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THAILAND

Newsletter

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Update on the SEC's regulations on digital assets

Due to the rapid developments in digital assets in the Thai market, the Securities and Exchange Commission of Thailand (the "SEC") from time-to-time updates and amends its regulations on digital assets in order to monitor and support the operation of digital asset businesses in Thailand. Recently, the SEC amended a set of regulations on digital assets which became effective on 16 January 2024. The updated regulations are as follows:

1. Update on criteria for investment in digital tokens, digital asset custodial wallet providers and other regulations related to digital asset businesses

As the SEC aims to provide adequate and proper protection to investors that take into account the risks of investing in digital assets, while supporting the use of technology in fundraising, and promoting sustainable innovation and technology development for the sustained growth of the digital market and economy, the SEC therefore held a public hearing in September 2023 to gain feedback thereon from the public. At the beginning of 2024, the SEC issued new regulations to amend the criteria, conditions, and methods for conducting digital asset businesses. The key points of these new regulations are as follows:

- 1) Elimination of investment limits for real estate-backed and infra-backed tokens:

The limitation on investments by individual investors in real estate-backed ICOs and infra-backed ICOs has been lifted. Previously, individual investors were restricted to investing no more than THB 300,000 per offering. This change aims to align investment limits with product risks and encourage the use of digital technology in fundraising.

- 2) Revision of criteria to support custodial wallet providers:

The criteria have been revised to support businesses providing digital asset custody services to other digital asset operators within the same group if the custodial wallet providers have the following characteristics:



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- the custodial wallet providers are listed companies or subsidiaries of the listed company as described by law; and
- the custodial wallet providers possess expertise, experience, and the capability to manage customer securities or other financial assets,

provided that, the custodial wallet providers and the digital asset operator must be in compliance with the SEC's regulations in relation to the independence between them.

3) Approval for additional business activities:

Digital asset businesses seeking to engage in other activities must obtain approval from the SEC before proceeding. The SEC is required to consider the application for approval within 30 days from the date of receipt of the application, along with any supporting documents. This ensures more effective monitoring of such additional business operations.

Note that the following criteria must be met in order for the SEC to approve the other activities:

- the other activities are to support or will be beneficial to the digital asset business;
- there is no conflict of interest with the existing digital asset business or, if there is, adequate protection measures have been put in place; and
- there is no risk to the assets of customers, or if there is, the digital asset operator must have a system in place to adequately manage those risks.

4) Increased scrutiny on service standards:

Digital asset businesses are prohibited from providing services through an operator that is not lawfully permitted to conduct digital asset activities, such as in the case that it is under investigation by the SEC or it has been sentenced by the Thai courts in relation to unlawful digital asset business operation. This measure aims to enhance the overall quality and trustworthiness of the digital asset market.

2. Update on custodial wallet providers regulations

In order to avoid creating unnecessary burdens and costs for digital asset operators, the SEC has announced new regulations concerning digital asset custodial wallet providers.

The new regulations include an additional exemption, stating that providing custody services for digital assets issued by the digital asset issuer itself and holding digital assets issued by itself for customers would not be considered as providing digital asset custody services under the law and therefore a license to provide digital asset custody services shall not be required.

3. Update on advertising criteria for digital assets

The SEC has also improved the advertising criteria for digital asset businesses as follows:

1) Cancellation of detailed notification criteria:

The criteria requiring detailed information about advertising and advertising expenses to be submitted to the office of the SEC on a per-item basis have been removed.

2) Requirement for senior management approval:

A digital asset operator is now required to submit advertisements to its senior management for consideration of whether they are in compliance with advertising criteria and other relevant criteria before publication. The digital asset operator's compliance unit is tasked with monitoring and reviewing advertisements after publication, and monthly reports on advertising oversights are to be presented to their board of directors, including reports that have received approval from the board of director for submission to the SEC on a quarterly basis.

3) Clear authority for regulatory actions:

The SEC has the authority to suspend, modify, or require businesses to provide information in cases where advertisements are found not to comply with the specified criteria.

In addition to the above update on digital asset regulation, the SEC is accepting public feedback on the amendments to procedures for approval of digital asset licenses and criteria on the trustworthiness of the digital asset operators until 9 February 2024.

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

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