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The Notification of the Bank of Thailand
No. SorNorSor. 79/2551
Re: Minimum Requirements on Client Treatment
for the Undertaking of Derivatives Transactions

1. Reason to issue the Notification

The Bank of Thailand has issued the Notifications of the Bank of Thailand to permit commercial banks to undertake derivatives transactions since 2003 by broadly prescribing the regulation on client suitability analysis and disclosure of information. In the past, practices of commercial banks were varying. Hence, in some cases, commercial banks have offered or provided derivatives transactions that have complicated structures and are quite difficult for the understandings of clients. The information may be disclosed only on the benefit side to clients. Thus, for derivatives transactions engaged between commercial banks and clients, commercial banks shall have suitable guidelines and procedures on client treatment. As such, the Bank of Thailand prescribes that commercial banks shall conduct client suitability analysis and shall disclose information to clients on the undertaking of the transactions. Besides, for commercial banks to have the same understandings and concordant practices on client treatment for the undertaking of derivatives transactions with commercial banks, the Bank of Thailand hereby prescribes minimum requirements on client treatment. Commercial banks shall use due cares on offering or providing derivatives transactions to clients. This is to prevent commercial banks from reputational risk arising from engaging in inappropriate transactions with clients or undertaking transactions that clients do not have real understandings, which may result in confidence of clients to commercial banks, and to ensure that clients receive correct, complete, and sufficient information for their decisions on the undertaking of derivatives transactions with commercial banks.

2. Statutory power

By virtue of Section 39 of the Financial Institutions Business Act B.E. 2551, the Bank of Thailand issues minimum requirements on client treatment for the undertaking of derivatives transactions as prescribed in this Notification.

3. Scope of Application

This Notification is applicable to all commercial banks under the Financial Institutions Business Act except retail banks.

4. Repeal of Notifications and Circulations

Detail of Notifications and Circulations repealed is in Appendix.

5. Contents

5.1. Under this Notification

“Derivatives transactions” means all types of derivatives transactions ranging from plain vanilla derivatives such as forwards, and FX swaps as well as exotic derivatives permitted by the Bank of Thailand.

“Clients” means any person who intends to undertake derivatives transactions with commercial bank or counter party that trades derivatives with commercial banks.

“Commercial banks” means commercial banks under Section 4 of the Financial Institutions Business Act B.E. 2551 except retail banks.

5.2. For the benefits on consumer protection, the Bank of Thailand hereby prescribes minimum requirements for commercial banks to comply on client treatment for undertaking of derivatives transactions:

5.2.1. General regulation on the offer or provision of derivatives transactions to clients

(1) Senior management of commercial banks shall put importance on client treatment on the undertaking of derivatives transactions. Senior management shall set policies and ensure that operating procedures on client treatment of commercial banks are set in written document. Operating procedures on client treatment shall cover client suitability analysis, information disclosures of commercial banks, complaint receipts and problem solving processes on client complaints, internal control system, and personnel capability. Such operating procedures shall be in line with regulation on client treatment prescribed by the Bank of Thailand in this Notification.

(2) Commercial banks shall honestly, fairly, and ethically provide services to clients and shall use due care as professional. Commercial banks shall provide correct and unbiased information to clients. The charges on fees, interests, and other expenses shall be fair and trustworthy. Details on the charges shall be sufficient for clients to understand.

(3) Commercial banks shall have resources that are able to efficiently support the offering of services to clients. Commercial banks shall have competent personnel who truly have knowledge, capability, and expertise in derivatives transactions as well as up-to-date financial instruments, as well as are able to appropriately use financial technologies. Besides, commercial banks shall fairly provide services to clients with possessed knowledge, capability and resources for maximum benefits of clients.

(4) Commercial banks shall keep secrets of clients and not disclose information of clients to other persons expect for the following cases:

(4.1) Disclosure information to supervisors or government agencies as stated in related laws

(4.2) Disclosure information according to Notification regarding consolidated supervision, or

(4.3) Disclosure information that clients give consents to commercial banks to disclose such information to other persons

(5) Commercial banks shall have operating system and procedures to prevent conflicts of interests regarding the undertaking of derivatives transactions with clients.

