในทำนองเดียวกับกองทุนดังกล่าวของบริษัท โดยต้องเป็นสำเนารายงานฉบับรายวันจำนวน 7 วันทำการติดต่อกัน หรือเป็นสำเนารายงานที่หน่วยงานที่กำกับดูแลการประกอบธุรกิจของบริษัทกำหนดให้ต้องคำนวณเป็นประจำตามรอบระยะเวลาจำนวน 7 งวดติดต่อกัน ก่อนวันยื่นคำขอสมัครเป็นสมาชิก

- 7) รายละเอียดเกี่ยวกับการบริหารความเสี่ยงที่สามารถแสดงได้ว่าการบริหารความเสี่ยงที่มีประสิทธิภาพ อย่างน้อยในเรื่องดังต่อไปนี้
  - (1) นโยบายและมาตรการในการบริหารความเสี่ยงที่เป็นลายลักษณ์อักษร รวมทั้งขั้นตอนในการให้ความเห็นชอบและการแก้ไขเปลี่ยนแปลงนโยบายและมาตรการดังกล่าว
  - (2) นโยบายและมาตรการในการบริหารความเสี่ยงในด้าน credit risk, market risk, legal risk และ operational risk
  - (3) ระบบที่เหมาะสมและเชื่อถือได้ในการบันทึกข้อมูล การรายงานข้อมูลต่อผู้บริหาร การป้องกันการล่วงรู้ข้อมูลระหว่างหน่วยงานที่มีผลประโยชน์ทับซ้อน (Chinese Wall) และการควบคุมการปฏิบัติงาน
  - (4) ขั้นตอนและวิธีการในการตรวจสอบ ควบคุม และติดตามให้มีการดำเนินงานตามนโยบาย มาตรการ และระบบที่วางไว้
- 8) สำเนาแผนรองรับเมื่อเกิดเหตุการณ์ โดยต้องระบุลักษณะเหตุการณ์ที่เป็นเหตุการณ์อย่างชัดเจนไว้ในแผนดังกล่าวด้วย
- 9) สำเนาหลักฐานที่แสดงความพร้อมของระบบงานด้านคอมพิวเตอร์และอุปกรณ์ระบบคอมพิวเตอร์ของผู้สมัครที่สามารถเชื่อมต่อกับระบบคอมพิวเตอร์ของสำนักหักบัญชี รวมถึงระบบปฏิบัติการอื่นที่จำเป็นต่อการปฏิบัติงานหลังการซื้อขายสัญญาซื้อขายล่วงหน้าที่สำนักหักบัญชีจัดให้มีขึ้น
- 10) สำเนาหลักฐานที่แสดงความพร้อมของระบบรายงานฐานะการเงินของบริษัทที่สามารถเชื่อมต่อกับระบบงานของสำนักหักบัญชีโดยตรง
- 11) สำเนาหลักฐานที่แสดงว่าบริษัทมีสำนักงานและอุปกรณ์เครื่องใช้สำนักงานต่างๆ ที่เพียงพอแสดงได้ว่าบริษัทมีความพร้อมในการประกอบธุรกิจ
- 12) เอกสารและหลักฐานอื่น ได้แก่
  - (1) แผนผังโครงสร้างองค์กร
  - (2) หลักฐานการเปิดวงเงินเบิกเกินบัญชี (Overdraft Loan) หรือวงเงินกู้ระหว่างวัน (Intra-day Loan)

- (3) รายละเอียดเกี่ยวกับการดำเนินงาน แผนธุรกิจ ของบริษัท โดยให้ระบุรายละเอียดเกี่ยวกับขอบเขตการประกอบธุรกรรมสัญญาซื้อขายล่วงหน้าของบริษัท ในช่วงระยะเวลา 5 ปี
- (4) รายละเอียดเกี่ยวกับระบบตรวจสอบและควบคุมฐานะสัญญาซื้อขายล่วงหน้าของบัญชีของสมาชิก (House Account) บัญชีของลูกค้ารวมของสมาชิก (Omnibus Client Account) และบัญชีของลูกค้าแต่ละรายของสมาชิก (Individual Client Account)
- (5) เอกสารอื่นใดที่บริษัทเห็นว่าเป็นประโยชน์ต่อการพิจารณารับบริษัทเข้าเป็นสมาชิกของสำนักหักบัญชี

**ข้อมูลด้าน นโยบาย และระบบบริหารความเสี่ยง ของบริษัท**

**คำชี้แจง** ในการตอบคำถามที่จัดให้ไม่เพียงพอ กรุณาแนบเอกสารเพื่อประโยชน์ในการพิจารณารับเข้าเป็นสมาชิก

1. โปรดอธิบาย ขอบเขตหน้าที่ความรับผิดชอบ และการแบ่งแยกหน้าที่ความรับผิดชอบ การบริหารจัดการ ในกรณีที่มีผลประโยชน์ทับซ้อน (conflict of interest) รวมทั้งระบบการ check-balance ระหว่างฝ่ายงานต่าง ๆ ดังนี้
  - ฝ่ายบริหารความเสี่ยง (Risk Management Department)
  - ฝ่ายตรวจสอบภายใน (Internal Audit Department)
  - ฝ่ายกำกับดูแลการปฏิบัติตามกฎเกณฑ์ (Compliance Department)
  - ฝ่ายปฏิบัติการหลังการซื้อขาย (Back Office Department)
  - ฝ่ายดูแลการซื้อขาย (Trading Department) สำหรับบัญชีการลงทุนของบริษัท
  - ฝ่ายการตลาด (Marketing Department) สำหรับบัญชีลูกค้าของบริษัท
  - ฝ่ายอื่น ๆ ที่อาจจะเกี่ยวข้องต่อการประกอบธุรกิจสัญญาซื้อขายล่วงหน้า (โปรดระบุ)
  
2. ในความคิดเห็นของบริษัท ระบบ/วิธีการ บริหารความเสี่ยงของบริษัทในธุรกรรมสัญญาซื้อขายล่วงหน้า ประกอบด้วยเรื่องอะไรบ้าง โปรดอธิบาย

3. ระบบบริหารความเสี่ยงในธุรกรรมสัญญาซื้อขายล่วงหน้า เป็นส่วนหนึ่งของการบริหารความเสี่ยงในระดับองค์กรรวมของบริษัท (Enterprise-wide risk management) หรือ แยกออกจากกัน ถ้าเป็นส่วนหนึ่งของ การบริหารความเสี่ยงในระดับองค์กรรวมของบริษัท (Enterprise-wide risk management) โปรดอธิบาย นโยบาย หลักการ วิธีการกำหนด นโยบาย ตลอดจนการตรวจสอบ ควบคุม กำกับดูแลให้เป็นไปตามนโยบาย

4. การทบทวน นโยบาย และระบบบริหารความเสี่ยง

- ความถี่ในการทบทวน วิธีการ/ระบบบริหารความเสี่ยงของบริษัท

- ปัจจัย หรือตัวชี้ (Indicator) อะไรบ้างที่ใช้บ่งชี้ถึงความจำเป็นในการทบทวนนโยบาย วิธีการ/ระบบบริหารความเสี่ยง

5. ระบบบริหารความเสี่ยงที่บริษัทใช้สำหรับธุรกรรมสัญญาซื้อขายล่วงหน้า มีการเชื่อมต่อกับระบบรับคำสั่งซื้อขาย และ/หรือ กับระบบหลังการขายหรือไม่ อย่างไร (real time, batch)
  
  
  
  
  
  
  
  
  
  
6. บริษัทมี Software ในการบริหารความเสี่ยง หรือไม่ พัฒนาโดยหน่วยงานใด (หน่วยงานภายในบริษัท, จัดจ้างหน่วยงานภายนอก พัฒนาระบบตามที่บริษัทกำหนด หรือ Software สำเร็จรูป โปรแกรมบูซื้อ)
  
  
  
  
  
  
  
  
  
  
7. ระบบบริหารความเสี่ยง ระบบการวางหลักประกัน การตรวจสอบวงเงินหลักประกันของลูกค้า ที่บริษัทมีนั้น สามารถเชื่อมโยงกับระบบติดตาม ดูแล ฐานะการซื้อขายในบัญชีของบริษัท (House Account) หรือบัญชีลูกค้า (Client Account) หรือไม่ อย่างไร

8. บริษัท ใช้ สมมติฐาน “what if” ของการเปลี่ยนแปลง “ราคา” และ “ความผันผวน” ในแบบจำลอง สำหรับการถือครอง account portfolios ในระบบบริหารความเสี่ยง หรือ ไม่ อย่างไร
- a. ไม่มีเลย
  - b. มีสำหรับบางบัญชี เช่น บัญชีเงินลงทุนของบริษัท (House Account) หรือ บัญชีลูกค้า (โปรดระบุ)
  - c. ทุกบัญชี
  - d. สำหรับบัญชีที่มีฐานะเกินกว่าเกณฑ์ที่บริษัทกำหนด (บริษัท กำหนดเกณฑ์อย่างไร)
9. วงเงินเบิกเกินบัญชีกับธนาคารพาณิชย์ (Overdraft Loan) หรือเงินกู้ระหว่างวัน (Intra-day Loan)
- บริษัทมีการทำสัญญาเพื่อขอเปิดวงเงินเบิกเกินบัญชีกับธนาคารพาณิชย์ (Overdraft Loan) หรือเงินกู้ระหว่างวัน (Intra-day Loan) หรือ ไม่ เป็นจำนวนกี่แห่ง เป็นจำนวนเท่าใด ใช้สำหรับธุรกรรมใดบ้าง



□ มีปัจจัยในการกำหนดวงเงินที่จัดสรรในแต่ละธุรกรรมอย่างไร

□ บริษัทมีความจำเป็นจะขอเปิดวงเงินเบิกเกินบัญชี หรือ เงินกู้ระหว่างวันสำหรับธุรกรรมสัญญาซื้อขายล่วงหน้า หรือไม่ เป็นจำนวนเท่าใด

10. บริษัท ทบทวนความต้องการวงเงินเบิกเกินบัญชี หรือวงเงินกู้ระหว่างวัน บ่อยเพียงใด

11. บริษัท มีเงินทุนเพียงพอที่จะจ่ายสำรองให้แก่ลูกค้าของบริษัท ถ้าบัญชีลูกค้าของบริษัท (Client Account) ถูกเรียกให้วางเงินประกันระหว่างวัน หรือ ไม่ อย่างไร

12. ถ้าบริษัทมีความจำเป็นเร่งด่วนที่จะต้องใช้เงิน แหล่งเงินทุนของบริษัทมาจากที่ใด
13. บริษัท มีแบบจำลอง stress test เพื่อทดสอบหาความเสียหายที่อาจเกิดขึ้นในบัญชีการลงทุนของบริษัท (House Account) และ/หรือบัญชีลูกค้าของบริษัท (Client Account) หรือไม่
- กำหนด Stress Scenario เป็นอะไรบ้าง อย่างไร
  - ทำการทดสอบ Stress Test บ่อยเพียงใด
  - ปัจจัยอะไรที่จะทำให้บริษัททบทวนแบบจำลอง stress test

14. บริษัท มีแหล่งเงินทุนสำรอง สำหรับรองรับภาระผูกพัน ที่เกิดจาก การส่งรายการซื้อขายของบริษัท ไปยังบริษัท รายอื่น ที่ไม่ได้รับการตอบรับ หรือไม่ อย่างไร (unaccepted give-up trades)
15. ระบบของบริษัท มีความสามารถในการประมาณการหรือคาดการณ์ มูลค่าหลักประกัน สำหรับฐานะ สัญญาซื้อขายล่วงหน้าที่มีแนวโน้มว่าจะสร้างภาระผูกพันต่อ บริษัท (potential positions) (มูลค่า หลักประกันนี้จะต้องรวมถึง intra-day margin call ที่อาจจะถูกเรียกด้วย) หรือไม่ อย่างไร
16. บริษัท ติดตาม ดูแล (monitor) การกระจุกตัวของ position (position concentration) ของลูกค้าแต่ละ ราย (End Client) และของบัญชีลูกค้าโดยรวม (Client Account) อย่างไร
17. บริษัท กำหนดเกณฑ์ขั้นต่ำสำหรับ การบังคับใช้ position concentration หรือไม่ อย่างไร กำหนดอย่างไร ใช้ปัจจัยอะไรเป็นเกณฑ์

18. มาตรการหรือวิธีการอะไรที่บริษัท จะดำเนินการในกรณีที่เกิด position concentration ในบัญชีลูกค้าแต่ละราย (End Client) หรือบัญชีลูกค้าโดยรวม (Client Account)
19. ปัจจัยอะไรที่บริษัทคิดว่าจะต้องคำนึงถึงมากที่สุดในการทำธุรกรรมเกี่ยวกับสัญญาซื้อขายล่วงหน้า
20. บริษัทมีนโยบายกำหนดคุณสมบัติทางการเงินของลูกค้า หรือข้อกำหนดเรื่องสภาพคล่องของลูกค้าหรือไม่ อย่างไร ความถี่ในการทบทวน credit risk เป็นอย่างไร
21. บริษัท ใช้ข้อมูลใดในการประเมินฐานะการเงินของลูกค้า
22. การกำหนด trading limit สำหรับบัญชีลูกค้า
- บริษัท มีการกำหนด trading limit สำหรับบัญชีลูกค้าแต่ละราย (End Client) หรือไม่ อย่างไร

□ บริษัท ติดตาม ดูแล (monitor) ให้เป็นไปตาม trading limit ที่ กำหนดไว้ (set) หรือไม่ อย่างไร

□ บริษัท ใช้ปัจจัยอะไร เป็นเกณฑ์ในการทบทวน trading limit (เช่น cumulative losses)

□ ความถี่ในการทบทวน trading limit เป็นเท่าใด

23. บุคคล หน่วยงาน ฝ่ายงานใด ที่ทำหน้าที่ทบทวน ฐานะการเงินของลูกค้า

24. การดำเนินการเมื่อลูกค้าของบริษัทผิดนัดวางหลักประกัน หรือ ผิดนัดชำระราคาและส่งมอบ หลักทรัพย์

□ บุคคล หน่วยงาน ฝ่ายงานใด ที่ทำหน้าที่ในการดำเนินการหากลูกค้าผิดนัดวางหลักประกัน หรือ ผิดนัดชำระราคาและส่งมอบหลักทรัพย์

- โปรดอธิบายแนวทาง กระบวนการ และระยะเวลาทั้งหมดที่บริษัทใช้ดำเนินการในปัจจุบันกรณีที่ถูกค้าผิดนัดชำระราคาและส่งมอบหลักทรัพย์

- โปรดอธิบายการดำเนินการและระยะเวลาในการดำเนินการหากลูกค้าผิดนัดวางหลักประกัน

25. บริษัทมีเกณฑ์ สำหรับการห้ามทำธุรกรรมของลูกค้าหรือไม่ อย่างไร

26. การกำหนด open position ในบัญชีลูกค้า

- บริษัท กำหนด open position ในบัญชีของลูกค้าแต่ละราย (End Client) หรือไม่ ให้ปัจจัยอะไรเป็นตัวกำหนด open position ในบัญชีของลูกค้าแต่ละราย (End Client)

- ความถี่ในการทบทวนเป็นเท่าใด?

