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Notification of the Securities and Exchange Commission
No. KorThor. 8/2551
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) as amended by the Securities and Exchange Act (No.4) B.E. 2551 (2008) and Clause 16(6) of the Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business B.E. 2551 (2008), the Securities and Exchange Commission hereby issues the following regulations:

Clause 1 The followings shall be repealed:

(1) 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;

(2) 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;

(3) 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;

(4) 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.

Clause 2 In this Notification:

(1) “Institutional client” shall mean similarly to the definition of “institutional investor” under Section 3 of the Derivatives Act B.E. 2546 (2003) and any notifications issued by virtue of such Act;

(2) “Short sale” means a sale of securities that must be borrowed in order to complete delivery;

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

(4) “Margin account” means an account which keeps records of lending of money to a client for the purchase of securities or lending of securities to a client for short sale.

Clause 3 The business operator shall establish organizational structures and set out policies, scope of duties and responsibilities as well as operations of work units relating to securities borrowing and lending, which demonstrate the provision of systems for internal control, risk management, prevention of conflicts of interest, prevention of information leaking among work units and officers, security of clients' information and assets, filing of documents and evidences relating to making transactions, which are able to efficiently support the undertaking of securities borrowing and lending business, together with controlling and monitoring measures to ensure proper operations as set forth.

Clause 4 The business operator shall establish the methods and procedures for accepting clients and entering into the written agreement with the client, which shall contain sufficient measures to ensure that the client is the same person as the one appears on the application document for making transactions with the business operator including client identification, beneficial owner and controlling person of securities borrowing and lending transaction. The business operator shall have sufficient information, documents or evidences to ascertain the client financial status and ability to pay debt of such client.

The business operator must perform know your client (KYC) procedure continuously. This can be done by keeping client's information, beneficial owner and controlling person up-to-date, as well as revise the financial status and the ability to pay debt of each client on a regular basis.

The business operator must retain the related documents or evidences as prescribed in the first paragraph and the second paragraph in the form which can be retrieved and inspected by the Office promptly. Such documents or evidences shall be stored for a period of at least five years from the cancellation date of the agreement.

Clause 5 In undertaking securities borrowing and lending business, the business operator shall comply with the following rules:

- (1) provide operations of securities borrowing and lending as specified by the Office;
- (2) perform duty with honesty, in the best interest of clients and in compliance with the standards of conduct specified by the Office.

Clause 6 In providing securities borrowing and lending services, the business operator, either in the position of the borrower or the agent of the borrower, or the lender or the agent of the lender, shall proceed as follows:

- (1) provide borrowing and lending services only for securities which are registered in the securities depository system of the securities depository licensed under the law on securities and exchange or that of any juristic person established under foreign laws which is allowed to operate as securities depository under such law

and governed by the government agency or organization responsible for supervision of securities trading;

(2) provide agreements of securities borrowing and lending which has characteristics and material information as prescribed by the Office;

(3) provide agreements of agent appointment in cases where the business operator acts as the agent of the securities borrower and lender;

(4) provide methods and procedures for the allocation of securities for borrowing and lending and disclose such information to clients;

(5) provide documents and evidences relating to securities borrowing and lending transactions and deposit or return of collaterals and submit them to clients as per the rules specified by the Office;

(6) keep the complete documents and evidences under sub-paragraphs (2) and (3) for not less than five years from the date of termination of contracts of securities borrowing and lending or agent appointment, as the case may be. Likewise, the documents and evidences under sub-paragraph (5) shall be kept for not less than five years from the date of execution of securities borrowing and lending transactions. In the first two years, those documents and evidences shall be retrieved and inspected by the Office promptly.

Clause 7 Except for cases specified in the second paragraph, the business operator shall require for deposit or call for collateral from securities borrowers in compliance with the following rules:

(1) The deposit of collateral which is securities shall be made by transferring collateral from the borrower to the lender;

(2) The collateral shall be free from any preferential rights or encumbrance and the type of collateral shall be as specified by the Office;

(3) The collateral value to the loaned securities value ratio shall be maintained to be not less than the ratio specified by the Office;

(4) The collateral value and the loaned securities value shall be updated at least at the end of every business day.

In cases where the business operator is a securities lender and lends securities to the client through a margin account under the Notification of the Securities and Exchange Commission governing sale of securities by a securities company which does not have possession of the securities, the deposit or call for collateral as well as the maintenance of the collateral value to the loaned securities value shall comply with the rules specified in the Notification of the Office governing the operation of margin loans and lending of securities to non-institutional clients for short sale.

Clause 8 In cases where the business operator provides securities lending services by acting as agent of the lender, the business operator shall additionally proceed as follows:

(1) Securing collateral and calling for additional collateral from clients for the necessity of maintaining the collateral value to the loaned securities value ratio under Clause 7(3);

(2) Providing a system for monitoring benefits given on loaned securities by the securities issuer to ensure compensation of such benefits to the securities lender.

Clause 9 In cases where the lender is an institutional client, the business operator and the lender may have an agreement which clearly states that the provisions in Clause 7 or Clause 8 shall not be applied or may have an agreement on such matters otherwise.

Clause 10 For the sake of practicality and for the Office's ability to inspect such operation, the Office shall have power in prescribing details concerning the matters specified in this Notification.

Clause 11 In applying for a license to undertake securities borrowing and lending business, if any applicant requests for limitation on the scope of business, no matter in what forms, when such applicant is granted a license, the operation of securities borrowing and lending business of such person shall be in the limited scope applied for.

In cases where the business operator under the first paragraph wishes to relax or terminate the limitation on the scope of business operation, such business operator shall first seek approval from the Office by demonstrating documents and evidences relating to the work plans, systems for operations or providing of services as well as systems for internal control, risk management, prevention of conflicts of interest, prevention of information leaking between work units and officers, security of clients' information and assets and filing of documents and evidences relating to making transactions in securities borrowing and lending, which indicate that the business operator has readiness and ability to comply with the regulations in the part that is enforced on the business activities requested for relaxation or termination of limitation.

Clause 12 The business operator who provides securities borrowing and lending services to a client before this Notification comes into force and has proceeded for the deposit or call for collateral and the maintenance of the collateral value to the loaned securities value ratio under the rules specified in the notifications repealed in Clause 1 as well as other notifications and circular letters issued by virtue of such repealed notifications, shall continue to comply with such rules until the borrowed securities are returned. In cases where the business operator extends the period of time for borrowing or lending of such securities after this Notification comes into force, the operator shall immediately proceed for the deposit or call for collateral and the maintenance of the collateral value to the loaned securities value ratio under the rules specified in this Notification.

Clause 13 This Notification shall come into force as from 1 November 2008.

Notified this 16th day of July 2008.

-Signature-
(Vijit Supinij)
Chairman

The Securities and Exchange Commission

Remarks: The reason for issuing this Notification is to revise the rules on undertaking of securities borrowing and lending business which obstructs services providing of business operators for more appropriateness and in line with the needs of clients.