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FSC Issues Rules on Banks' Offshore Units' Financial Derivatives Activities

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During most of 2013, the Financial Supervisory Commission ("FSC") regulated the financial derivatives business conducted by banks' offshore banking units ("OBUs") pursuant to its letter, Ref. No. Jin-Guan-Yin_Zi-10250000860 dated April 11, 2013 ("Letter").

On Dec. 27, 2013, the FSC issued a subsequent letter, Ref. No. Jin-Guan-Yin-Wai-Zi-10200293010, abolishing the Letter and stipulating the Rules for Offshore Banking Units Conducting Financial Derivatives Businesses ("Rules")

The procedure for applying for approval of the competent authority and the rules for dealing in credit default swaps and credit default options under the Rules are the same as those stipulated in the Letter. However, certain matters are separately provided in the Rules, as follows:

Restrictions on Business Scope and Counterparties Are Expressly Provided in the Rules

Unless approved by the competent authority, the financial derivatives business conducted by OBUs should not involve the New Taiwan Dollar, and the counterparties should be limited to customers outside the territory of the Republic of China ("ROC") and financial institutions inside the territory of the ROC, as defined in para graph 2 of Article 4 of the Offshore Banking Act.

Determining Thresholds of Customers Are Relaxed

Under the Letter, an OBU conducting financial derivatives business other than dealing with credit default swaps or credit default options was required to divide its counterparties into "professional customers" and "retail customers" .

However, Article 4 of the Rules does not provide such determining thresholds for professional customers and retail customers. Instead, it provides that an OBU conducting financial derivatives business shall set customer eligibility standards, anti-money laundering compliance guidance, Know Your Customer guidelines, customer-specific suitability analysis procedures and the range of available products based on its internal and risk controls. The above-mentioned rules may proceed after they are adopted by the board of directors of a local bank or the head office or regional center of a branch of a foreign bank.

Restrictions on the Range of Products Available to Retail Customers Who Are Individuals Outside the Territory of the ROC Are Eased

According to Article 33 of the Directions for Banks Conducting Financial Derivatives Business and the provisions of the Self-Regulatory Rules for Banks Conducting Financial Derivatives, there are certain

restrictions on the types of products that banks may offer to individual retail customers.

However, according to Article 4 of the Rules, an OBU conducting financial derivatives business is not subject to Article 3, paragraph 2 of Article 25, paragraph 2 of Article 28, paragraph 4 of Article 30 and Article 33 of the Directions for Banks Conducting Financial Derivatives Business. Therefore, it may be construed that OBUs are no longer subject to the Self-Regulatory Rules for Banks Conducting Financial Derivatives.

The text of the Rules is available, in Chinese, at <http://law.fsc.gov.tw/law/NewsContent.aspx?id=4418>.

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