27. วิธีดำเนินการเมื่อลูกค้า มี position เกินกว่า position limit ที่ บริษัท กำหนด
28. บริษัทมีข้อกำหนด หรือเงื่อนไข ในการบังคับฐานะของลูกค้าแต่ละราย (End Client) หรือไม่ อย่างไร
29. จำนวนบุคลากรด้าน back office ที่รับผิดชอบในแต่ละเรื่อง (trade allocation, trade reconciliation, margin, position limits, preparation and maintenance of books and records) มีกี่ท่าน
30. ในกระบวนการ reconcile ฐานะในบัญชีของบริษัท (House Account) และบัญชีของลูกค้าบริษัท สอดคล้องกับกำหนดเวลาของสำนักหักบัญชีหรือไม่ มีวิธีการ และระยะเวลาที่ใช้ อย่างไร
31. อุปกรณ์ที่สำคัญที่สุด ต่อการดำเนินการตามกำหนดเวลา (schedule) ของสำนักหักบัญชี

32. มีเหตุใดบ้าง ที่อาจทำให้การทำรายการ allocation/give-up ไม่เสร็จสิ้นภายในวันที่ซื้อขาย?

33. บริษัท มีการจัดเตรียม ระบบสำรอง และแผนปฏิบัติการเมื่อเกิดกรณีฉุกเฉินเมื่อระบบปฏิบัติการหลัก มีปัญหา หรือไม่ อย่างไร และคาดว่าจะมีการซักซ้อมแผนดังกล่าวปีละกี่ครั้ง
- มีวิธีปฏิบัติ เขียนไว้ชัดเจน หรือ ไม่
  - มีการกำหนด เหตุการณ์ ที่จะเป็เหตุให้กระบวนการทำงาน ย้ายไปใช้ระบบสำรอง
  - มีการกำหนด ขั้นตอน ระยะเวลา หน่วยงานรับผิดชอบ และ contact person

34. ในการโอนย้ายระบบปฏิบัติการหลัก ไปยังระบบปฏิบัติการสำรอง บริษัทคาดว่าจะใช้เวลานานเท่าใด

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## **Regulations**

### **Chapter 100: General Provisions**

#### **101 Governing Law**

The regulations of TCH shall be governed by and interpreted in accordance with the laws of Thailand.

In case of doubt or problem in the application or interpretation of the regulations of TCH, TCH shall make a decision. The decision of TCH shall be final and binding upon and observed by the members.

#### **102 Liabilities of TCH**

##### **102.01 Liabilities of TCH**

TCH shall be liable for damage arising from its operations in the normal course or in support of its functions in connection with the derivatives clearing services and other related services if such damage is caused by its willful act or gross negligence. However, such liability shall exclude any damage arising from or caused by an emergency situation which affects the clearing system or an error of the trading system or the clearing system on TFEX whereby TCH has exercised reasonable care and control.

##### **102.02 Liabilities of Persons Performing the Duties**

(1) The persons who perform duties or do any other act related to the performance of duties for the interest of TCH and its delegated persons in accordance with their power and duties in good faith and with the exercise of due care must not be liable for any damage that may arise there from even if any person is thereby injured.

(2) The persons who perform duties under (1) shall mean to include the Board, the Managing Director, the sub-committees appointed by the Board to perform any functions, the employees or any persons delegated by TCH.

#### **103 Rights to Data from the Clearing System of TCH**

The data recorded in or processed by the clearing system of TCH shall be the property of TCH.

#### **104 Dealing with Data of the Members and Clients**

TCH shall keep confidential and shall not disclose to any other person the data of the members and clients which is received from its operations and should not be disclosed under normal circumstances, except for data that has already been disclosed to the public in the trading procedures on TFEX or in the clearing in TCH or the disclosure according to Section 153 of the law on derivatives.

**105 Miscellaneous**

(1) TCH may disclose and disseminate its rules including any other data as TCH considers appropriate.

(2) The regulations of TCH might be amended or revised in whole or in part for suitability with the situation that may be changed or as TCH considers appropriate.

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## **Regulations**

### **Chapter 200: Definitions**

#### **201 Definitions**

“TCH” means Thailand Clearing House Company Limited.

“TFEX” means Thailand Futures Exchange Public Company Limited.

“SET” means the Stock Exchange of Thailand.

“SEC” means the Securities and Exchange Commission under the law on securities and exchange.

“Office of the SEC” means the Office of the Securities and Exchange Commission under the law on securities and exchange.

“Board” means the Board of Directors of TCH.

“Applicant” means an applicant who files an application for membership of TCH.

“Member” means a person whom is permitted by TCH to use its derivatives clearing services.

“Ordinary Member” means a member who uses the clearing services of TCH for itself, its clients, another member of TCH, or another member whom it performs the duty of clearing for.

“Executives” mean the executives according to the notification of the SEC.

“Executive director” means a person whom the company’s board of directors appoints an executive director or authorizes to make decision on the operations of the company on behalf of the board of directors.

“Department director” means a person who is responsible for functions at the level of division of a company.

“Supervisor” means a member’s officer whom is assigned by the member to supervise and be responsible for the operations of the member.

“Derivatives agent” means a person licensed to undertake derivatives business in the category of derivatives agent.

“Client” means a buyer or seller who trades the exchange traded derivatives on TFEX through a derivatives agent.

“Operating officer” means a derivatives back office operating officer of a member.

“Authorized trader” means a person in charge of transmitting the derivatives trading orders of clients into the trading system of TFEX.

“Compliance officer” means a person in charge of supervising the compliance with the regulations, circular letters and orders of TCH.

“Internal auditor” means a person in charge of auditing the internal systems and operations related to derivatives trading of a member.

“Risk management officer” means a person in charge of fixing the limits and ceilings for the trading by clients, and managing the risks in the derivatives transactions of a member.

“Clearing” means the payment of price and the provision of margin, any fees and other debts to TCH.

“Derivatives” means any contract which has any one or any combination of the characteristics according to the Derivatives Contract Act B.E. 2546, as well as its amendments from time to time, and which is as prescribed by and listed on TFEX.

“Derivatives position” means an obligation in consequence of the buying or selling of exchange traded derivatives.

“Asset account” means an account prepared by TCH for the purpose of keeping the assets of a member and a member’s clients which are received by TCH as margins and for the security in the derivatives trading and clearing.

“Position account” means an asset account prepared by TCH for the purpose of recording the derivatives position.

“Margin account” means an asset account prepared by TCH for the purpose of recording the rate or value of margin.

“House account” means an account for the derivatives trading by a member.

“Client account” means an account in the derivatives trading by a member’s client.

“Closing out the derivatives position” means the closing out of a derivatives position according to the Derivatives Contract Act B.E. 2546 and its amendments from time to time.

“Transfer of derivatives position” means the transfer of a derivatives position of one member to another member for the purpose of the clearing on behalf.

“Related person” means a related person according to the regulations of TFEX.

“Commodity” means securities, gold, crude oil, or any other property underlying the exchanged traded derivatives as specified by TFEX.

“Underlying” means the commodity or variable underlying the trading of exchange traded derivatives.

“Clearing report” means a clearing report prepared by TCH for the purpose of notifying a member to pay the price and provide an additional margin.

“Trading” means the buying or selling of exchange traded derivatives on TFEX.

“Trading transaction” means the trading of exchange traded derivatives on TFEX that has already taken place.

“Deposit of margin” means the deposit of any assets as margin in the derivatives trading and clearing in accordance with the type, rate or value prescribed by TCH.

“Margin” means the assets deposited by a member as margin in the derivatives trading according to the rate or value prescribed by TCH in order to secure the derivatives trading and clearing.

“Maintenance margin” means the minimum amount of assets which a member must deposit and maintain throughout the period of holding a derivatives position as security for the derivatives position in each month or for the opposite derivatives positions of the same underlying but different contract months.

“Inter-month spread Maintenance margin” means the amount of assets which a member must deposit as security when it holds opposite derivatives positions in the same underlying but of different contract months under 2 or more derivatives contracts.

“Variation margin” means an amount of money which a member must deposit to support the change in price its derivatives position.

“Intra-day margin” means an amount of money which a member must deposit when TCH finds that there is a drastic fluctuation in price of the exchange traded derivatives.

“Additional margin” means the amount of assets which must be additionally deposited by a member according to the type, rate or value prescribed by TCH.

“Clearing Fund” means the assets which a member must deposit for the security of the clearing system according to the exchange traded derivatives traded by the member or the derivatives position held by the member in accordance with the rules, rate or value prescribed by TCH.

“Assets for the Security” means the assets which a member must provide for the security of the derivatives clearing system in accordance with the rate or value prescribed by TCH.

“Securities” means the securities under the law on securities and exchange.

“Force majeure” means any event that may happen and could not be prevented even though appropriate care is taken as might be expected in that situation and condition.

“Risk Management Sub-Committee” means a sub-committee appointed by the Board to perform the duty of reviewing and managing the risks that may arise in the derivatives clearing.

“Business Conduct Sub-Committee” means a sub-committee appointed by the Board to perform the duty of considering the offences committed by the offenders or persons involved in the commission of offences against the regulations of TCH, and the disciplinary actions against those persons.

“Appeal Sub-Committee” means a sub-committee in charge of considering and deciding on the appeals against punishment order.



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## **Regulations**

### **Chapter 300: Members**

#### **301 Type of Members**

General clearing members are members of the futures exchange in the category of derivatives agents who are permitted by TCH to use the service of settlement of debts under derivatives contracts, made available by TCH, for a member's account, or for the account of a member's client, or for the accounts of other members, for which the member pays debts on their behalf.

#### **302 Membership Qualifications**

##### **302.01 General Qualifications**

(1) Having executives who are qualified and have no prohibited characteristics, in accordance with the law governing derivatives, or notifications of the SEC, or the Capital Market Supervisory Board, which specify other prohibited characteristics of personnel in the derivatives business;

(2) Having operating officers who are in charge of the back office system for derivatives trading, in an adequate number who can support the undertaking of the back office system in an efficient manner. Such officers may be the same persons who are in charge of the back office system in relation to the underlying commodities or variables specified in the derivatives contracts, which the member has applied to in order to use the service, but who shall not be the same persons as the investor contacts, or authorized officers, or officers supervising trading for the member's derivatives investment account;

(3) Having officers in charge of overseeing the compliance with TCH's stipulations, circular letters, or orders (compliance officer) in an adequate number which can support the undertaking of the back office in an efficient manner. Such officers may be the same persons as the officers in charge of overseeing the compliance with the stipulations, circular letters and the orders of the SET, the futures exchange, TSD, or the Office of the SEC;

(4) Having an internal auditor in charge of auditing the systems and operations relating to the derivatives trading back office, and risk management in derivatives transactions. Such officer may be the same internal auditor who is in charge of work of such nature, which is related to the underlying commodities or variable in derivatives;

(5) Not having been, or not being under the process of being, accused or sued under the law governing derivatives, or the law governing securities of the SET, or the laws regarding other financial transactions, with respect to acts which are unfair, fraudulent or dishonest;

(6) Having a computer system and computer hardware which can be connected to TCH's system, including other operating systems necessary for the performance of the back office operations, provided by TCH;

(7) Having a system reporting on the financial conditions, which can be directly connected to the work system of TCH;

(8) Having an office and adequate office equipment which show the applicant's readiness for business operations.

The rules and procedures for submitting an application for membership shall be as prescribed by TCH.

**302.02 Specific Qualifications of a General Clearing Member:**

(1) licensed to undertake the business of a derivatives agent in accordance with the rules prescribed by the SEC or the Capital Market Supervisory Board;

(\*the original provision in 302.02 (1) is to be repealed and replaced by this new provision, by virtue of TCH's Regulations, Chapter 300: Members, dated 24 November 2008)

(2) be a person being in the process of submitting an application for membership of the futures exchange, and later to be granted approval to become a member of the futures exchange;

(3) have a risk management officer in charge of determining the fund limit and the trading limit in the trading account of the member, and the trading account of a member's client. Such officer shall not be the same person as the investor contact or authorized officer; and

(4) have the financial condition and capital in accordance with the following criteria:

(4.1) shareholders' equity:

(a) have shareholders' equity of not less than Baht 100 million, for a member who carries out trading transactions on the futures exchange only; and

(b) have shareholders' equity of not less than Baht 250 million for a member who carries out trading transactions, both on the futures exchange and the underlying commodities or variables market as specified in derivatives contracts, which member specifies in its application for membership.