(6) Commercial banks shall comply with the regulation regarding compliance to guideline of commercial banks (compliance) prescribed by the Bank of Thailand.

(7) Commercial banks shall have guideline to prevent reputational risk arising from the undertaking of derivatives transactions as well as corrective measures (if any).

(8) The undertaking of derivatives transactions of foreign branches of locally incorporated commercial banks shall be under the regulations of the countries where the branches are located. However, this excludes the case where such foreign branches undertake the transactions with residents in Thailand, which shall be under the scope and regulations prescribed in this Notification.

5.2.2. Client suitability

(1) Principle

Before offering or providing financial services related to derivatives to clients, commercial banks shall study and analyze client information in order for commercial banks to be able to offer transactions that meet financial objectives of client, are truly suitable with knowledge and experiences of clients, and are appropriate to risk tolerant capacities of clients.

(2) Regulation

Other than the compliance to regulation regarding anti-money laundering and combating the financing of terrorism (AML/CFT), in undertaking derivatives transactions with clients, commercial banks shall additionally comply with the regulation on client suitability as follow:

(2.1) Client information

Commercial banks shall, at a minimum level, understand the following information of client:

(2.1.1) Nature and business operating status, position, or occupation of clients

(2.1.2) Financial objectives, objectives on the undertaking of transactions such as for hedging, investment, or cost reduction, etc., as well as risk appetite level in the undertaking of transactions

(2.1.3) Operating and financial positions of clients and shall use best efforts to assess risk tolerant level of clients

(2.1.4) Historical and current information on the investments of clients, experiences and understandings in derivatives transactions of clients. The assessment shall be conducted not only from investment experiences of clients, but commercial banks shall also conduct the assessment from capabilities of clients on making understandings on derivatives transactions and transactions that commercial banks will offer to clients by using questionnaires, for example. In case that clients are juristic persons, in conducting the assessment, commercial banks shall consider from persons with authority to make decisions on undertaking derivatives transactions, which at least shall be senior management in financial unit of such juristic persons or persons with authorized signatures to sign for such juristic persons in undertaking the transactions.

(2.1.5) Other information that should be know such as obligations on guarantees, etc.

(2.2) Client suitability analysis

(2.2.1) Commercial banks shall put in place procedures on client suitability analysis in undertaking the transactions. Commercial banks shall thoroughly analyze information in (2.1) that is related to client. This is for commercial banks to be able to select and offer or provide transactions that are appropriate to client profiles, to ensure that clients have sufficient knowledge and experiences to understand nature and associated risks. Clients shall make their own decisions in undertaking financial transactions.

(2.2.2) Commercial banks shall keep record of information on client suitability analysis, transactions offered or provided to clients, as well as reasons on the undertaking of such transactions. Commercial banks shall keep such information for the examination of the Bank of Thailand. However, if commercial banks are not able to offer services or transactions that are appropriate to clients, commercial banks shall immediately notify the clients.

(2.2.3) In case that clients do not provide complete or sufficient information for the analysis, commercial banks shall follow up with the clients in order to get sufficient information for the analysis or inform clients that services or financial products that are offered by commercial banks are based on the analysis of incomplete information, which limit efficiency in providing services to clients.

(2.2.4) Commercial banks shall have evidences illustrating that commercial banks have reviewed the suitability of clients on a regular annual basis or every time that there is a change in client information that may affect client suitability analysis.

(3) Exception

The regulation on client suitability analysis stated in (2) is exempted for the following derivatives transactions or clients:

(3.1) Plain vanilla derivatives of forwards, futures, and swaps

(3.2) Clients under the supervision of government agencies as follow:

(3.2.1) Commercial banks, finance companies, credit foncier companies

(3.2.2) Securities companies, asset management companies, and funds under the supervisions of the Securities and Exchange Commission such as provident funds, private funds, and mutual funds, etc.

(3.2.3) Insurance companies registered in Thailand under the supervision of Office of Insurance Commission

(3.2.4) Foreign juristic persons under the supervision of foreign government agencies such as commercial banks, other financial institutions, and mutual funds, etc.

