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Notification of the Securities and Exchange Commission

No. KorKhor. 12/2551

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

(As Amended)

By virtue of the Section 9(1), Section 121, Section 122 and Section 124 of the Derivatives Act B.E. 2546 (2003) and Section 8(1) and Section 76 of the Trust for Transactions in Capital Market Act B.E. 2550 (2007) which contain 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. This Notification shall come into force as from 16 November, 2008.

Clause 2. In this Notification:

- (1) “administrative proceedings” means proceedings related to consideration on administrative sanction;
- (2) “administrative sanction” means administrative sanction specified under law on derivatives or law on trust for transaction in the capital market;
- (3) “alleged person” means person against whom the SEC Office, based on its findings, preliminarily considers that [such person] has certain behaviors indicating unlawful acts subject to administrative sanction;
- (4) “authority” means the SEC, administrative panel and the SEC Office, as the case maybe;
- (5) “administrative panel” means administrative panel under law on derivatives or law on trust for transaction in the capital market;
- (6) “Secretary-General” means Secretary-General of the SEC office.

Chapter 1

General Provisions

Clause 3. Law on administrative procedure shall, *mutatis mutandis*, be applicable to a consideration and imposition of administrative sanction and consideration on an appeal against such imposition.

Clause 4. A notifications of allegation, appointment, imposition of administrative sanction, consideration on appeal or any other matters shall be made in writing.

Clause 5. In cases of urgency or where a recipient intends to receive the notification by other means, notifications of allegation, appointment, imposition of administrative sanction, consideration on appeal or any other matters may be made by facsimile transmission, electronic mail or any other means according to the recipient's intention. In this regard, record of notification shall be made and written notification shall be sent to the recipient at the earliest occasion. In such case, the recipient shall be deemed to have been notified on the date and time appeared in the record of facsimile transmission, electronic mail or any other means, except where it has been proven on the contrary that the recipient has not been notified or has been notified before or after the said date and time.

Chapter 2

Administrative Proceedings and Imposition of Administrative Sanction

Clause 6. When the SEC Office has gathered the facts and preliminarily considered that any person has the behavior that should be subject to the administrative sanction, the following procedures shall commence:

(1) In cases where type of administrative sanction applicable to an alleged person is the authority of the SEC Office, the SEC office shall commence the administrative proceedings under this Chapter;

(2) In cases where type of administrative sanction applicable to the alleged person is not the authority of the SEC Office, the SEC office shall propose the matter to the administrative panel or the SEC, as the case may be, for commencing the administrative proceedings under this Chapter.

Clause 7.1 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.

Division 1

Administrative Proceedings

Clause 8. Administrative proceedings shall include the following procedures:

- (1) gathering of evidence considered necessary for fact proving;
- (2) admission of evidence, explanation or opinion of the SEC Office, an alleged person or a witness or expert witness called by the SEC Office and an alleged person except where the authority considers that it would be unnecessary, redundant or dilatory; request
- (3) requesting any fact or opinion from a witness or expert witness;
- (4) requesting any person to submit relevant documents in such person's possession;
- (5) conducting an on-site inspection.

The alleged person shall cooperate with the authority in relation to fact proving and shall have a duty to notify the authority of any known evidence.

Clause 9. When the authority has inspected the fact, it shall notify an alleged person of an allegation in order to make argument or present the evidence. The alleged person shall be entitled to file an explanation with the authority within fifteen days from the date of notification.

The provision under the first paragraph shall not be applicable to the following cases except where the authority considers otherwise:

- (1) where the proceedings under the first paragraph has completed before the SEC proposes the case to the authority;
- (2) where it is an urgent case that delay will cause serious damage to any person or affect public interest;
- (3) where the fact was given by the alleged person in the explanation or interrogation to the officer of the SEC Office;
- (4) where it is apparently impractical in the light of such circumstance;
- (5) where it is an administrative enforcement measure.

The provision under the first paragraph shall not be applicable if it is likely to cause serious to public interest.

¹ Amended by the Notification of the Securities and Exchange Commission No. KorKhor. 2/2554
Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.2) dated 21 February, 2011.

Clause 10. A notification of allegation shall be in writing with the following material particulars:

- (1) an alleged person's name;
- (2) any act that would be considered as violation subject to the administrative sanction together with facts and circumstances pertinent to the said acts;
- (3) a provision of law, rule, by-law, notification or directive under law on derivatives or law on trust for transaction in the capital market which is considered that the alleged person has violated.

Clause 11. When the authority has considered any evidence and counter argument, if finding no violation committed by an alleged person, the authority shall dismiss an allegation. If, however, the alleged person is considered committing a violation, [the authority] shall determine and order an imposition of administrative sanction.

The SEC Office shall notify the alleged person of the result of consideration without delay.

Clause 12. At least half of the panelists in the administrative panel shall form a quorum.

Decisions shall be made at the meeting upon majority vote. Each commission panelist is entitled to one vote. In the event of a tied vote, the chairman of the meeting may exercise a casting vote.

Clause 13. In performing the power and duty of the administrative panel or the SEC which is not an adjudication under Clause 11, [the administrative panel or the SEC] may appoint any member of the [panel or commission] to perform any matter on its behalf, including-

- (1) signing a letter notifying an allegation or appointment date;
- (2) signing a letter requesting any person to provide an explanation or opinion or submit any documents or evidence;
- (3) interrogating and recording an explanation or opinion of an alleged person, a witness or expert witness.