(4.2) maintain the Net Capital Rule (NCR) and/or the BIS Ratio or Capital Adequacy Ratio, or maintain any other capital similar thereto required by the Office of the SEC, or an agency in charge of overseeing the member's business operations.

(5) have, and prove that it has, a system to check and control the derivatives position of the member's account and the account of the member's client;

(6) have, and prove that it has, a system to check and control that the placement of margins by each client will not be lower than the amount specified by TCH;

(7) have policies and procedures for the management of credit risk, operational risk, market risk arising from changes in the prices of derivative contracts, or prices of commodities or variables underlying the derivatives contracts, and legal risk, which can support the undertaking of the derivatives business in an efficient manner, including

controlling and monitoring measures to ensure that the operations will be as prescribed by TCH.

### **303 Membership Admission**

TCH shall accept applications for membership from time to time and make an announcement thereof in general. The acceptance of membership applications by TCH shall be in accordance with the criteria prescribed by TCH.

### **304 Membership Admission Process**

#### **304.01 Membership Admission Process**

(1) An applicant must file a membership application together with documents and evidence in accordance with the criteria prescribed by TCH;

(2) During its consideration of the application, TCH may prescribe additional conditions and summon the applicant to provide a clarification, or submit additional documents or evidence, as deemed appropriate.

(3) TCH shall notify the applicant of the result of its consideration within ninety (90) days from the date TCH receives all documents and evidence.

(4) TCH shall notify the applicant of the result of its consideration of the approval of membership, and inform the applicant to show the documents and evidence in accordance with the criteria prescribed by TCH. The applicant who is granted approval to become a member shall pay a membership fee in the amount, and within the period of time, specified by TCH.

(5) When the applicant has fully complied with the conditions under Regulation 304.01(4), TCH will designate, and notify the applicant of, the commencement date of its membership.

TCH's consideration of the admission of membership is final.

#### **304.02 Change in, or Revocation of, Membership Approval**

TCH may change or revoke its approval of the membership of an applicant under Regulation 304.01(4) upon the occurrence of any of the following events:

(1) any fact or evidence given or submitted by the applicant to TCH, to support its consideration of the membership application, is false or untrue; and

(2) there is any circumstance, act, or ground which, in TCH's opinion, causes the applicant to be disqualified and unsuitable to be a member.

### **305 Change in Membership Category**

If any member wishes to change their membership category, such member must possess the qualifications, and submit an application for the new membership category

applied for, according to Regulation 302. Such membership admission shall comply with Regulation 303.

### **306 Rights of a Member**

#### **306.01 Rights of a General Clearing Member**

(1) to carry out the settlement of debts under derivatives contracts in the system of TCH for the member's account, or for the account of the member's client, or for the accounts of other members, for which the member pays debts on their behalf.

(2) to receive any other services made available by TCH, provided that TCH may render different services to the members based upon the type of underlying commodities or variables specified in the derivative contracts.

\*TCH may restrict the member's rights under (1) or (2) exclusively in relation to derivative contracts with any type of underlying commodities and variables, as approved by TCH, on a case by case basis.

(\*provision added to the last paragraph of 306.01 by virtue of TCH's Regulations, Chapter 300: Members, dated 24 November 2008)

#### **306.02 Assignment of Membership Right**

A member's membership right is personal, and may not be assigned to any other person, unless such transfer is permitted by TCH on a case by case basis, or is in accordance with the rules prescribed by TCH.

(the original provision in 306.02 is repealed and replaced by this provision, by virtue of TCH's Regulations, Chapter 300: Members, dated 24 November 2008)

### **307 Duties of a Member**

#### **307.01 Duties of a General Clearing Member**

\*(1) to comply with the law on derivatives, the stipulations of the SEC, the Capital Market Supervisory Board and the Office of the SEC, the regulations, circular letters or orders of TCH, and to consent to TCH's punishment in the case of the member's violation or non-compliance. The member has the duty to cause its clients to acknowledge and consent to comply with the rules related to the clients;

(\*the original provision in 307.01 (1) is repealed and replaced by this new provision, by virtue of TCH's Regulations, Chapter 300: Members, dated 24 November 2008)

(2) to maintain the membership qualifications insofar as the member remains a member;

\*Where the member is unable to maintain the specific qualifications of a general clearing member in relation to the financial conditions and capital, the member shall comply with the rules and procedures specified by TCH.

(\*added to the second paragraph of 306.0 (2) by virtue of TCH's Regulations, Chapter 300: Members, dated 30 December 2009)

(3) not to cooperate with or assist other members or other persons in the violation of, or non-compliance with, Regulation 307.01 (1);

(4) not to undertake any acts which can be regarded or reasonably believed to be the avoidance of, or non-compliance with, Regulation 307.01 (1);

(5) to have a suitable internal control system that is able to control and supervise the performance of duties of the executives and the employees, or operating staff of the member, to ensure their compliance with Regulation 307.01 (1), and not to commit any violation or any act which can be regarded or reasonably believed to be the avoidance of or non-compliance with Regulation 307.01 (1);

The member shall be responsible for the actions of its executives, operating staff, agent or person designated by the member, which violates or can be regarded or reasonably believed to be the avoidance of or non-compliance with Regulation 307.01 (1)

(6) to report the violation of or non-compliance with Regulation 307.01 (1), (2), and (3), to TCH (self-reporting) immediately upon the member or its executives, employees, or operating staff, violating or failing to comply with Regulation 307.01 (1), (2), and (3);

(7) to provide cooperation in the performance of duties of TCH's employees or officers, or any persons designated by TCH, or its Business Conduct Sub-committee or Appeal Sub-Committee;

(8) to, on every business day, check the accuracy of the value of the margin and the derivatives position of the member or the client of the member, in the report delivered by TCH to the member. If the member finds that the value of the margin and the derivatives position of the member, or the member's client, is incorrect or inaccurate with the data on TCH's report, the member must notify TCH of such inaccuracy within the business day following the date the member becomes aware of such inaccuracy;

(9) to place the margin with TCH in accordance with the rules, procedures, and conditions as prescribed by TCH;

(10) to prepare its clients' derivatives position accounts and asset accounts, and keep them strictly separate from its own derivatives position account and asset account;

(11) to keep and update data relating to the trading, settlement, and placement of margin, of the member and its clients for a period of ten (10) years, or as deemed appropriate by TCH;

(12) to submit any reports as requested by TCH, wherein such reports must be accurate, complete and up to date in accordance with the rules and conditions as prescribed by TCH. If the member finds that any report submitted by it is inaccurate, incomplete, or not up to date, the member must amend it to ensure that it is accurate, complete and up to date, and must immediately notify TCH of such amendment together with the reasons therefor;

(13) to carry out the settlement of debts under the derivatives contracts in accordance with the rules, procedures, and conditions prescribed by TCH;

(14) to pay fees, penalties, or other expenses as prescribed by TCH;

(15) to place property with TCH for the security of the system for the settlement of debts under the derivative contracts traded on the futures exchanges, as prescribed by TCH;

(16) to render cooperation and allow TCH or its designated persons to examine the member's documents and accounts relating to its operations, financial condition, internal audit and risk management, including its computer system and computer hardware;

(17) to allow TCH to disclose or exchange data relating to the member or its clients, which is related to derivatives trading, the settlement of debts under derivatives contracts, management of risks related to derivatives trading, the settlement of debts under derivatives contracts, and the violation of and non-compliance with the stipulations, circular letter or orders of TCH, including the consideration of penalties for the member, to the SET, the futures exchange, the Office of the SEC, the Bank of Thailand, the clearing house for commodities or variables underlying the derivatives contracts, and other agencies, which is considered compliance with the law; and

(18) to undertake acts to maintain the benefits and interests of TCH and not to commit any act that is detrimental to the reputation of TCH.

### **308 Punishment and Termination of Membership**

#### **308.01 Penalties**

If any member is in violation or is involved in non-compliance with the law on derivatives, stipulations, circular letters or orders of TCH, TCH may impose any of the following single or combined penalties against it:

- (1) warning;
- (2) probation;
- (3) reprimand through public announcement;
- (4) fine;
- (5) determining, limiting, and/or reducing the limit of the derivative position holding;
- (6) ordering the member to transfer the derivatives position, including the margin, in the account of its client to another member, as TCH deems appropriate;
- (7) closing out the member's or its clients' derivative position;
- (8) limitation of the scope of its use of TCH's services;
- (9) temporary suspension of the service of settlement of debts under the derivative contracts;
- (10) termination of membership; and
- (11) any acts as TCH deems appropriate.

### **308.02 Reasons for Termination of Membership**

TCH may terminate a member's membership in any of the following cases:

- (1) the member resigns by submitting a resignation letter to TCH;
- (2) the member lacks any qualification under Regulation 302.01;
- (3) the member lacks any qualification under Regulation 302.02, specifically for general clearing members;
- (4) the member violates or fail to perform its duties under Regulation 307, which is of a severe nature;
- (5) the member's operations or financial condition might be detrimental to the settlement system of TCH, and/or to the country's economy.

The person whose membership is terminated shall remain obliged to make payment of any outstanding debts owed to TCH.

### **308.03 Announcement of the Names of Members whose Membership has been Terminated**

When any member is no longer a member, TCH shall notify in writing to the member whose membership is terminated, and other members, of such termination, and shall publicly announce the name of the member whose membership is terminated, in accordance with the method as TCH deems appropriate.

### **308.04 Readmission of Members whose Membership has been Terminated**

Any member whose membership has been terminated may re-submit an application for membership, if their membership was terminated according to Regulation 308.02 (1), or for not less than five (5) years from the date of termination of membership, or if there is any change in the structure of the shareholders, executives, board of directors, or management policy of the member company, and TCH deems it appropriate to re-admit such member.

### **308.05 Return of Property to a Members whose Membership has been Terminated**

When the membership of a member has been terminated under Regulation 308.02, TCH shall return the property placed by such member to secure the trading of derivative contracts, and for the security of the settlement system under the derivative contracts traded on the futures exchange, including the remaining benefits therefrom after the deduction of all debts that the member owes to TCH, within the period of time prescribed by TCH.

### **309 Membership Fee**

The member is obliged to pay fees and expenses related to the provision of debt settlement service by TCH in accordance with the rules and procedures as prescribed by TCH.



## Procedures

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## **Procedures**

### **Chapter 300: Members**

#### **304 Membership Application Process**

##### **304.01 (1) Membership Application Process**

An applicant must file a membership application in the form prescribed by TCH, together with at least the documents listed below, which are certified to be correct copies by the member's person who has management authority:

(1) the evidence of the applicant's registration with the Ministry of Commerce, or the copies of its certification document, memorandum of association, list of shareholders, and articles of association, which are certified by the Ministry of Commerce no earlier than three (3) months before the date of submitting a membership application;

\*(2) a copy of the general clearing membership applicant's license to undertake derivatives trading business as a derivatives agent, in accordance with the rules prescribed by the SEC or the Capital Market Supervisory Board, or the evidence which shows that the general clearing membership applicant is in the process of applying for a license from the SEC or the Capital Market Supervisory Board;

(\*the original provisions in (2) of 304.01 (1) shall be repealed and replaced with these new provisions, by virtue of TCH's Procedures, Chapter 300: Members, dated 24 November 2008);

(3) the copies of the evidence which shows that the applicant is a member of the futures exchange, or of the evidence which shows that the applicant is in the process of submitting an application for membership of the futures exchange, only for the applicant who has applied for general clearing membership;

(4) the copies of the evidence which shows that the applicant has an operating officer, i.e. an officer in charge of overseeing the compliance with TCH's stipulations, circular letters, or orders (compliance officer), an internal auditor, and a risk management officer, in accordance with the rules prescribed by TCH, or the copies of the evidence which shows that the applicant is in the consideration process of recruiting any persons to perform such work, in accordance with the rules prescribed by TCH;

(5) the copies of the evidence relating to the applicant's financial condition, such as their latest semi-annual financial statement and annual report, which have been audited by their auditor, etc.;

(6) the copies of the applicant's reports regarding the calculation of net capital or net capital ratio and/or BIS Ratio or Capital Adequacy Ratio, or on the maintenance of any other capital similar thereto, which are the daily reports of seven (7) consecutive business days, or the periodical reports, as required by an agency in charge of overseeing the member's business operations, for the seven (7) consecutive periods, before the date of submitting a membership application;

(7) the copies of the documents or evidence in relation to the applicant's risk management policy or system;

(8) the copy of the contingency plan, which clearly describes the nature of the circumstances which are emergency situations;

(9) the copies of the evidence which shows the readiness of the applicant's computer system, and equipment which can be connected to the computer system of TCH, including other operational systems necessary for the back office operations, which are made available by TCH;

(10) the copies of the evidence which shows the readiness of the system reporting the financial condition of the applicant, which can be directly connected to the work system of TCH;

(11) the copies of the evidence which shows that the applicant has an office and adequate office equipment, which can show that the applicant is ready for business operations; and

(12) other documents and evidence, as specified by TCH.