(3.2.5) Other juristic persons additionally prescribed by the Bank of Thailand

5.2.3. Information disclosure of commercial banks

Commercial banks shall set guidelines on the disclosure of information regarding the offers and provisions of products related to derivatives transactions as follow:

(1) Principle

Clients shall receive complete, correct, unbiased, timely, and sufficient information for efficient decision making on the undertaking of transactions. Information that clients received from commercial banks shall help clients to understand nature and risks arising from the undertaking of such transactions as well as factors affected gains or losses to clients. Commercial banks shall disclose information based on the following principle:

(1.1) Commercial banks shall prepare information illustrating nature of transaction, the undertaking of transactions, benefits, risks, risk factors, range of losses, and current market situation. Commercial banks shall also indicate important information stated in the contracts or other documents that clients need to thoroughly study.

(1.2) Information provided to clients shall be correct, up-to-date, and not be distorted to persuade clients to invest or engage in the transactions with commercial banks. The presentation of information shall be clear both on the gain and loss side to the clients. The presentation shall not be focused only on the benefit side but ambiguous on the loss side during adverse market situation.

(1.3) Information that clients received shall be pertinent, not in complicated form, be in simple language, and not be ambiguous. Information shall be understandable by clients and not make clients misunderstand in the main substance of the transactions. If jargons or technical terms are needed to be used, commercial banks shall clearly explain meanings of such terms to clients.

(1.4) Clients shall continuously and timely receive information both before and after undertaking the transactions until maturity of the transactions without any discrimination.

(1.5) Commercial banks shall give clients supports on making understandings on transactions or services offered by commercial banks. Commercial banks shall give clients opportunities to inquire details of transactions and shall facilitate information to clients for their considerations before engaging in the transactions. Commercial banks shall also advice clients to study details of important information prepared by commercial banks for their decisions. Before undertaking derivatives transactions with clients, commercial banks shall ensure that clients receive information and truly understand transactions and associated risks as well as potential losses. Moreover, commercial banks shall have evidences indicated that commercial banks have disclosed the prescribed information.

(2) Regulation

(2.1) Minimum information that commercial banks shall disclose:

(2.1.1) General information:

(2.1.1.1) General information of commercial banks such as name, address, office address, telephone, convenience contact time for clients, and channels or methods to submit complaints, etc.

(2.1.1.2) Types of services and products provided by commercial banks

(2.1.2) Information on derivatives transactions:

Commercial banks shall disclose information regarding derivatives transactions that offered or provided according to principle in 4.2.3 (1). Details of transactions shall be prepared in written documents focusing on risks and ranges of potential losses of the transactions. Commercial banks shall at least disclose the following information to clients:

(2.1.2.1) Types, natures, and structures of derivatives transactions, financial assets, or reference variables, reasons on the offering of such transactions, and suitability with client profiles. For exotic derivatives, to easily understand and for more clarification, commercial banks may explain by using sub – elements. Commercial banks shall explain sub – elements to clients when request.

(2.1.2.2) Benefits or returns from the undertaking of transactions, potential gains / losses arising from the undertaking of transactions, details for the calculation of such gains, losses, or returns

(2.1.2.3) Risks associated to the undertaking of transactions and risk factors both for the case that clients are risk takers and the case that commercial banks take risks from clients as well as the case of netting of risks arising from sub – elements of exotic derivatives. Commercial banks shall illustrate the analysis in many situations such as range of potential losses from the changes of market situations and periods that clients have to take risks from losses of such transactions, and risk analysis. Commercial banks shall also analysis risks in the most adverse situation to clients as well as liquidity of transactions or products offered or provided. However, commercial banks shall give client cooperation in the case that clients have any inquiries. Clients shall receive clear and true explanations on a timely basis before they make decisions to undertake the transactions.

(2.1.2.4) Up – to – date information on economy, market situations, and environments related to the transactions

(2.1.2.5) Price, amount of money, securities, or collaterals used in the undertaking of transactions both for the case that clients pay or deliver and the case that clients receive or accept, as well as fees, fines, and commissions related to the undertaking of transactions. Commercial banks shall notify clients in details regarding timing that clients will make or receive a payment.

