

UNOFFICIAL TRANSLATION

Readers should be aware that only the original Thai text has legal force, and that this English translation is strictly for reference.

Notification of the Capital Market Supervisory Board
No. TorThor. 47/2552
Re: Sale of Securities by a Securities Company
Which Does Not Have Possession of the Securities

By virtue of Section 16/6 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 Section 98(5) of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions related to the restriction of rights and liberty of persons, which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board pursuant to Section 60 of the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* hereby issues the following regulations;

Clause 1 The *Notification of the Capital Market Supervisory Board No. TorThor. 18/2551 Re: Sale of Securities by a Securities Company Which Does Not Have Possession of the Securities* dated 16 July 2008 shall be repealed.

Clause 2 In this Notification:

- (1) “*institutional client*” shall have the same meaning as the term “*institutional investor*” defined under Section 3 of the *Derivatives Act B.E. 2546 (2003)* and the Notifications issued by virtue of such law;
- (2) “*short sale*” means a sale of securities borrowed for delivery;
- (3) “*client*” means a person assigning a securities company to buy or sell securities on his or her behalf;
- (4) “*margin account*” means an account recording loans provided to a client for buying securities or the lending of securities to a client for a *short sale*;
- (5) “*Stock Exchange*” means the Stock Exchange of Thailand.

Clause 3 A securities company may sell securities that are not in its possession only in the following cases:

- (1) a *short sale* on behalf of the securities company itself or as ordered by a client in compliance with the rules specified herein; or
- (2) a sale of securities in accordance with the order of a client who has not delivered the possession of such securities to the securities company when the client made the sale order, but the securities company is confident that the client owns the securities, regardless of whether such securities are in the client’s possession, deposited with another securities company, or deposited with a securities depository.

Clause 4 A securities company may make a *short sale* whether on its own behalf or for its client only in the following cases:

- (1) a *short sale* of securities that are equity instruments listed on the *Stock Exchange* in compliance with the rules prescribed by the *Stock Exchange* regarding the approval of the SEC Office;

(2) a *short sale* of securities that are debt instruments whereby the SEC Office may exercise the power to issue rules with which the securities company shall comply; or

(3) a *short sale* resulting from the duty to comply with the obligations in accordance with the categories or characteristics prescribed by the SEC Office.

Clause 5 In making a *short sale* under an order of a person who is not an *institutional client*, a securities company shall proceed as follows:

(1) provide information and ensure that the client understands and affixes his or her signature to acknowledge the risks that may arise from the *short sale*;

(2) require the client to place a collateral and ensure that operations regarding lending of securities for a *short sale* shall comply with the rules prescribed by the SEC Office in the case where the securities company arranges for the client to make a *short sale* through a *margin account*.

Clause 6 Prior to making a *short sale* for its own account, the securities company shall make available a source for securities borrowing to ensure that the securities under a *short sale* can be delivered within the time frame specified by the clearing house under the *Law on Securities and Exchange* or within the period as agreed upon by the parties, as the case may be.

In case of a *short sale* made in accordance with an order of a client, the securities company shall ensure that securities are available for the client to borrow or shall make available a source for securities borrowing for such client, unless the client can prove that securities have been borrowed and that the securities under a *short sale* can be delivered within the time frame specified by the clearing house under the *Law on Securities and Exchange* or within the period as agreed upon by the parties, as the case may be.

In any sale of securities that is not determined as a *short sale* but there is a necessary cause to borrow securities for delivery within the time frame specified by the clearing house under the *Law on Securities and Exchange*, a securities company shall borrow securities or cause its client to borrow securities from or through a securities depository approved under the *Law on Securities and Exchange* or a securities borrowing and lending business licensee, provided that such securities borrowing shall be able to reflect the necessary cause in accordance with the characteristics as prescribed by the SEC Office.

Clause 7 A securities company shall keep record and prepare report on a *short sale* in accordance with the rules prescribed by the SEC Office.

Clause 8 All Notifications of the Office of the Securities and Exchange Commission, orders and circulars issued pursuant to or specifying guidelines for compliance with the Notification of the *Securities and Exchange Commission No. KorDor. 30/2540 Re: Sale of Securities by a Securities Company Which Does Not Have Possession of the Securities* dated 31 July 1997 which have been in force prior to the effective date of this Notification shall remain in force to the extent that they are not inconsistent with or contrary to the provisions herein until Notifications, orders and circulars issued hereunder or specifying guidelines for compliance herewith come into force.

Clause 9 Any reference in any other Notifications to the *Notification of the Securities and Exchange Commission No. KorDor. 30/2540 Re: Sale of Securities by a Securities Company Which Does Not Have Possession of the Securities* dated 31 July 1997 shall mean a reference to this notification.

Clause 10 This Notification shall come into force on 1 September 2009.

Notified this 3rd day of August 2009.

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(Mr. Vijit Supinit)
Chairman
Securities and Exchange Commission

Remark: The rationale for the issuance of this Notification is that as the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* prohibits a securities company from selling securities of which it does not have possession or if no persons assigned the securities company to sell such securities, unless permitted by the Capital Market Supervisory Board, it is deemed expedient that this Notification be issued to replace the *Notification of the Securities and Exchange Commission No. KorDor. 30/2540 Re: Sale of Securities by a Securities Company Which Does Not Have Possession of the Securities* dated 31 July 1997. Therefore, it is necessary to issue this Notification.