### **307 Duties of a Member**

#### **\*307.01 (2) Action in the case that the general clearing member is unable to maintain the qualifications in relation to the financial condition and capital funds**

(1) where the member has shareholders' equity lower than the amount specified by TCH, the member shall undertake the following acts:

(1.1) immediately notify such event in writing to TCH;

(1.2) submit the plan to rectify the shareholder's equity to TCH within 60 days from the date the member is unable to maintain the shareholders' equity. This is in accordance with the procedures and within the period of time specified by TCH, except in the case where the member is able to maintain the shareholders' equity in accordance with the specified rules within the following accounting period;

(1.3) maintain the shareholders' equity, so that it does not fall below the specified amount within 120 days from the date the member's shareholders' equity drops lower than such amount; and

(1.4) in the case the member fails to submit the plan to rectify the shareholders' equity under (1.2), TCH may terminate its membership;

(2) where the member is unable to maintain the net liquid capital, in accordance with the rules specified by the SEC or the Capital Market Supervisory Board, the member must undertake the following acts:

(2.1) immediately notify such event in writing to TCH;

(2.2) submit a report on the calculation of net liquid capital to TCH every day. This must be done by the end of the following business day, from the date the member is unable to maintain the net liquid capital, until the member can maintain the net

liquid capital in accordance with the specified criteria for a period of seven (7) consecutive business days, or a period as designated by TCH;

(2.3) submit the plan to rectify the maintenance of the net liquid capital to TCH within thirty (30) days from the date the member is unable to maintain the net liquid capital, in accordance with the procedures and within the period specified by TCH, except for the member who can maintain the net liquid capital, in accordance with the specified criteria for seven (7) consecutive business days or the period prescribed by TCH;

(2.4) the member must rectify the maintenance of the net liquid capital, so as to comply with the specified criteria, within 120 days from the first day it is unable to maintain the net liquid capital; and

(2.5) where the member fails to submit the plan to rectify the maintenance of the net liquid capital as prescribed above, TCH may terminate the member's membership.

Where the member is unable to rectify the shareholders' equity under (1), or unable to rectify the maintenance of the net liquid capital under (2), TCH may terminate the member's membership.

(\*the provision was added to the second paragraph of 307.01 (2) by virtue of TCH's Procedures, Chapter 300: Members, dated 30 December 2009)

#### **307.01 (12) Duties of a Member in Submission of Reports**

The member shall submit reports in accordance with the following criteria:

(1) the member must submit the reports of the types, and within the periods of time, as specified below to TCH, in the form of a hard copy and/or through a computer system connected to TCH's system:

\*(1.1) a report on the holding of the derivatives position of the client shall be submitted in the form, and within the period of time specified by TCH, at the end of every business day;

(\*the original provision in (1.1) of 307.01 (12) is repealed and replaced by this new provision, by virtue of TCH's Procedures, Chapter 300: Members, dated 19 October 2007)

(1.2) a report on the net liquid capital on the last business day of the month shall be submitted by the seventh day of the following month;

(1.3) a report on the financial condition and a report on income and expenditure, as follows:

\*(1.3.1) for a monthly period, the reports shall be submitted by the 14<sup>th</sup> day of the following month;

(\*the original provision in (1.3.1) of 307.01 (12) is repealed and replaced by this new provision, by virtue of TCH's Procedures, Chapter 300: Members, dated 30 December 2009);

(1.3.2) for the first 6-month period of an accounting year, the reports shall be submitted within three (3) months of the end of such accounting period; and

(1.3.3) for an accounting year, the reports shall be submitted within four (4) months from the end of such accounting year;

(1.4) an internal audit report, and any opinion on the member's back office system or operations, as well as the member's risk management, specifically with respect to the parts that are material, including a report on the results of the member's significant acts, as recommended by an internal auditor, shall be submitted once a year; and

(1.5) a report on the compliance with TCH's stipulations, circular letters, or orders (compliance report), specifically with respect to the parts that are material, including a report on the results of the member's significant acts, as recommended by its compliance officer in charge of overseeing the compliance with TCH's stipulations, circular letters, or orders (compliance officer), shall be submitted once a year.

(2) The member must report to TCH any of the following circumstances that may adversely affect its derivatives transactions, together with the supporting reasons, by the end of the business day following the date on which the member is aware of such circumstances:

\*(2.1) when its net liquid capital, or the net liquid capital ratio at the end of any business day, drops to a level below or equivalent to, three (3) times the minimum threshold that must be maintained, as prescribed by the SEC or the Capital Market Supervisory Board;

(\*the original provision in (2.1) of 307.01 (12) is repealed and replaced by this new provision, by virtue of TCH's Procedures, Chapter 300: Members, dated 24 November 2008)

(2.2) when there is a significant change in the company operations, such as a change of a director, manager or a person with management authority, a merger, a change in operational structure, or a change in the shareholding ratio of a major shareholder representing more than twenty-five percent (25%) of its total shares; or

(2.3) any other circumstances that may adversely affect the member's operations, financial condition, and liquidity.

(3) the member shall have such reports, submitted in the form of a hard copy, certified by its authorized directors, as per the certificate of partnership or company registration issued by the Department of Business Development, the Ministry of Commerce.

For the purpose of overseeing and examining the settlement of debts, financial conditions, and the operations of a member, TCH may notify the member to submit other reports and designate the time of such submission as it deems appropriate.

### **\*309 Membership Fee**

TCH shall collect fees and expenses related to TCH's provision of debt settlement services from the members in the following rates:

- (1) a membership admission fee at the rate prescribed by TCH from time to time;
- (2) an annual fee at the rate of Baht 300,000 per annum, which shall be paid annually in advance, in accordance with the calendar year, by the end of the 15<sup>th</sup> day of January of every year. Where the membership of the member commences during any calendar year, the member is still required to pay for the full year's fee; and
- (3) a settlement service fee at the rate prescribed by TCH, for each type of derivatives contract.

(\*the original provision in 309 is repealed and replaced by this new provision, by virtue of TCH's Procedures, Chapter 300: Members, dated 29 February 2008)

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## **Regulations**

### **Chapter 400: Clearing**

#### **401 Novation Process**

TCH will provide the derivatives clearing services to its members in each category as prescribed by TCH. TCH shall be a central counterparty for its members by becoming a substitute buyer or a substitute seller to its members for every derivatives transaction immediately after the trading on TFEX takes place. This novation process also includes the derivatives positions transferred to a member for the clearing purpose.

#### **402 Clearing Through the Clearing System**

The clearing through the clearing system shall be carried out by a member who is authorized by TCH in accordance with the rules, condition and procedures prescribed by TCH.

In order to ensure the use of a member's computer system to be compliance with the standards prescribed by TCH, and to prevent any damage that may be caused to the clearing system, TCH may:

- (1) inspect the computer hardware or software which is connected to the clearing system;
- (2) require the member to make any modification or improvement to the computer hardware or software which is connected to the clearing system;
- (3) prohibit the member from using all or any part of the computer hardware or software which is connected to the clearing system within a period of time as TCH considers appropriate.

The member must be responsible for any act carried out in the clearing system either by itself or its agent who is permitted by it or by TCH to use its computer system.

#### **403 Preparation and Keeping of Assets**

##### **403.01 Preparation and Keeping of TCH's Asset**

In the provision of its clearing services, TCH shall prepare and keep its asset in the separated account from the accounts of the members and those of the members' clients. TCH may permit a member to open several accounts for keeping the assets.



#### **403.02 Account Opening**

When TCH admits any person as a member, such member must open the accounts for clearing purpose with TCH by separating their house account and client account in accordance with the rules, procedures and conditions prescribed by TCH.

The accounts for clearing purpose can be classified according to their operating objectives as position account, margin account and other accounts as designated by TCH. The rules and procedures for recording and keeping assets in respective types of accounts may be different in accordance with the rules, procedures and conditions prescribed by TCH.

TCH will provide services to the members according to the types of accounts which the members open with TCH only. In applying for account opening under paragraph one, the member must open both a position account and a margin account with TCH and may choose to open some or all types of accounts as designated by TCH.

#### **403.03 Recording of Position Account**

TCH shall record the derivatives position in the account for a member who buys or sells exchange traded derivatives according to the TFEX trading data in accordance with the rules as follows:

(1) In the case that the member buys or sells exchange traded derivatives for the purpose of opening a derivatives position, TCH shall make an entry in the position account of the member or the member's client, as the case may be.

In case TFEX change a derivative position due to the corporate actions or corporate entitlements of listed company issuing the underlying common stocks, TCH will adjust the outstanding derivatives position in accordance with the modification using the calculation which is notified by TCH case by case.

(2) In the case that the member buys or sells exchange traded derivatives for the purpose of closing out a derivatives position, TCH shall deduct a position from the account of the member or the member's client, as the case may be; provided that where the member does not have a sufficient derivatives position to close out the position and does not amend the trading transaction through the trading system of TCH, TCH shall make an entry in the position account of the member or the member's client, as the case may be, and it shall be deemed that the member has opened a derivatives position according to (1).

(3) On the maturity date of the exchange traded derivatives, if it appears that there is a outstanding derivatives position in a position account of the member or the member's client, TCH shall close out the position by deducting such position from the accounts on that day.

(4) In the case of an instruction to close out the derivatives position by operation of law or the Court's order, TCH shall close out such derivatives position on that date.

#### **403.04 Adjustment of Margin Account**

TCH shall adjust the margin account in accordance with the rules regarding the deposit of margins in the derivatives clearing system as prescribed by TCH.

### **404 Clearing Reports**

#### **404.01 Preparing and Submitting of Clearing Reports**

Preparing for clearing reports shall be in accordance with the following rules:

- (1) TCH will evaluate the value as shown below at the end of trading day.
  - (1.1) Options value (Rules 405.02)
  - (1.2) Closing value of Futures contracts (Rules 405.03)
  - (1.3) Exercise value (Rules 405.04)
  - (1.4) The required margin value based upon the derivatives position in the house account and client account in accordance with the rules regarding the deposit of margins in the derivatives clearing system as prescribed by TCH.

TCH will calculate the required margin value in house account as net margining while the required margin value in client account is calculated from the margin and position information that the member is obligated to submit to TCH at the end of trading day. However, if the margin value which the member must place for the client account is lower than the minimum risk value calculated by TCH, TCH will calculate the margin value in this account as gross margining based on derivatives positions in the clearing system.

(2) TCH shall prepare clearing reports by separating the information for the member's house account and client account. Such reports shall consist of the data on outstanding derivatives position, the data on margin and other data for clearing purpose as prescribed by TCH.

(3) TCH may prepare any reports other than the clearing reports prescribed under (2) for the member to acknowledge and/or proceed with the clearing of any other debts not notified in the clearing reports.

TCH shall send the clearing reports to the member via an electronics system of TCH. In the case of disruption of the system connected between the member's system and TCH's system, the member may obtain such clearing reports from TCH.

#### **404.02 Binding Effect of the Clearing Reports**

In the clearing and deposit of margin by the member, it shall be deemed that the data in the clearing reports and other reports under the rule 404.01 are correct and that the member agrees to accept and be bound by the same.

#### **405 Clearing**

##### **405.01 Clearing Process**

The member must carry out a clearing procedure by separating its house account and client account, and must not setoff the derivatives positions in the member's house account and client account or in the different clients.

##### **405.02 Options value**

A buyer has a responsibility to make a payment for buying options to seller by calculating from an executed price of options as specified in TFEX rules. TCH will calculate the options value as follow:

- (1) For physical delivery: Executed Price multiplies by Options Position and Unit of underlying per contract
- (2) For Cash settlement: Executed Price multiplies by Options Position and Multiplier

The seller has the rights to receive money for selling options (premium received) as shown in TCH clearing report.

##### **405.03 Closing value on Futures**

TCH will close the positions at the end of market closing time of last trading day by calculating the closing value as follow:

- (1) Overnight Position  
TCH will calculate the difference price between settlement price of last trading day and final settlement price multiply by outstanding positions and multiplier
- (2) Today Trades Position  
TCH will calculate the difference price between final settlement price and executed price multiply by outstanding positions and multiplier

#### **405.04 Exercise value**

When the member is requested to comply with the obligation of options position on the last trading day which is prescribed by TFEX, TCH will calculate the exercise value as follow:

**(1) Physical Delivery**

Strike price multiplies by number of exercise positions and unit of underlying per contract. Then the member who holds long call options and short put options must pay the exercise value to TCH in order to receive the underlying from TCH.

The member who holds short call options and long put options has the obligation to deliver the underlying to TCH and receive the exercise value from TCH.

**(2) Cash settlement**

The difference price between settlement price and strike price multiply by number of exercise position and multiplier. Then the member who holds short put or long call options must pay the exercise value to TCH.

The member who holds short call options and long put options has the rights to receive the exercise value from TCH.

#### **405.05 Clearing Method**

The member may carry out a clearing by cash or non-cash assets in accordance with the rules, procedures and conditions prescribed by TCH.

**(1) Clearing by cash**

(1.1) For the purpose of carrying out a clearing, the member shall maintain a full and correct amount of fund in its deposit account with a commercial bank acting as a clearing agent as designated by TCH in accordance with the clearing report of TCH and within the time prescribed by TCH.

The clearing by cash shall be deemed valid when TCH has received the transfer of a full and correct amount of fund to its bank account in accordance with its clearing report.

(1.2) For the purpose of accepting a clearing, the member shall file an application for acceptance of clearing in order to request for the transfer of fund to its bank account according to the clearing report of TCH in accordance with the procedures and within the period of time prescribed by TCH.

**(2) Clearing by non-cash assets**

The member wishing to carry out or accept a clearing by other type of asset other than cash must obtain the prior permission of TCH by in accordance with the rules, conditions and procedures prescribed by TCH.

#### **405.06 Clearing Schedule**

The member has the duty to carry out a clearing and deposit the margin according to the clearing report or any other report within the period of time prescribed by TCH.

#### **406 Exercise Options**

The member who holds long options in house account or member's client account can request for the obligation of options on last trading day which is prescribed by TFEX under the rules, conditions and procedures as follow;

##### **406.01 Exercise Request**

The member who holds long options in house account or member's client account can submit an exercise request through the clearing system within the time period which is prescribed by TCH.

When TCH receives an exercise request, TCH will process as per member's requested. However, TCH can deny an exercise request through the clearing system, if TCH found out a fact or possible reason that this request conflicts with TCH rules or effects to the clearing system.

The member can deny an exercise request through the clearing system within the time period and procedure which are prescribed by TCH.

##### **406.02 Automatic Exercise**

For the benefits of members who holds long positions in house account or member's client account, when the difference price between settlement price and strike price on the last trading day of such options which caused the member has rights to receive the money from exercise in the higher rate or value which TCH prescribe. If the member does not deny the automatic exercise within the procedure which is prescribed by TCH, TCH bound the member accepts automatic exercise through the clearing system as the procedure which is prescribed by TCH.