(2.1.2.6) Commercial banks shall clearly distinguish the differences between the truths and the views of commercial banks. And in case that commercial banks give or show clients information regarding expectations on future returns that clients may receive or on environments, commercial banks shall not make clients misunderstand that information provided is the returns that clients will receive in the future from the undertaking of transactions if commercial banks do not guarantee for such returns.

(2.1.2.7) Other information that is important for decision making of clients such as:

- Details of time period, processes, or procedures in the undertaking of transactions as well as documents or evidences that clients need to use in the undertaking of transactions

- Obligations and rights between clients and commercial banks in the undertaking of transactions and results from exercising of rights and not exercising of rights of both clients and commercial banks as well as time period and range of the exercising of rights or time period and range of the arisen obligations

- Information, documents, evidences and reports that clients will receive as well as timing and frequency of such receipts.

- Withdrawals from the undertaking of transactions or cancellations of contracts as well as the results from such withdrawals or cancellations

- Warnings and limitations associated to the transactions

(2.2) Form of information disclosures:

In disclosing information, commercial banks shall prepare document evidences as follow:

(2.2.1) Documents summarized important information (quick guides), which are documents illustrated information that is important and necessary for efficient decision making. Such information shall illustrate important information in the form that is precise and easily to read. Sources of information in each aspect shall also be indicated in the documents for additional studies of clients.

(2.2.2) Documents containing all information related to the undertaking of transactions as well as information that clients should know.

(3) Exception

The regulation on information disclosures stated in (2) is exempted for plain vanilla derivatives such as forwards, futures, and swaps, or transactions undertaken with clients that are other commercial banks. Commercial banks shall disclose information as appropriate. Such disclosures shall be in line with the principle on information disclosures stated in (1).

5.2.4. Complaint receipts and problem solving processes on client complaints

(1) Principle

For fairness to clients in complaining about undertaking derivatives transactions with commercial banks, commercial banks shall put in place procedures on complaint receipts from clients as well as processes on solving problems and monitoring the solving of problems regarding such complaints. Such processes shall be clear, quick, and fair.

(2) Regulation

(2.1) Procedures on client complaints:

(2.1.1) Commercial banks shall have units responsible for the receipts of client complaints independently from units responsible for the offerings or providing transactions to clients in order to receive complaints from clients, examine, find facts, manage, inform results, monitor results, and report to senior managements or boards of directors of commercial banks according to operation procedures of commercial banks. Such units shall be able to support the contacts from clients on a convenience and quick basis. The complaints from clients shall also be recorded.

(2.1.2) When the units in (2.1.1) receive complaints from clients, such units shall seek for facts and sufficient evidences to conclude the complaints and to find corrective actions. Such procedures shall also be recorded in written documents with minimum information as follow:

(2.1.2.1) Fact conclusions regarding the complaints

(2.1.2.2) Results from the interview of any persons responsible for such transactions both commercial banks and clients sides as well as evidences related to complained transactions and operations according to transactions processes

(2.1.2.3) Results from the evaluations and suggestions

(2.1.2.4) Complaint management processes, which may report to senior managements for management guidelines depending on level of severity stated in operating procedures of commercial banks

(2.1.3) Commercial banks shall set operating time period for management of complaints as well as shall notify results of the monitoring or managing of such complaints to clients. Such time period and results from the monitoring shall not be for delaying until market situations change in the way that benefits to commercial banks.

(2.1.4) Complaints and the results from managing of such complaints shall be regularly reported to senior managements or boards of directors of commercial banks according to operating processes of commercial banks in order to consider the problems and flaws from the operations and decide for problem solving guidelines to prevent future problems.

(2.2) Operating processes in case of client losses:

(2.2.1) In case that there are losses to returns or any benefits from the undertaking of transactions of clients, commercial banks shall be able to quickly and correctly explain situations, facts, and reasons to clients.

(2.2.2) In case that clients who receive losses from the undertaking of transactions and complain commercial banks that they were not correctly informed before undertaking transactions, commercial banks shall have documents and clear evidences indicated that the procedures on the disclosures information regarding the offer or provision of transactions are correctly followed. Besides, commercial banks have already conducted, at the best capability, any actions as professionals in informing clients for their understandings regarding natures and risks associated to derivatives transactions.

