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THAILAND

Newsletter

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Public Hearing on Draft Notifications Relating to Capital Maintenance for Securities Business Operators and Futures Trading Business Operators Engaged in Digital Asset Businesses

The Securities and Exchange Commission (the "SEC") is spearheading a move to significantly update the regulations pertaining to digital asset businesses, which will also include securities and derivatives operators conducting businesses involving digital assets.

The proposed notifications relating to capital maintenance for Securities Business Operators and Futures Trading Business Operators Engaged in Digital Asset Businesses form one of the initiatives of the SEC, aimed at further enhancing trust and protecting investors in the digital asset market. They will introduce measures to bolster business credibility, ensure financial readiness, and compensate stakeholders for any losses.

The SEC has invited public feedback on the proposed notifications on its website until 27 May 2024 and is expected to enact these notifications by the third quarter of 2024. The key proposed notifications are summarized below.

Key Points of Proposed Notifications

1. New minimum net capital requirement

The proposed notifications adjust the minimum fund requirement by increasing the net capital ratio (NC¹) to accommodate digital asset businesses. This adjustment includes modifying the NC ratio to support asset custody in hot wallets and cold wallets in accordance with the proportion and sources of customer digital asset holdings. They also enhance the fund maintenance schedule to mitigate the risks associated with providing digital asset trading services and remove the obligation to manage funds on behalf of shareholders and related operations.

¹NC (Net Capital) is equal to liquid assets minus total liabilities and haircut rate.

2. Utilizing insurance policies to mitigate custody and trading service risks

Under the proposed notifications, business operators will have the option of taking out insurance policies instead of being obliged to meet the capital requirements. The insurers must demonstrate that they are financially stable, and policy terms shall include the following:

- **Custody Risk:** Coverage for client asset losses due to fraud and cyber-criminal liabilities, in line with the client's digital asset custody type (e.g., hot wallet, self-custody cold wallet, third-party custodian cold wallet), ensuring no offset from one asset type's coverage against losses stored in another.
- **Trading Service Risk:** Coverage for errors in business operations, such as professional indemnity insurance.

In the case of group insurance or multi-beneficiary scenarios, coverage for maintaining funds is proportional to the amount each business operator is entitled to receive.

3. Establishing early warning (EW) levels for digital asset businesses

The SEC will set an Early Warning (EW) level. Business operators with an NC that does not exceed the respective EW level must submit a report explaining the reasons for the decrease in NC to the SEC. Additionally, they must provide a plan outlining the actions they will take to return their NC to a level above the EW threshold. The report and plan must be submitted to the SEC office within the next business day after the NC reaches or falls below the EW level.

4. Criteria for suspending digital asset business operations

When a business operator's NC falls below the minimum requirement, it must submit the reasons therefor and a corrective plan to the SEC within 15 days. It must then complete the corrective actions within the timeframe notified to the SEC, which should not exceed 45 days. During this period, the operator is prohibited from carrying out certain actions specified by the SEC, such as expanding its business or increasing its risks, which include but are not limited to the following:

- Opening new customer accounts;
- Increasing customers' trading volume limits; and
- Adding investment/trading portfolios unless they are necessary to support the NC or provide business services.

Additionally, it must refrain from any actions that could increase financial risk, operational risk, or violate agreements with customers.

If a business operator fails to submit and implement the plan within the specified timeframe or if the NC falls below 60% of the minimum requirement for a period of 5 days or more, it must suspend digital asset business operations, notify customers, and follow the SEC's instructions to rectify the situation.

5. Preparing and submitting an NC report

The proposed notifications will also require business operators (regardless of whether they hold customers' assets or not) to complete a daily report and ensure its completion by the next business day. They must then submit such a report to the SEC office on the following business day after the report is prepared.

CMHM will closely monitor these legal developments and keep you updated once they have been enacted. If you have any questions in relation to the issues raised in this newsletter, please contact the authors listed in the left-hand column.

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