The member who holds long positions must be obligated as exercising in the aforementioned paragraph.

##### **406.03 Assign Exercise**

TCH will randomly select the member whom holds short positions both house account and member's client account to comply with the obligation if it has an exercise as the procedure which TCH prescribes. TCH will notify the exercise result and exercise value to member through the clearing system.

The member who holds short positions must be obligated as shown in the clearing report for exercise which is arranged by TCH.

#### **407 Transfer of Derivatives Position**

In the cases as set out below, the member may transfer the outstanding derivatives position in its position account or that of its client for the purpose of the clearing on behalf in accordance with the rules, conditions and procedures prescribed by TCH.

(1) In the case of a transfer by operation of law or the Court's order, or in the case of a related person or the same client;

(2) In the case of an incorrect trading, whereby the outstanding derivatives position in the member's account shall not be transferred to its client account;

(3) In the case of malfunction of the member's computer system.

#### **408 Amendment of Trading Transactions**

The member may amend a trading transaction through the clearing system of TCH in accordance with the rules, procedures and conditions prescribed by TCH, provided that such amendment can be made only to the following particulars:

(1) Type of trading account opened with TCH;

(2) Number of trading account;

(3) Type of buyer or seller;

(4) Open or close derivatives position.

The member may amend the particulars of trading transaction other than those specified in paragraph one only when permission has been obtained from TCH.

#### **409 Cancellation of Trading Transactions**

TCH may cancel the member's derivatives trading transaction when it receives a request for such cancellation from TFEX, provided that the counterparty member shall remain responsible for expenses arising as a result of the provision of clearing services by TCH or the penalty in full.

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## **Procedures**

### **Chapter 400: Clearing**

#### **402 Clearing Through the Clearing System**

##### **402.01 Standards of the Member's Computer System Connected to the Clearing System**

A member may connect its computer system to the clearing system after obtaining a written permission from TCH. The member's computer system must consist of computer hardware and software which are used to connect to the clearing system. The functions of the member's computer system must meet the standards prescribed by TCH or a person designated by TCH to be a service provider.

##### **402.02 Connection of Computer Hardware Used in the Clearing**

(1) The member may connect its computer hardware to the clearing system for the purpose of recording or receiving the clearing data from the clearing system connected to its computer system. Such connection of computer hardware must be approved by TCH in accordance with the rules, conditions and procedures prescribed by TCH.

(2) The member may allow any person as permitted by the member to connect his computer hardware used in the clearing to the member's computer system, which is connected to the clearing system, to enable such person to record the clearing data into the member's computer system directly or to allow such person to receive data from the clearing system through such connection. The connection of computer hardware must be approved by TCH in accordance with the rules, conditions and procedures prescribed by TCH.

(3) In any case whatsoever, the member must be liable to any damage caused or may be caused to the clearing system due to the connection of its computer hardware, or its permission of the connection of any person's computer hardware to its computer system that is connected with the clearing system.

##### **402.03 Installation of Computer Hardware Used in the Clearing**

(1) The member must install its computer hardware used in the clearing which is connected to the clearing system only at each of its offices, unless a permission is obtained from TCH in the case that the member wishes to install such computer hardware outside its office.

(2) The member must inform TCH of the places of installation of its computer hardware used in the clearing, the types and number of such computer hardware, including the department and personnel responsible therefore, as well as the policy to allow the use of its computer system within the period prescribed by TCH.



#### **402.04 The Use of Computer Hardware or Software by the Member in the Clearing**

(1) The member may use its own computer software or that of a system developer in connecting to the clearing system only with the permission of TCH in accordance with the following rules:

(1.1) The member must submit the documents or media specifying details of the computer software used in the clearing as prescribed by TCH, and must certify that its computer system has the functions that are in accordance with, are not in contravention of the requirements of TCH, and does not cause any damage to the clearing system. The member must also certify that the operation of its computer system meets the standard as required under the rule 402.06.

(1.2) In the case that the member uses the computer system or computer software which is developed by a system developer for the clearing purpose, the member shall cause such system developer to certify that it possesses the qualifications under (2), and that the computer software or the functions of the computer system of such member are in accordance with, not in contravention of the requirements of TCH, and does not cause any damage to the clearing system, including that the operation of its computer system meets the standard as required under the rule 402.06.

TCH may require the member to procure or change the person who inspects and certifies the functions of its computer system and computer software as deemed appropriate.

(1.3) The computer system and/or computer software of the member and/or the system developer must pass the operational test in accordance with the rules, conditions and procedures prescribed by TCH.

(2) The member's system developer must possess or maintain the qualifications in accordance with the following criteria:

(2.1) has a secured financial condition and is not exposed to any risk that may adversely affect its business operation;

(2.2) is experienced in developing and providing services related to computer software for not less than 2 years before the filing of application, or within a period as TCH deems appropriate;

(2.3) has the executives who are capable and honest, and have business ethics and experience in the business of computer system development;

(2.4) has a management system in relation to the development of computer software and provides computer software service that is acceptable according to international standards or the standards recognized by TCH;

(2.5) has a sufficient number of personnel who are knowledgeable, capable and experienced in the development of computer software and provision of computer software service related to the clearing system.

(3) In the case that TCH is of the opinion that the member's system developer is unable to maintain the above qualifications, or has falsely certified the functions of the computer system or computer software used in the clearing which is connected to the clearing system, which may cause damage to the clearing system, TCH may prohibit the member from using such computer system or computer software or require the member to change its system developer or do any other acts as TCH deems appropriate.

(4) The member must be liable for any damage that is or may be caused to the clearing system as a result of the use of the computer software used in the clearing.

In the case that the member is a member of TFEX who has been permitted to connect its computer system used in the trading, and has submitted the documents and evidence in accordance with the rules prescribed by TFEX, TCH may consider waiving its requirement for the member to submit the documents or media specifying the details of the computer software in accordance with the rules prescribed by TCH, or may require the member to submit additional documents and evidence as TCH deems appropriate.

#### **402.05 Change or Modification to the Member's Computer System**

(1) In the case that the member wishes to make any change or modification in connection with its computer system as described below, the member shall comply with the rule 402.04(1) prior to commencing the use of the changed or modified computer system:

(1.1) change of the system developer;

(1.2) change of technology of the computer software;

(1.3) change of the functional specification of a part of the member's computer system relating to its clearing which is connected to the clearing system;

(1.4) other matters as prescribed by TCH.

(2) In the case that the member wishes to make any change or modification in connection with its computer system as described below, the member shall report to TCH in the form prescribed by TCH in accordance with the rule 402.04(1)(1.1) and (1.2) prior to commencing the use of the changed or modified computer system:

(2.1) change of the network architecture of the member's computer system that is connected to the clearing system;

(2.2) change of the site of a server of the member's computer system that is connected to the clearing system;

(2.3) other matters as prescribed by TCH.

(3) In the case that the member makes any change or modification in connection with its computer system as described below, the member shall report to TCH in the form and within the period prescribed by TCH:

(3.1) change of the network architecture of the computer system of the member's branch office;

(3.2) change of the functional specification of a part of the member's computer system which is related to its clearing other than as described in (1.3);

(3.3) change of the site of a server of a computer system of the member's branch office;

(3.4) change or alteration of the management and control of the operational security systems (Security Management);

(3.5) other matters as prescribed by TCH.

(4) The member shall have the measures to strictly control and supervise the change or alteration in connection with its computer system used in the clearing as permitted by TCH so as to prevent any damage that may be caused to the clearing system.

In the case that the member is a member of TFEX who is required to report any change or modification in connection with its computer system used in the trading in accordance with the rules prescribed by TFEX, TCH may consider waiving its requirement for the member to report on any change or modification in connection with the computer system in accordance with the rules prescribed by TCH, or may require the member to make an additional report as TCH deems appropriate.

#### **402.06 Readiness for the Use of the Member's Computer System**

The member must be prepared for the use of its computer system as follows:

(1) The member must have in place the following management and control of the operational security systems (Security Management) which must be in accordance with the standards prescribed by TCH in the attachment hereto:

(1.1) a physical security system in the site where its computer hardware used in the clearing which is connected to the clearing system is located;

(1.2) a network security system to prevent unauthorized persons from accessing to the system and acquiring or altering data from the clearing;

(1.3) a user authentication and privacy system to confirm that the system user is an authorized person, as well as to protect the client's privacy;

(1.4) an information security standard;

(1.5) other matters as prescribed by TCH.

(2) The member must have in place the backup plan and backup system for its computer system which is connected to the clearing system, which must be capable of immediate implementation to cope with the circumstances where the member's computer system is malfunctioning, and must arrange for a test of such backup system at least once a year. The member must also make a report on such backup plan and backup system, as well as the outcome of the test of the backup system to TCH within the prescribed time.

(3) The member must participate in a test of the clearing system, the backup clearing system and the use of backup computer system, which are provided by TCH for the member in the case that the member's backup system is malfunctioning, as required by TCH, and must report on the outcome of such test to TCH. Such report must be certified by the authorized signatory according to a list which the member has given to TCH.

(4) The member must have a sufficient number of personnel in charge of supervising its computer system that is connected to the clearing system in order to coordinate with TCH during and outside the business hours.

(5) The member must certify its computer system or computer software used in the clearing in accordance with the rule 402.04(2)(2.1) and (2.2) every two years.

#### **403 Preparation and Keeping of Assets**

##### **403.02 Account Opening**

The member must open the accounts for clearing purpose in accordance with the following rules:

(1) The member must submit an application for account opening according to the form prescribed by TCH, and must have a system that is compatible to and can be connected with the clearing system of TCH.

(2) The member may open the following accounts as provided by TCH in accordance with the objectives of the clearing:

- (2.1) position account;
- (2.2) margin account;
- (2.3) market making account; and
- (2.4) other accounts as designated by TCH.

Provided that, the member must open the position account and margin account with TCH.

## **405 Clearing**

### **405.07 Clearing Schedule**

The member has the duty for complying with the clearing report which TCH prepares and submits to the member via the clearing system before market opening on the next trading day.

## **407 Transfer of Derivatives Position**

The member may transfer a residual derivatives position in the house account or client account either within or after the trading day on TFEX by complying with the following rules:

### **(1) Transfer of derivatives position within the trading day on TFEX**

(1.1) In the case of a transfer of derivatives position within the same member, the member must effect such transfer through the system of TCH within the trading day of the exchange traded derivatives so transferred in accordance with the procedures and within the period of time prescribed by TCH.

(1.2) In the case of a transfer of derivatives position for the purpose of clearing on behalf between different members:

(a) The transferor member must transfer the derivatives position through the clearing system of TCH to the transferee member for the purpose of its clearing on behalf of the transferor member, and the transferee member must confirm the acceptance of such transfer through the clearing system of TCH within the trading day of the exchange traded derivatives so transferred. The transfer of such position shall be valid when TCH records it into the clearing system.

(b) In the case that the transferor member is unable to transfer the derivatives position within the time prescribed by TCH, TCH shall require the member to deposit a margin. The rate and value of such margin shall be calculated according to the residual derivatives position of the transferor member.

### **(2) Transfer of derivatives position after the trading day on TFEX**

(2.1) The transferor and transferee member must submit an application for transfer in the form and within the time prescribed by TCH in order to request TCH to proceed with the transfer of such derivatives position.

(2.2) In the case that the transferor member fails to file an application for transfer within the time prescribed by TCH, TCH will adjust the value of the derivatives position in accordance with the rules regarding the deposit of margins of TCH in respect of the residual derivatives position of the transferor member.

The transfer of derivatives position under (2) shall be binding upon the transferor member and the transferee member when TCH records it into its clearing system.

TCH may refuse to permit the member to transfer such derivatives position if TCH consider that such transfer may affect its clearing system.

#### **408 Amendment of Trading Transactions**

The member may amend a trading transaction either within or after the date of the trading transaction intended to be amended by complying with the following rules:

(1) Amendment of trading transaction within the date of the trading transaction intended to be amended or the end of one business day after the trading day (T+1).

The member must make the amendment through the clearing system by sending a report on amendment of trading transaction in the form prescribed by TCH.

(2) Amendment of trading transaction after the date of the trading transaction intended to be amended

The member must send an application for amendment of trading transaction to TCH before the end of trading hours of TFEX in order to request TCH to proceed with such amendment.

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## **Regulations**

### **Chapter 500 Margins**

#### **501 General Principles**

The major principles in the margins shall be as follows:

(1) In the trading and clearing on TFEX, the member has the duty to prescribe the rules regarding the deposit of margins with it by its clients. Such rules must be appropriate and clear and must not be contradictory to or inconsistent with these Regulations.

(2) In the deposit of margin by the member with TCH, each member must deposit a gross margin for its client account and a net margin for its house account.

(3) For efficient clearing with TCH, TCH may offset the member's margin against that of its defaulting client.

#### **502 Types of Margins**

TCH has designated the types of margins as described below in accordance with the rules, procedures and conditions prescribed by TCH.

##### **502.01 Maintenance Margin**

The member who has a derivatives position in its house account and/or client account has the duty to deposit assets which are acceptable to TCH as a maintenance margin with TCH, and must maintain the value thereof throughout the period that it has a derivatives position.

TCH shall calculate the maintenance margin that will be required by it according to paragraph one, in order to call for the following maintenance margins:

(1) Maintenance margin for the derivatives position in each contract month. TCH will calculate the value of margin that must be deposited by the member according to the rate of maintenance margin in accordance with the rules, procedures and conditions prescribed by it.

(2) Inter-month spread maintenance margin. TCH will calculate the value of margin that must be deposited by the member by using the inter-month spread maintenance margin rate in accordance with the rules, procedures and conditions prescribed by it.