(2.2.3) In case that the losses that clients received are arisen from improper or incautious practices of commercial banks or commercial banks did not sufficiently disclose information for decisions of clients, commercial banks shall have guidelines to correct such problems and to compensate losses to clients as deem appropriated.

5.2.5. Internal control system

(1) Principle

Commercial banks shall have proper internal control system to ensure that commercial banks and staff of commercial banks have followed policies and operating procedures regarding client treatment of commercial banks that are in accordance with the regulations prescribed in this Notification.

(2) Regulation

(2.1) Operating plans and standards:

Commercial banks shall set operating plans and standards regarding internal control as follow:

(2.1.1) Line of commands to ensure proper and independent internal control and operating audit

(2.1.2) Internal control procedures and audits as well as the control and audit of the operation regarding compliance to procedures on client treatment of the staff. However, such controls and audits shall be concretely stated such as random audit of compliance to the regulation shall be regularly conducted, etc.

(2.1.3) Penalty codes to responsible persons in case of flaws to incompliance to procedures regarding client treatment set by commercial banks

(2.1.4) Reporting processes to audit committee and boards of commercial banks as well as supervisors and senior management regarding compliance to policies and operating procedures on client treatment as well as any actions taking on related complaints

(2.2) Keeping of documents and evidences:

Commercial banks shall put in place appropriate procedures on the keeping of data and documentary evidences of clients on client suitability analysis, information disclosures, offerings of transactions, undertaking of transactions, as well as client complaints. Such data and documentary evidences shall be in the forms that are readily to be used for internal and external audits.

5.2.6. Personnel capability

(1) Principle

To ensure efficiency of the offering and providing of services to clients, staff of commercial banks shall be good knowledge and understandings on derivatives transactions offering or providing to clients. Staff shall also be expert in new financial transactions and shall also be able to appropriately use financial technologies as well as shall have ethics on their works.

(2) Regulation

To ensure that staffs responsible for offering or providing services to clients have good knowledge and understandings on derivatives transactions and financial products, are able to pass on knowledge as well as clearly and correctly explain nature of transactions as associated risks, and comply with operating procedures set by commercial banks, as well as to ensure that supervisors are able to thoroughly and efficiently control and monitor the operations by appropriately set structure and allocate resources under lines of commands, commercial banks shall have:

(2.1) Recruitment process to recruit staffs with appropriate knowledge and expertise to the assigned jobs in the positions especially experts on derivatives transactions. Staff shall also have integrity and ethics.

(2.2) Regular training program to staffs to ensure that staffs have knowledge and understandings on financial transactions and related technologies that are continuously developed as well as to ensure that staffs are able to offer and provide services and financial products that are appropriate to clients and to efficiently conduct their works. Commercial banks shall have staff development plan which may be set as internal rules such as staffs shall be trained not less than 15 hours per year on the courses directly related to their responsibilities, etc.

6. Transitory Provision

To provide commercial banks time to prepare for the compliance to minimum requirements on client treatment for the undertaking of derivatives transactions prescribed in this Notification, the Bank of Thailand relaxes regulations until end of October 2008. During this period, commercial banks shall follow internal processes of commercial banks on client treatments covering client suitability analysis, information disclosures, complaint receipts and problem solving processes on client complaints, and internal control system that are in line with re regulations on client treatments prescribed in this Notification. The principles in this Notification are consistent with previous principles prescribed in Circulated Letter No. 1821/2550 regarding Realization of the Importance on Client Treatment for the Undertaking of Derivatives Transactions

7. Effective date

This Notification shall come into force from the date after the announcement on Government Gazette onward.

Notified on 3 August 2008.

(Mrs. Tarisa Watanagase)

Governor

The Bank of Thailand

Repeal of Notifications and Circulations

No.	Dated of the Notification of the Bank of Thailand / Circulation	Type	No.	Regarding
1	18 September 2007	Circulated Letter	BOT. ForNorSor. (21) Wor. 1821/2550	Realization of the Importance on Client Treatment for the Undertaking of Derivatives Transactions

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