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Notification of the Securities and Exchange Commission

No. KorKhor. 2/2554

Re: Administrative Procedure under the Derivatives Act B.E. 2546 and Trust for Transactions in the Capital Market Act B.E. 2550

(No. 2)

By virtue of Section 9(1), Section 121 and Section 122 of the Derivatives Act B.E. 2546 (2003) and Section 8(1), Section 74 and Section 75 of the Trust for Transactions in Capital Market Act B.E. 2550 (2007) which contains certain provision in relation to the restriction of rights and liberties of persons which Section 29 in conjunction with Section 32, Section 33, Section 34, Section 36, Section 41, Section 43, and Section 45 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Securities and Exchange Commission hereby issues the following regulations:

Clause 1. Provision in Clause 7 of the Notification of the Securities and Exchange Commission No. KorKhor. 12/2551 Re: Administrative Procedure under the Derivative Act B.E. 2546 and the Trust for Transactions in the Capital Market Act B.E. 2550 dated 13 October 2008 shall be repealed and replaced with the following provisions:

“Clause 7 The department in charge as assigned by the SEC Office to perform operational tasks including undertaking of any other actions assigned by the administrative panel or the SEC, as the case may be.”

Clause 2. The following provisions shall be added as Clause 14/1 and Clause 14/2 of the Notification of the Securities and Exchange Commission No. KorKhor. 12/2551 Re: Administrative Procedure under the Derivative Act B.E. 2546 and the Trust for Transactions in the Capital Market Act B.E. 2550 dated 13 October 2008:

“Clause 14/1. Violation or non-compliance with the provisions which contain administrative sanction, if it is not the case where the SEC Office considers appropriate to penalize by ordering a probation or public reprimand, it shall be in accordance with the following criteria:

(1) the violation or non-compliance with the rules in undertaking business shall be subject to the administrative fine;

(2) the administrative sanction to restrict or suspend business undertaking or revoke licenses, registration or approval shall be imposed on the violation or non-compliance with any of the following characteristics that is likely to cause damages to investor or client, the derivatives trading system or the overall capital market:

- (a) seriously lack of business codes of conduct;
- (b) lack of sufficient management or supervision, in materiality, to undertake business efficiently and in compliance with related laws and regulations and fair treatment to investor or client or;
- (c) lack of financial stability to support the undertaking of business;

Clause 14/2. Determination of administrative fines shall take into account the levels of severity of the violation on case by case basis. In this regard, rate of criminal fine imposed on the violation under law on securities and exchange with similarity in nature shall apply as the basis of calculation.

Consideration on the levels of severity of the violation under the first paragraph shall be based upon the factors specified in Clause 14.

In case of intentional or gross negligent violation which causes the violator to obtain ill gotten gain or causes damages to investor or client, the derivatives trading system or the overall capital market, the benefits so obtained or damages incurred shall be included in the calculation for the administrative fines, but not exceeding the maximum fines rate as specified by law for each act.”

Clause 3 This Notification shall come into force as from 1 March 2011.

Notified this 21st February 2011.

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(Vijit Supinit)
Chairman
Securities and Exchange Commission

Remark: The rationale for issuing this Notification is to allow the SEC Office to assign any department to carry out the operational tasks for the administrative panel and to specify additional criteria in considering the administrative sanction to be in line with the nature of violation including the criteria in determining the administrative fines.