TCH may call for the inter-month spread maintenance margins for the derivatives contracts of opposite risks, at the different rates or may change the rate of inter-month spread maintenance margin as TCH considers appropriate.

\* To call for margins under (1) and (2), TCH will take into account the risks arising from the holding of derivatives positions as determined by it, after deduction of an inter-commodity spread credit from the holding of derivatives positions with



correlated underlyings. TCH may apply different rates of inter-commodity spread credits according to the rules, procedures, and conditions prescribed by it. Such rates must not be lower than the minimum margin for the holding of short options positions (short options minimum charge) stipulated by TCH, taking into account the risks arising from the holding of derivatives positions as designated by it.

*(\*Amended September 24, 2008.)*

#### **502.02 Variation Margin**

\*At the end of every trading day, TCH shall calculate the gain or loss arising from the futures positions, futures trades in the member's house account or client account, and notify the member to deposit a variation margin.

*(\*Amended September 24, 2008.)*

When the member is notified by TCH according to paragraph one, the member must deposit cash with TCH as a variation margin.

#### **502.03 Additional Margins**

When TCH reviews the market condition as a whole and finds that the member has an increased risk due to its derivatives position that may adversely affect TCH, TCH shall notify the member to deposit the additional margins as follows:

(1) Super margin. A super margin shall be called when there is a risk that may arise as a result of the fluctuation in price of derivatives during the period that TFEX closes its business for a certain consecutive period, and may be influenced by the external factors.

(2) Concentration margin. A concentration margin shall be called when there is a risk that may arise due to the concentration of derivatives positions in the house account and client account.

(3) Uncovered risk margin. An uncovered risk margin shall be called when a risk from the value of damage that may arise from derivatives position of the member is higher than the amount prescribed by TCH when compared with the value of all margins combined with the asset for the clearing system protection of TCH.

TCH may prescribe additional conditions for the requirement of additional margins under various circumstances as TCH considers appropriate.

### **503 Deposit of Margins**

#### **503.01 Deposit of Margins**

(1) The member using the clearing services of TCH must deposit the margins according to the types of margin required under its clearing reports for the margin accounts of the member and the member's clients, based on the risk level of respective accounts and the rules, procedures and conditions prescribed by TCH.

\*(2) During business days, or in cases when the market conditions, or the price of the futures contracts, are irregularly volatile or when there is a reasonable cause to believe that such volatility may occur, the Member shall deposit intra-day

margin as cash denominated in Thai Baht, or in a foreign currency, in accordance with the conditions prescribed by TCH. When TCH calculates the value of the margin, which shall be deposited by the member, due to the position of the futures contracts of the member, or its client, and the price of the futures contracts as at any time during the trading hours under rule 504.01, in comparison with the value of the margin in the account of the member and the account of the member's client, combined with the assets for security which the Member has at TCH, and finds that it is not sufficient, the member shall deposit the margin in an amount equal to the rate, or the value, of the intra-day margin calculated by TCH. The member may have to deposit the intra-day margin more than once a day.

*(\*Amended November 5, 2010.)*

#### **503.02 Period of deposit Margins**

(1) The member who has a duty to deposit the margin in accordance with rule 502 must deposit the margin in the day after the trading day (T+1) before TFEX opens its business.

(2) The member who has a duty to deposit the margin in accordance with rule 503.01 (2) must deposit the Intra-day Margin within 2 hours after notify from TCH as the rules, procedures and conditions prescribed by TCH.

#### **503.03 Assets Deposited as Margins**

The member must deposit the margins in the forms of cash, government bond, treasury note or other assets according to the rules, procedures and conditions prescribed by TCH. The margins deposited by the member must be valid and free of defect and must not be subject to derogation of rights by any other person.

TCH shall procure a system for monitoring the change in values of the assets deposited as margins on every business day so that the member can maintain them according to the actual market condition in accordance with the rules, procedures and conditions prescribed by TCH.

#### **503.04 Rates or Values of Margins**

TCH shall calculate the rates or values of margins and change the rates or values of the respective types of margins according to the rules, procedures and conditions prescribed by TCH.

In the case that there is any change in the calculation of the rates or values of margins, the new rates or values shall apply to all derivatives positions in the house account and client account.

### **504 Adjustment of Margins and Deposit of Extra Margins**

#### **504.01 Adjustment of Margins**

TCH shall adjust the derivative position in each account of the member at least at the end of every business day in accordance with the rules, procedures and conditions prescribed by TCH.

#### **504.02 Deposit of Extra Margins**

The member has the duty to maintain the rate or value of margin in its house account or client account in accordance with the rules of TCH.

Any member whose margin in any account is lower than the rate or value at which TCH requires from it at the end of a business day or during a business day, as the case may be, shall deposit an extra margin in order to maintain the margin in such account at the level not lower than the rate or value and within the time prescribed by TCH.

#### **505 Keeping and Management of Margins**

##### **\*505.01 Keeping of Margins**

TCH shall keep the margin in accordance with the type of assets deposited by the member. TCH may determine the policy for margin management in accordance with rule 505.03, and shall record the amount of margin by separating the margin for the trading of the futures contracts for the member's account and the margin for the trading of the futures contracts for the account of the member's client.

*(\*Amended November 5, 2010.)*

##### **505.02 Keeping of Margins by the Member**

The member must make records in the margin account and keep its margins separately from those of its clients, and must prepare an account showing the position of its margins separately from that of its clients.

The member may not setoff the margin in its client's margin account against that in its margin account.

##### **505.03 Management of Margins**

TCH or its designated person may manage the margins received from the members by seeking benefits there from or investing the same in accordance with the rules, procedures and conditions prescribed by TCH and by taking into account the liquidity and risks in the investment as well as the impacts that may be caused to the stability of the clearing system of TCH; provided that TCH shall allocate the benefits derived from those margins after deducting its management fee to the members according to the rate and procedures prescribed by it.

##### **\*506 Return of Margin**

The member may apply for the return of the margin which has been deposited with TCH, when consideration in accordance with the rules relating to depositing the margin is made, and it appears that the margin placed with TCH is higher than the rate or the value of margin under rule 502. In this regard, the Member may apply for the return of the part of the margin that is in excess only. The member shall give notice to TCH in advance, within the time specified by TCH, and TCH shall return the same type of assets that were deposited as the margin by the member with TCH. TCH may

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not grant approval to such application if it has reasonable cause, or TCH may agree with the member, upon additional conditions, with regard to the application for the return of the margin.

*(\*\*Amended November 5, 2010.)*

The member may request for the return of margin under paragraph one only in respect of the excess portion thereof which remains after the deduction of any debts and margin management fee which the member owes to TCH according to the rules, procedures and conditions prescribed by TCH.

*(\*Amended October 29, 2007.)*

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## Procedures

### Chapter 500 Margins

#### 502 Types of Margins

##### 502.01(1) Maintenance Margin for the Derivatives Position in Each Contract Month

\*The member must deposit a maintenance margin for each derivatives contract to cover the highest value of damage that may arise as a result of the fluctuation in its price on each day at the confidence level of 99 per cent. A member must place a margin for its house account on a net basis, and a margin for its client account at the rate or value of not less than the rate or value of maintenance margin called from each of its clients, in accordance with the rules, procedures, and conditions prescribed by TCH, or as notified by TCH through the clearing system.

*(\*Amended October 29, 2007.)*

\*In calculating the value of damage under paragraph one, TCH shall process the data on the changes in the price of the derivatives, or price of the underlying over a period of 1 year, or 6 months, 3 months, or 1 month, and use the highest value obtained from such data processing for each duration. In the determination of the duration, due regard shall be given to the appropriateness and suitability to market conditions.

*(\*Amended September 24, 2008.)*

##### 502.01 (2) Inter-month Spread Maintenance Margin

The member must deposit an inter-month spread Maintenance margin for each pair of derivatives contracts to cover the highest value of damage that may arise as a result of the fluctuation in their prices on each day as a result of the holding of opposite positions in the derivatives of different contract months at the confidence level of 99 per cent.

\*In calculating the value of damage under paragraph one, TCH shall process the data on the changes in the price of the derivatives, or price of the underlying, over a period of 1 year, or 6 months, 3 months, or 1 month, and use the highest value obtained from such data processing for each duration. In the determination of the duration, due regard shall be given to the appropriateness and suitability to market conditions.

*(\*Amended September 24, 2008.)*

##### \* 502.01 Inter-Commodity Spread Credit – last paragraph

TCH will calculate the inter-commodity spread credit from correlating the prices of the underlyings, over a period of 1 year, or 6 months, 3 months, or 1 month, and use the lowest value obtained from such data processing. Such correlated value must represent a consistent direction in each period, and must demonstrate a statistical significance with a confidence level of 99 percent. In the determination of the

duration, due regard shall be given to the appropriateness and suitability to market conditions.

*(\*Amended September 24, 2008.)*

#### **502.04 Additional Margin**

The member must deposit an additional margin where the risk may arise in any of the following events in order to cover the highest value of damage at the confidence level of 99 per cent.

(1) Super margin. A super margin shall be called when there is a risk that may arise as a result of the fluctuation in price of derivatives during the period that TFEX closes its business for a certain consecutive period, and may be influenced by the external factors. This margin shall be calculated from the highest value of damage that may arise due to the change in price of the residual derivatives position during the period that TFEX closes its business.

(2) Concentration margin. A concentration margin shall be called when a risk arises due to the concentration of derivatives positions, and shall be calculated from the value of damage that may arise in the case that the member is unable to fully close out such derivatives positions within 1 business day.

(3) Uncovered risk margin. An uncovered risk margin shall be called when a risk from the value of damage that may arise from derivatives position of the member whose is higher than the amount prescribed by TCH when compared with the value of all margins combined with the asset for clearing system protection of TCH. This margin shall be calculated from the highest value of damage of such member in each circumstance as prescribed by TCH.

### **503 Deposit of Margins**

#### **\*503.01(1) Deposit of Margins**

The member must deposit margins once it has a long or short position. TCH may require the member to deposit an additional margin in the case of a fluctuation in the price of a derivatives contract, according to the value to be calculated by TCH, based upon the value of the maintenance margin under rule 502.01, less an adjustment to the options value under rule 504.01(1), together with the variation margin calculated according to an adjustment to the value of futures contracts under rule 504.01(1), and the additional margin under rule 502.03.

*(\*Amended September 24, 2008.)*

#### **\*503.03 Assets Deposited as Margins**

- (1) Rules and Procedures for Deposit of Margin  
(1.1) Cash denominated in Thai Baht

The member shall deposit the margin by transferring cash through a commercial bank as specified by TCH or through the BAHTNET system of the Bank of Thailand into TCH's account, and it shall be deemed completed upon TCH receiving cash denominated in Thai baht in full in accordance with the amount of the

margin which the member is obliged to deposit, which must be completed by the member within the period prescribed by TCH.

(1.2) Cash denominated in a foreign currency

The member may deposit the margin in cash denominated in a foreign currency only in the case of a maintenance margin or an additional margin for non-Thai clients. This shall be done by way of transferring such cash through a commercial bank as prescribed by TCH into TCH's account and shall be deemed completed upon TCH receiving such cash.

(1.3) Securities

The member may deposit the margin in securities only in the case of a maintenance margin and an addition margin by way of transferring the securities as prescribed by TCH into a securities deposit account which was opened by TCH with TSD.

Where the member is unable to deposit the margin as cash denominated in a foreign currency or securities in full in accordance with the number notified by the member, within the period prescribed by TCH, the member shall transfer cash in Thai baht in full, and the transfer shall be deemed to be completed upon TCH receiving the assets with the correct total value in accordance with the amount of the margin which the member is obliged to deposit. The member shall complete such transfer within the period prescribed by TCH and in accordance with the rules prescribed by TCH.

When the deposit of the margin is completed, the member may not cancel such deposit.

(2) A system for tracking the change in the value of assets deposited as the margin

TCH shall adjust the value of the assets deposited as the margin to be in accordance with the market-to-market price, which is deducted by the Haircut Rate, in accordance with the rules and procedures prescribed by TCH. The calculation shall be made at least at the end of every business day.

TCH shall review the Haircut Rate in order to calculate the value of the assets deposited as the margin in accordance with the types of assets, in accordance with the following rules:

(2.1) TCH shall review the Haircut Rate in order to calculate the value of the cash denominated in a foreign currency at least once every quarter or as deemed fit by TCH; and

(2.2) TCH shall review the Haircut Rate in order to calculate the value of the securities at least once a year or as deemed fit by TCH.

(3) Change of Margin

Upon the request of the member or upon the occurrence of any of the following events, TCH may cause the member to change the assets deposited as the margin with a value not less than the margin collected by TCH, to be deposited in lieu of the original assets, within the period prescribed by TCH:

(3.1) the payment of benefits in securities as dividend or interest;

(3.2) the payment of benefits in securities as subscription rights;

(3.3) the payment of any benefits in securities other than under (3.1)

and (3.2);

(3.4) the change in the par value of securities which causes the change in the number of securities;

(3.5) the amalgamation or merger of businesses, which does not cause the change of securities; and

(3.6) any other event as prescribed by TCH.



When TCH has received the new margin, TCH shall return the original margin to the member. Where the member did not change the assets which were deposited as the margin in accordance with paragraph one and benefits have arisen from such assets which were deposited as the margin, TCH reserves the right to consider exercising the rights received or repay the benefits to the member after deducting the relevant costs and tax burden, as TCH deems expedient.  
(\*Amended November 5, 2010.)

**\*503.04 Margin Rate or Value**

In the event that TFEX makes any adjustment to the derivatives contracts, because an issuer of the underlying thereof takes any corporate action, or returns, or compensates for, the rights and interests arising from such underlying (corporate entitlement), TCH will adjust the margin rate or value in consistence with such modification, based upon the calculation method from time to time as prescribed by TCH.

(\*Amended September 24, 2008.)

