

(Translation)

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Notification of the Securities and Exchange Commission
No. KorDor 29/2540
Re: Rules, Conditions and Procedures for
Securities Borrowing and Lending

By virtue of Section 14 of the Securities and Exchange Act, B.E. 2535 (1992) and Clause 5 of the Ministerial Regulation No. 9 (B.E. 2540) issued under the Securities and Exchange Act, B.E. 2535 (1992), the Securities and Exchange Commission hereby issues the following regulations:

Clause 1. In this Notification:

“Short sale” means the selling of securities where delivery is made with borrowed securities;

“Business operator” means a person licensed to undertake securities business in the category of securities borrowing and lending (SBL);

“Central securities depository” means any central securities depository under the law on securities and exchange;

“Depositor” means a person approved by the central securities depository or the Bank of Thailand to make securities deposit, withdrawal or book-entry transfer for the purpose of making or taking delivery in the traded securities, as the case may be;

“Office” means the Office of the Securities and Exchange Commission.

Clause 2. In carrying out the securities borrowing and lending business, the business operator shall, whether acting as the borrower or its agent or as the lender or its agent, do so with an understanding that such borrowing or lending is made in accordance with any of the following purposes:

(1) to enable the borrower or other persons to deliver securities that have been or will be sold;¹

(2) to enable the borrower or other persons to return the securities previously borrowed;

(3) to enable the borrower or other persons to fulfill any obligation in accordance with the category or characteristic as notified by the Office.²

¹ As amended by the Notification of the Securities and Exchange Commission No. KorThor 59/2543 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 3) dated 23 November 2000.

² As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

Clause 3. The business operator, whether acting as the borrower or its agent, shall not borrow or arrange to borrowing for the purpose of selling to the offeror in a tender offer under the law on securities and exchange.

Clause 4. The borrowed securities or lent securities under Clause 2 shall be securities in securities depository system of the central securities depository or securities for which the Bank of Thailand is a securities registrar.

Clause 5. Any securities shall not be borrowed continuously exceeding the period as notified by the Office, irrespective of whether they are borrowed under one transaction or consecutive transactions from one lender or more.

Clause 6. In carrying out the borrowing and lending of securities, the business operator, whether it is acting as the borrower or its agent or the lender or its agent, shall:

(1) conduct counterparty risk analysis and arrange for collateral to be provided by the borrower in accordance with the rule under Clause 9, and to process and report data on level of risks incurred in securities borrowing and lending to its executives in accordance with its internal guidelines on internal control and risk management related to SBL business which has been previously set in writing and approved by the board of directors of the business operator;

(2) arrange to have in place a securities borrowing and lending agreement having characteristic and substantial matter as notified by the Office;

(3) in the case where there is a transfer of securities between accounts of different depositors, or between a depositor's house account and customer account, notify the central securities depository or the Bank of Thailand, as the case may be, whether such transfer is made in connection with a loan, a return of the loan, a deposit of collateral or a return of collateral;

(4) keep data and prepare report related to the borrowing and lending of securities in accordance with the rules as notified by the Office.

³(5) to undertake any other acts as specified in the Notification of the Office.

Clause 7. In the case where the business operator acts as agent of the securities lender, it shall also:

(1) ensure safekeeping of the collateral, and call for additional collateral from the borrower if necessary to maintain the collateral to loan ratio in compliance with Clause 9 (3);

(2) have in place a system to monitor any benefit on the loaned securities given by the issuer of the securities so as to compensate the lender for such benefit;

(3) provide for a fair and transparent allocation procedure where the business operator is acting for several lenders who are ready to lend the same securities at the same time.

Clause 8. In the case where the business operator is the custodian for of the securities of the customer and wishes to borrow the securities from the customer or to lend the securities to other persons, the business operator must have a

³ As amended by the Notification of the Securities and Exchange Commission No. KorThor 27/2549 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 4) dated 25 October 2006.

prior written consent of its customers. If the business operator or accepted by the business operator puts up or receives cash collateral for the benefit of the customer, the business operator may invest such collateral only in the assets specified in the written agreement made with the customer. Such agreement shall, at least, specify the types of investable assets and investment restrictions.