**\*504 Adjustment of Margins and Deposit of Extra Margin**

**504.01 Adjustment of Margins (Mark to Market)**

To adjust the member's margin account, TCH shall make calculation from the derivatives position in accordance with the rules as follows:

**(1) Futures**

(1.1) Residual derivatives position prior to the current business day (Overnight Position), TCH shall calculate the difference between the settlement price of the previous business day and the settlement price of the current business day and multiply it by the number of the outstanding contracts or the multiplier.

(1.2) Derivatives position opened on the current business day (Today Trades Position), TCH shall calculate the difference between the matching price of the derivatives (Executed Price) occurred on the current business day and the settlement price of the current business day and multiply it by the number of the outstanding contracts and the multiplier.

**(2) Options**

TCH will calculate the market value of options by multiplying the current day's settlement price by the amount of underlying per contract, or the multiplier, and the amount of outstanding contracts. In the case that TCH calculates the value of margin in the member's client account on a gross basis, TCH will include only the outstanding contracts of the short position holders in such calculation.

\*.

(\*Deleted September 24, 2008.)

(\*Amended October 29, 2007.)

## 505 Keeping and Management of Margins

### \*505.03 Management of Margins

TCH may prescribe a margin management policy in accordance with the following rules:

- (1) cash denominated in Thai Baht

TCH may invest such cash in securities or other property or seek benefits therefrom by any or several other means as follows:

(1.1) securities issued by the government such as government bonds or treasury notes;

(1.2) debentures or bonds issued by state enterprises or juristic persons established under specific laws, which are guaranteed by the Ministry of Finance;

(1.3) deposits or certificates of deposits of commercial banks or other financial institutions established by specific laws;

(1.4) promissory notes of finance companies or financial institutions established by specific laws;

(1.5) bills of exchange;

(1.6) debentures or warrants on debentures, exclusive of convertible debentures; and

(1.7) investment units or warrants on investment units of debt instrument mutual funds; and

- (2) cash denominated in a foreign currency

TCH may use such cash to seek benefits by depositing it in a commercial bank or other local financial institution established by specific laws in the country.

TCH shall allocate the benefits to the Member once every six months.

(\*Amended November 5, 2010.)

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## **Regulations**

### **Chapter 600: Default of Clearing**

#### **601 Principles**

TCH shall make consideration of the client accounts separately from the accounts of respective members. If the default takes place in any account, TCH may take any action against it; provided that TCH shall not use the money or any other margin in the client account for settling the debts or taking any action in respect of the house account.

#### **602 Causes of Default**

Should any of the following events arise in respect of any member, it shall be deemed that such member is in default:

(1) The member fails to make payment or deposit a margin in accordance with the rules, procedures and conditions prescribed by TCH.

(2) The member fails to provide Asset for the Clearing System Protection in accordance with the rules, procedures and conditions prescribed by TCH.

(3) The member fails to pay the fee, interest, penalty, damages, and any other expense which it is obligated to pay to TCH as collected by TCH.

(4) The member is sued in a bankruptcy case and subject to the Court's receivership order, or is under a legal process or has deteriorated liquidity or financial condition and is thereby unable to pay its debts as usual.

(5) The member is unable to pay any other debt related to the exchanged trade derivatives which it is obligated to pay to TCH.

If the defaulting member can demonstrate that it has sufficient money or securities to make payment or provide security in its clearing account but such default is caused by the performance of duty by its officer (human error) and does not cause damage to the clearing system, or by error in the operation of a bank authorized to carry out the clearing on its behalf, or by force majeure in the processing system of the member or of a bank authorized to carry out the clearing on its behalf, TCH may consider in postponing the clearing period of the member as deemed appropriate.

#### **603 Actions in Case of Default**

When a member is in default according to the rule 602, TCH may take any action or the combined actions as stated below until the member has carried out the clearing or performed any act to release itself from the cause of default:

(1) To ask TFEX to temporarily suspend the trading for the opening of a derivatives position of the defaulting member.

(2) To order the member to transfer, or to transfer all or part of the derivatives positions in the defaulting member's client accounts to another member with the approval of TCH in accordance with the rules, procedures and conditions prescribed by TCH; provided that all assets of the clients which are related to the transferred derivatives positions shall also be transferred to the member taking such transfer.

In the case that the transfer of derivatives positions according to paragraph one to another member is not practicable, TCH shall cause such derivatives positions to be closed out and return the assets that are discharged from obligations to the clients.

(3) To order the member to close out, or to close out all or part of the derivatives position in an account of the defaulting member.

TCH may offset the residual derivatives position in an account of the defaulting client against the residual derivatives position in an account of such member as considered appropriate.

(4) To apply the margins of the defaulting member and the Asset for the Clearing System Protection in the enforcement of the payment of debts or to setoff against the debts owed by the member to TCH in order to compensate for the damage caused by such default, whereby the rules, procedures and conditions regarding the use and return of the Asset for the Clearing System Protection shall apply.

(5) If the default of the member is caused by the default of payment in a client account, the member shall notify the name of the client who is in default of payment, the amount of derivatives position in default and the residual derivatives position to TCH.

(6) To do any other act to compensate for damage caused by the default of such member as TCH considers appropriate.

#### **604 Duties and Responsibilities of Defaulting Member**

If a member is in default in whatsoever case, it shall have the duties and responsibilities as follows:

(1) To make reimbursement of the money and assets which are Asset for the Clearing System Protection of TCH according to the amount that has been used under the rule 603(4), together with interest, penalty and any damages as from the date of using such money and/or assets.

(2) To pay the fee, interest, penalty, damages and any other expense that may arise from the action taken TCH in the event of default of such member according to the rule 603.

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## **Regulations**

### **Chapter 700: Assets for the Clearing System Protection**

#### **701 Setting Up of Assets for the Clearing System Protection**

TCH may procure assets for the Clearing System Protection or other assets as collateral against damage that may be caused by the default of clearing or other damage that may arise from an act of a member in connection with the clearing system of TCH.

#### **702 Types of Assets for the Clearing System Protection and Other Assets**

##### **702.01 Types of Assets for the Clearing System Protection**

The assets for the security of the clearing system of TCH mean cash, government bonds, treasury notes or other types of asset as prescribed by TCH. These assets can be divided into 2 types as follows:

- (1) Securities Deposit; and
- (2) Clearing Fund

##### **702.02 Types of Other Assets**

TCH may use the other assets as follows:

- (1) Contribution to the Clearing Fund by SET;
- (2) SET's reserve fund for the security of TCH; and
- (3) Registered capital of TCH.

##### **702.03 Ownership of Assets**

SET, TCH and the members shall be the owners of the assets proportionately to their contributions to the assets for the Clearing System Protection of TCH.

#### **703 Provision of Securities Deposit**

The member has the duty to provide Securities Deposit in accordance with the procedures and within the period of time prescribed by TCH. TCH may change the value of the Securities Deposit that has been provided as deemed appropriate.

In the case of change of value of the Securities Deposit according to paragraph one, TCH may call for additional Securities Deposit from the member as deemed appropriate, and may require the Securities Deposit from some members at the value higher than that from the other members based on the risk from the act of each member that may cause damage to the clearing system of TCH.

## **704 Contribution to the Clearing Fund**

### **704.01 Contribution to the Clearing Fund**

The member has the duty to make contribution to the Clearing Fund according to the value as prescribed by TCH as follows:

(1) **Initial Contribution.** The member must make an initial contribution to TCH according to the procedures and within the period of time prescribed by TCH. TCH may change the value of such contribution and call for additional contribution from the member as considered appropriate.

(2) **Monthly Contribution.** The member must make a monthly contribution to TCH according to the value as prescribed by TCH. TCH shall determine the value of the required contribution by taking into account the risk that may cause damage due to an act of the fund member. If TCH finds that the highest value of damage determined by TCH exceeds the value of the Asset for the Security of clearing system fixed by TCH, TCH may adjust the value of additional contribution and call it from the member as considered appropriate.

### **704.02 Change of Value of Contribution to the Clearing Fund from Each Member**

TCH may change the value of the monthly contribution which the member has the duty to deposit to TCH, and may require the monthly contribution from some members at the value higher than that from the other members based on the risk from the act of each member that may cause damage to the clearing system of TCH.

### **704.03 Calling for Additional Contribution**

In the case that damage is caused to the clearing system of TCH and the amount of contributions to the Clearing Fund is not sufficient to fully cover the damage that may arise, TCH may require the members to place additional contribution to the Clearing Fund in an amount not exceeding 1 time the current value of the initial contribution plus total monthly contributions of respective members. The member is required to make additional contribution within the period of time prescribed by TCH; otherwise, it shall be deemed that such member is in default.

## **705 Management of Assets for the Clearing System Protection**

In the case that the members provide assets for the Clearing System Protection in the form of cash, TCH or its designated person shall manage them in accordance with the rules, procedures and conditions prescribed by TCH.

In the case that TCH or its designated person manages the assets for the Clearing System Protection and there are benefits, if such benefits are derived from the Securities Deposit, TCH shall return them to the members in accordance with the rules, procedures and conditions prescribed by TCH. If such benefits are derived from the contributions to the Clearing Fund, the whole amount thereof after deduction of a



management fee shall be contributed to the Clearing Fund proportionately to the contributions of respective members.

#### **706 Use of Assets for the Clearing System Protection and Other Assets**

TCH may use the assets for the Clearing System Protection or other assets in the case that the member is in default or any damage is caused by the act of the member in any activity related to the clearing in the following order:.

- (1) Securities Deposit of the member who is in default or causes damage to the clearing system of TCH;
- (2) Contribution to the Clearing Fund by the member who is in default or causes damage to the clearing system of TCH;
- (3) Contribution to the Clearing Fund by other members;
- (4) Additional contribution according to the proportion made to the Clearing Fund by respective members;
- (5) Contribution to the Clearing Fund by SET;
- (6) SET's reserve fund for the security of TCH;
- (7) Registered capital of TCH.

#### **707 Return of Assets for the Clearing System Protection or Other Assets**

##### **707.01 Return of Assets for the Clearing System Protection or Other Assets by the Defaulting Member**

A member who is in default or causes damage to the clearing system of TCH has the duty to return the assets for the Clearing System Protection or other assets which TCH has used according to the rule 706.

In the case that the Clearing Fund has been used, TCH may charge interest for the use of such fund at the maximum rate permitted by the law on interests on loans of financial institutions, as from the date of the use of such fund until the date of the return thereof unless other interest rate is prescribed by TCH.

##### **707.02 Allocation of Assets when the Defaulting Member Returns Assets together with Interest to TCH**

When the member who is in default or causes damage to the clearing system of TCH returns the assets for Clearing System Protection or other assets to TCH, TCH shall allocate them back in the following order:

- (1) Registered capital of TCH;
- (2) SET's reserve fund for the security of TCH;

- (3) Contribution to the Clearing Fund by SET;
- (4) Additional contribution according to the proportion made to the Clearing Fund by respective members;
- (5) Contribution to the Clearing Fund by other members;
- (6) Contribution to the Clearing Fund by the member who is in default or causes damage to the clearing system of TCH;
- (7) Securities Deposit of the member who is in default or causes damage to the clearing system of TCH.

#### **707.03 Demand for Compensation or Penalty from Member**

TCH may demand a compensation or penalty for the use of assets for the Clearing System Protection or other assets from the member who is in default or causes damage to the clearing system of TCH in accordance with the rules, procedures and conditions prescribed by TCH.

#### **708 Return of Assets for the Clearing System Protection**

When TCH has a resolution to terminate the membership of any member, TCH shall return the assets which such member has provided for the protection of the clearing system of TCH, including the remaining benefits therefrom after deduction of all debts as well as damages and penalty that the member owes to TCH, within the period of time prescribed by TCH.

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**Procedures**

**Chapter 700 Assets for the Clearing System Protection**

**703-4 Provision of Assets for the Clearing System Protection**

**\*(1) Assets for Clearing System Protection**

Members have the duty to provide assets for clearing system protection of the following types and amounts:

(1.1) securities deposit of at least Baht five million for members who are allowed to clear all types of derivatives;

securities deposit of at least Baht four million for members who are allowed to clear only one type of derivatives;

(1.2) clearing fund:

(a) initial contribution of at least Baht five million for members who are allowed to clear all types of derivatives;

initial contribution of at least Baht one million for members who are allowed to clear only one type of derivatives;

(b) monthly contribution in the amount of not less than Baht 1,000.

*(\*Amended January 12, 2012, Forced January 23, 2012)*

**(2) Method of Provision of Assets for the Clearing System Protection in the Form of Cash**

(2.1) In the case that the member must provide assets for the Clearing System Protection in the form of cash, the member may:

(a) make payment by a cheque which must be payable to TCH and sent to TCH at least 1 business day prior to the last business day on which the member can make payment without being in default;

(b) transfer money which must be transferable to an account of TCH as designated by TCH within the last business day on which the member can make payment without being in default.

(2.2) The member must pay a full amount of contribution to TCH within the period of time as prescribed by TCH.

**(3) Period of Provision of Assets for the Clearing System Protection**

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the Clearing System Protection

The member must provide the assets for the Clearing System  
Protection within 7 business days from the date of receiving a notice from TCH.

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## **Regulations**

### **Chapter 800: Emergency Situations Affecting the Clearing**

#### **801 Emergency Situations Affecting the Clearing**

Any events which have or might have impact on the operations of TCH as a consequence of which TCH is or might be unable to carry out the operations as usual will be deemed by TCH as the emergency situations under this Chapter. Such emergency situations shall mean to include any other emergencies as prescribed by TCH.

The emergency situations that have impact on the operations under paragraph one shall include the following incidents:

(1) Natural disaster or casualty that may affect the derivatives trading and clearing system, such as fire, bomb or bomb threat, electrical short circuit, severe earthquake or any other incident likely to be harmful to the life of or to cause bodily injury to the operating officers or visitors of TCH etc.