Clause 9. The business operator shall, except otherwise specified in the second paragraph, arrange for collateral to be provided by the borrower in accordance with the rules as follows:

(1) the collateral shall be cash in Thai Baht, letter of credit, Thai government bond or other assets as notified by the Office. The calculation of collateral value shall be made in accordance with the notification of the Office;

(2) the deposition of collateral which is securities shall be made by transferring such collateral from the borrower to lender;

(3) the value of the collateral to the value of the loaned securities at any time shall not be less than the ratio notified by the Office;

(4) there must be a system to monitor daily the market value of the loaned securities and collateral.

In the case where the business operator lends securities to its customer through a margin account under the notification of the SEC on short selling, the deposition or call for collateral from such customer shall be in accordance with the rule as notified by the Office by virtue of the power under the aforesaid notification.

Clause 9/1.⁴ In the case where the lender is one of the following juristic persons, the business operator and the lender may agree otherwise for the undertaking under Clause 7 (1) or (2) or Clause 9:

⁵(1) the Bank of Thailand;

⁶(2) the Financial Institutions Development Fund;

⁷(3) the Export-Import Bank of Thailand;

⁸(4) the Industrial Finance Corporation of Thailand;

⁹(5) commercial banks;

¹⁰(6) finance companies;

⁴ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

⁵ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

⁶ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

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⁹ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

¹⁰ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

- ¹¹(7) securities companies;
- ¹²(8) life insurance companies;
- ¹³(9) foreign financial institution acting for its benefit or acting as representative of another person having no domicile in Thailand;
- ¹⁴(10) mutual funds;
- ¹⁵(11) provident funds;
- ¹⁶(12) private funds;
- ¹⁷(13) pension funds;
- ¹⁸(14) other juristic persons as notified by the Office.

Clause 10. In order to prevent conflict of interests which may arise in the securities borrowing and lending business, in the case where the business operator has a proprietary account, the business operator shall separate the unit which is responsible for the management of its proprietary account from the unit which operates the securities borrowing and lending service for customers.

In the case where the business operator under the first paragraph wishes to undertake proprietary securities borrowing or lending for its proprietary account, the business operator shall act as follows:

(1) undertake proprietary securities borrowing or lending transactions through or with another business operator or the central securities depository ; or

(2) undertake proprietary securities borrowing or lending transactions through its unit that provides securities borrowing and lending services to customers. In this instance, when making allocation to its lending customers, such client SBL unit shall treat the proprietary account as another customer.

¹⁹**Clause 10/1.** In applying for license, if the applicant requests to restrict the scope of its securities borrowing and lending business in any way, then

¹¹ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

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¹⁹ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.

after license has been given,, the business operator shall undertake the securities borrowing and lending business within that restriction.

²⁰In the case where the business operator under the first paragraph wishes to relax or remove such restriction, the business operator may do so only with prior approval from the Office. In seeking such approval, the business operator shall present document and evidence related to operating plan, operating system in providing service, internal control system and risk management system for the securities borrowing and lending business, which exhibits that the business operator is ready and capable to comply with the rules applicable to the undertakings falling outside the previous restriction.

Clause 11. This Notification shall come into force as from the day following the date of its publication in the Government Gazette.

Notified this 31st Day of July B.E. 2540

Thanong Bidaya
(Mr. Thanong Bidaya)
Minister of Finance
Chairman of the Securities and Exchange Commission

Note:

The Notification of the Securities and Exchange Commission No. KorDor. 29/2540 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending dated 31 July 1997, published in the Government Gazette dated 19 August 1997, General issue, Vol. 114, Section 66Ngor.

The Notification of the Securities and Exchange Commission No. KorThor. 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No.2) dated 26 May 1999, published in the Government Gazette dated 10 June 1999, Vol. 116, Section 46Ngor.

The Notification of the Securities and Exchange Commission No. KorThor. 59/2543 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No.3) dated 23 November 2000, published in the Government Gazette dated 6 December 2000, Vol. 117, Special section 124Ngor.

The Notification of the Securities and Exchange Commission No. KorThor. 27/2549 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No.4) dated 25 October 2006, published in the Government Gazette....

²⁰ As added by the Notification of the Securities and Exchange Commission No. KorThor 12/2542 Re: Rules, Conditions and Procedures for Securities Borrowing and Lending (No. 2) dated 26 May 1999.