(2) Incident due to the policy of any government authority or regulatory agency in the derivative trading which affects the clearing by any member and the normal operations of TCH, such as the declaration of an emergency state upon occurrence of terrorist act in the country, or an order to suspend the trading etc.

(3) Problem in the communication system, the network or the processing system for clearing services.

(4) Other incidents which, in the opinion of the Board and/or the executives directly responsible for emergencies, have or might have an impact on the clearing system of TCH.

#### **802 Action of TCH Upon Occurrence of Emergency situation Affecting the Clearing**

When a emergency situation arises according to the rule 801, TCH will take any action or the combined actions as stated below in order to resolve or alleviate such situation or its results:

(1) To ask TFEX to temporarily suspend all trading

(2) To ask TFEX to suspend the trading of any specific group derivatives with the same underlying (class of contracts) or the trading of any derivatives during any period.

(3) To suspend the provision of services that are related to or are or might be affected by the disruption.

(4) To order the member to immediately close out derivatives positions.

(5) To change the method and conditions of clearing by the members as TCH considers appropriate.

(6) To correct, change or cancel the trading transactions during the occurrence of emergency situation without requiring the permission of the members.

(7) To permit the member to deliver the underlying of the same type and of equivalent or superior quality to that specified in the contract specification whereby the conditions requiring the member to make payment may be prescribed as appropriate.

(8) To require the exchange traded derivatives to clear at any price which is different from the settlement price which calculated according to the rules prescribed by TFEX.

(9) To order the member to do or refrain from any acts for the purpose of resolving the emergency situation or halting its result that may affect the clearing.

(10) To request TFEX to do any act according to its regulations in order to resolve the emergency situation or halt its result that may affect the clearing.

(11) To change the rate or minimum value of maintenance margin that TCH calls from the members.

(12) To do any other act as TCH deems appropriate.

**803 Responsibility for the Outcome of Action for Resolving the Emergency situation**

In the case that TCH takes any appropriate act under this Chapter for the purpose of resolving the emergency situation, the member shall neither claim a compensation for any damage which is or might be caused by such act from TCH or any person acting on behalf or for the benefit of TCH, nor do anything which is an opposition to or non-cooperation with TCH in this regard.



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## **Regulations**

### **Chapter 900: Consideration and Management of Risks**

#### **901 Consideration and Management of Risks**

For the purpose of considering and managing risks that may arise in the derivatives clearing, the Board shall be empowered to appoint a Risk Management Sub-Committee for performing the duties under these Regulations.

#### **902 Scope of the Consideration and Management of Risks**

For the purpose of managing the risks, the Sub-Committee shall lay down the risk management policies for each type of derivatives, or each type of the members or each type of the margins, in order to promote and develop the management of risks in an efficient manner.

#### **903 Duties of the Risk Management Sub-Committee**

The Risk Management Sub-Committee shall have the duties as follows:

(1) To lay down the policies and major principles in the management of risks of TCH, such as TCH's membership qualifications, maintenance of TCH's membership qualifications, stipulation of rates of various types of margins, change of rate of initial margin, stipulation of types and conditions of assets that TCH will accept as margins, adequacy of funding sources to support the damage in the clearing system, calculation of the contribution to the Clearing Fund, adequacy of the overdraft limit of TCH and the additional measures for some members that the Risk Management Sub-Committee deems it appropriate to exercise a special control and supervision etc.

(2) To consider the proposals, or acknowledge and follow up the results of the management of risks to ensure compliance with the policies and principles that have been laid down.

(3) To provide advice and opinions in the development and improvement of, and to resolve problems and obstacles in the management of risks in accordance with the international standards and subsisting condition.

(4) To report the results of the management of risks to the Board.

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## **Regulations**

### **Chapter 1000: Consideration of Offence, Disciplinary Actions and Decision on Appeal**

#### **1001 Consideration of Offence, Disciplinary Actions and Decision on Appeal Against Punishment Order**

For the purpose of considering an offence of any person who commits or involves in the violation of the regulations of TCH, imposing a disciplinary action against such person, and making decision on an appeal against a punishment order, the Board shall be empowered to appoint a sub-committee to perform the duties under these Regulations.

#### **1002 Power to Consider the Offence and Disciplinary Actions**

The sub-committee shall have the power to consider the offence and disciplinary action as follow:

- (1) consider the offence and impose a disciplinary action against any person who commits or involves in the violation of the regulations of TCH;
- (2) consider and make decision on an appeal in order to propose its opinion concerning the appeal to the Board for further consideration and instruction;
- (3) consider an application for the stay of execution of a punishment order;  
and
- (4) make any other consideration and instruction for compliance with the regulations of TCH, including any other act as necessary for the process of consideration of an offence, imposition of a disciplinary action and consideration of an appeal, and any other case as approved by the Board.

#### **1003 Consideration of Offence and Reply to Accusation**

##### **1003.01 Consideration of Offence**

The consideration process shall be completed without delay, but an accused person must be provided with an opportunity to make clarification and produce witnesses and evidence supporting the clarification as appropriate. For the purpose of performing its duties, the sub-committee may assign the Managing Director of TCH to be in charge of compiling the facts and evidence concerned, examining and proposing an opinion concerning the facts and points of law to the sub-committee, and taking any other acts for the compliance with these Regulations.

When there appears any accusation or suspicion that may convince that there is a violation or the involvement in a violation of the regulations of TCH, the Managing Director of TCH shall consider that fact. If it is found to be well-grounded, the Managing Director of TCH shall compile the facts and evidence concerned, prepare an opinion together with the reasons and points of law concerned for

proposing to the sub-committee, and give written notice of the accusation to the accused person.

In the case that the fact is found to be groundless, the Managing Director of TCH shall be empowered to give an order to close the case and make a report to the sub-committee; provided that the sub-committee may, if it is deemed expedient, give an order not to close the case and instruct the Managing Director of TCH to take further action according to paragraph one.

#### **1003.02      Reply to Accusation**

The accused person may make a reply to accusation by himself or execute a power of attorney authorizing any other person to act on behalf. A reply to accusation in writing together with documents and evidence related to the accusation must be submitted to the sub-committee within the period of time specified in a written notice of accusation.

#### **1004      Consideration of Offence by the Business Conduct Sub-Committee**

The Business Conduct Sub-Committee shall complete its consideration of an offence within 60 days from the date of commencement of the consideration.

The Business Conduct Sub-Committee may order the assigned person under the rule 1003.01 to send a letter requiring the accused person to appear for an inquiry, to submit additional documents and evidence, or to clarify additional facts concerning the accusation within the prescribed time, or may instruct an internal unit of TCH that is concerned with the notification of such accusation to submit additional documents and evidence or provide additional clarification.

In the issuance of an order relating to the punishment, the Business Conduct Sub-Committee may issue the order according to an opinion of the assigned person under the rule 1003.01 or otherwise.

#### **1005      Notice of Result of Consideration**

When the Business Conduct Sub-Committee has completed the consideration and issued an order relating to the punishment, the assigned person under the rule 1003.01 shall make written notice of such order to the accused person without delay.

In the case that the Business Conduct Sub-Committee issues a punishment order, the assigned person under the rule 1003.01 shall also make a report to the Board and the Office of the SEC.

#### **1006      Submission of Appeal**

A person subject to punishment may dispute a punishment order to the Board by himself or by executing a power of attorney authorizing any other person to act on behalf. Such person must submit an appeal in writing stating the punishment order that is a ground of such appeal, the facts, points of law and reasons which are the dispute against any respect of the punishment order, together with all documents and

evidence related to the appealed issue within 15 days from the date of receiving a written notice of punishment order.

An appeal under paragraph one shall be submitted to the Managing Director of TCH. If the Managing Director of TCH is of an opinion that the appeal is correct and complete, the Managing Director of TCH shall prepare the opinion together with the reasons and points of law concerned for proposing to the Sub-Committee without delay.

For the purpose of performing its duties, the Sub-Committee may delegate the Managing Director of TCH to be in charge of compiling the facts and evidence concerned, examining and proposing an opinion concerning the facts and points of law to the sub-committee, and taking any other acts for the compliance with these Regulations.

#### **1007 Consideration of Appeal by the Sub-Committee**

The Sub-Committee shall complete its consideration of an appeal within 30 days from the date of receiving the appeal. The members of the Sub-Committee must not be the persons who have issued a punishment order.

During considering the appeal, the Sub-Committee may order the assigned person under the rule 1006 to send a letter requiring the appellant to appear for an inquiry, to submit additional documents and evidence, or to clarify additional facts concerning the appeal within the prescribed time, or may instruct an internal unit of TCH that is concerned with the punishment order to submit additional documents and evidence or provide additional clarification.

When the Sub-Committee has completed its consideration, the assigned person under the rule 1006 shall make a record of the opinion together with reasons of the Sub-Committee for proposing to the Board for consideration and issuance of instruction.

#### **1008 Consideration of Appeal by the Board**

If the Board issues an instruction differently from an opinion of the Sub-Committee, the Board shall provide the reasons supporting such instruction.

The consideration and instruction of the Board as mentioned above shall be final.

#### **1009 Notice of Result of Consideration of the Board**

When the Board has completed the consideration and issued an instruction, TCH shall make a written notice of the result of consideration and the instruction to the appellant and the Office of the SEC without delay.

#### **1010 Application for the Stay of Execution of Punishment Order**

The submission of an appeal shall not be a ground for the stay of execution of a punishment order; provided that an appellant may submit an application for the stay of execution of a punishment order to the Board along with an appeal. Such application must provide the reasons and necessity in the request for the stay of execution of the punishment order and must be accompanied by a copy of the written notice of order relating to the punishment.

When an application for the stay of execution of a punishment order is correctly submitted, the assigned person under the rule 1006 shall take it into consideration on an urgent basis and propose an opinion to the Appeal Sub-Committee without delay.

#### **1011 Consideration of an Application for the Stay of Execution of Punishment Order**

In the case that the Appeal Sub-Committee has made consideration and is of the view that such case is a necessary and urgent case and the application for the stay of execution of a punishment order is well-grounded, the Board shall issue an order as considered appropriate whereby any conditions may be prescribed as necessary. The assigned person under the rule 1006 shall then make a written notice thereof to the appellant, the person issuing the punishment order, the Office of the SEC and the internal unit of TCH that is concerned with such punishment order.

If the Board has made consideration and deems it expedient to issue an order not to stay the execution of a punishment order, the assigned person under the rule 1006 shall make a written notice thereof to the appellant and the Office of the SEC without delay.

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## **Regulations**

### **Chapter 1100: Sub-Committees of TCH**

#### **1101 Appointment of Sub-Committees**

The Board is empowered to appoint the following sub-committees for performing the duties under the relevant regulations of TCH:

- (1) Risk Management Sub-Committee;
- (2) Business Conduct Sub-Committee; and
- (3) Appeal Sub-Committee.

#### **1102 Composition of Sub-Committees**

##### **1102.01 Composition of Risk Management Sub-Committee**

A Risk Management Sub-Committee shall have at least 5 members consisting of at least the Managing Director of TFEX or a person delegated by him, 2 members who are knowledgeable or experienced in exchange traded derivatives or underlying instruments, 1 expert in risk management and the Managing Director of TCH or a person delegated by him.

##### **1102.02 Composition of Business Conduct Sub-Committee**

A Business Conduct Sub-Committee shall have 5 members consisting of at least the Managing Director of TFEX or a person delegated by him, 2 qualified persons who are knowledgeable and/or well experienced in derivatives business, 1 legal expert and the Managing Director of TCH or a person delegated by him.

##### **1102.03 Composition of Appeal Sub-Committee**

An Appeal Sub-Committee shall have at least 3 but no more than 5 qualified members, consisting of at least 1 qualified person who is knowledgeable and/or well experienced in each of the legal, accountancy and finance, and derivatives business fields, in order to make consideration and propose opinions concerning the appeals to the Board. A member of the Appeal Sub-Committee must not be the same one as the person who issues a punishment order.

#### **1103 Term of Office and Vacation from Office of Members of Sub-Committees**

Each member of the Sub-Committees shall hold office for each term of 2 year and may not hold office in excess of 2 consecutive terms.

In the case that a member of any Sub-Committee vacates the office upon the expiry of his term, the Sub-Committee shall appoint his substitute. While a new member is not yet appointed, the retiring member shall remain in office to perform the duties until a new member is appointed and assumes the duties.

Other than retiring upon the expiry of their term of office, the members of the Sub-Committees shall vacate their office upon:

- (1) Death;
- (2) Resignation;
- (3) Removal by a resolution of the Board; or
- (4) Lack of qualifications under the rule 1102.

In case that a member of any Sub-Committee vacates his office before the expiry of his term, the Board may appoint another person to be a substitute member. A person so appointed shall hold office for the remaining term of the member whom he replaces.

#### **1104 Meetings of Sub-Committees**

The Board shall appoint a member of the Sub-Committee to be the chairman of the Sub-Committee.

In a meeting of the Sub-Committee, not less than one-half of the total number of its members must be present to form a quorum.

If the chairman of the Sub-Committee is not present at a meeting or cannot perform his duties, the vice-chairman, if any, shall preside over the meeting. If there is no vice-chairman or the vice-chairman is not present at the meeting or cannot perform his duties, the members present thereat shall elect one member to preside over the meeting.

A decision of the meeting shall be made by the majority votes. Each member shall have one vote. In the case of the equality of votes, the chairman of the meeting shall have another casting vote.

In case of necessity and urgency, a meeting of the Sub-Committee may be held by the subscription of signature by all members on a written resolution and the decision shall be in accordance with the provisions of paragraph four. However, this method of meeting may not be applied in the case of a meeting held for the purpose of seeking a resolution which imposes a punishment or an increased punishment.

A member of the Sub-Committee who has a vested interest in any matter to be considered may not take part in the consideration of such matter.

**Annex 2: The Rules**