Division 2

Determination of Administrative Sanction

Clause 14. In considering an administrative sanction to be imposed on an alleged person regardless of whether one or more administrative sanctions will be determined, the authority shall take into consideration the following factors:

- (1) nature of unlawful act which, in general, shall be considered from-

(a) unlawful act caused by intention, gross negligence or merely lack of due care;

(b) benefits gained or will be gained by a wrongdoer or person related to the unlawful acts or any other person;

(c) the nature of unlawful act is a violation or non-compliance of provision of law, regulation, order or condition, in materiality or a breach of fiduciary duty or a violation or non-compliance of technical regulation;

(2) damage caused by such [unlawful] act which, in general, shall be considered from-

(a) level of damage to financial or capital market or client or any other person;

(b) damage incurred is monetary (loss of benefits that should have been gained or increase of cost or expense, for instance) or non-monetary (adverse impact to market or business trustworthiness);

(3) other relevant facts which, in general, shall be considered from-

(a) period and frequency of unlawful act;

(b) such unlawful act indicated deficiency in operational or internal control system and such operational or internal control system accounted for the business of the wrongdoer, in whole or in part;

(c) such unlawful act occurred by the act or knowledge of the wrongdoer's senior officer or a group of senior officers;

(d) the violation or non-compliance involved with the matters specified by the guidelines set in the Notification of the SEC Office;

(e) the wrongdoer notified or reported the unlawful act to the SEC Office within a reasonable period and the report covers some or all of the information including characteristics of report and reason thereof;

(f) remedy of damage or any step taken by the wrongdoer to prevent recurrence of such unlawful act;

(g) level of the wrongdoer's cooperation with the SEC Office, which in case where the wrongdoer is a legal entity, shall include the clear instruction of such legal entity to relevant personnel to cooperate with the SEC Office;

(h) records on administrative sanction of the wrongdoer which, in case where the wrongdoer is a legal entity, shall include records on administrative sanction of personnel related to such legal entity's unlawful act;

(i) level of administrative sanction imposed on other wrongdoers committing similar or closely related unlawful act.

Clause 14/1.² 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 14/2.³ 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.

Division 3

Imposition of Administrative Sanction

Clause 15. An order imposing administrative sanction shall be in writing and shall state date, month and year of the order, administrative sanction imposed, name, signature and title of the authority issuing the order or the person authorized to sign the order.

² Inserted by the Notification of the Securities and Exchange Commission No. KorKhor. 2/2554
Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.2) dated 21 February, 2011..

³ Inserted by the Notification of the Securities and Exchange Commission No. KorKhor. 2/2554
Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.2) dated 21 February, 2011.

Clause 16. An order imposing administrative order shall contain supporting reasons, providing that the reasons shall at least include-

- (1) material facts,
- (2) pertinent legal provisions;
- (3) consideration and support of discretion.

The provision under the first paragraph shall not be applicable in the following cases:

- (1) the reason has been learned of without the necessity to be reiterated;
- (2) it is the case of confidentiality;
- (3) it is the case of urgency where written reason shall be made within appropriate period of time upon the request of person subject to the sanction.

Clause 17. In issuing an order imposing administrative sanction, the authority may prescribe any condition as necessary to attain the objective of law on derivatives or law on trust on transaction in the capital market.

Prescription of the condition under the first paragraph shall include the following prescriptions of condition as appropriate in the light of circumstance of the case:

- (1) the prescription of commencement and termination of administrative sanction at any particular period of time;
- (2) the prescription of commencement and termination of administrative sanction shall depend upon an uncertain future event;
- (3) the prescription to act or omit to act by the person subject to the sanction to rectify or prevent repetition of violation or non-compliance of law on derivatives or law on trust on transaction in the capital market.

Clause 18. An order imposing administrative sanction shall be enforceable against the person subject to such sanction as from the period where such person is notified of [the sanction].

Chapter 3

Appeal

Clause 19. In filing an appeal against an administrative sanction issued by the SEC Office, the SEC or the Administrative panel under Section 124 of the Derivatives Act B.E. 2546 or Section 76 of the Trust for transaction in the Capital Market Act B.E. 2550, the appellant shall file with the SEC Office within the following periods:

- (1) within fifteen days after the date on which the appellant is informed of the sanction issued under the Derivatives Act B.E. 2546;
- (2) within thirty days after the date on which the appellant is informed of the sanction issued under the Trust for transaction in the Capital Market Act B.E. 2550.

The appellant may file the appeal by hand with the SEC Office or by registered mail. For the purpose of calculating statute limitation as to filing of the appeal by mail, the date posted by the post office of the mailing place shall be deemed as the date of filing such appeal.

Clause 20. An appeal shall be made in writing and signed by the appellant. It shall clearly state the cause of appeal, reasons of argument against the administrative sanction together with referred factual or legal issues, as the case may be.

All documents pertaining to the matter of appeal, which the appellant considers as usefulness for consideration an appeal shall be attached to the appeal.

Clause 21.⁴ Department in charge of appeal consideration shall examine an appeal. If [the department in charge of appeal consideration] considers that the appeal does not contain particular under Clause 20, it shall propose to the Secretary-General to order the appellant to rectify the appeal within specified period.

In case where the department in charge of appeal consideration considers that the appeal was not filed within the period specified under Clause 19 or in case where the Secretary-General issued the order under the first paragraph, but the appellant failed to comply within the specified period, the matter shall be proposed to the Securities and Exchange Commission to order not to accept the appeal. A notice of such order shall be sent to the appellant.

Clause 22.⁵ When the department in charge of appeal consideration has examined an appeal that finds that it is not the case under Clause 21 or the appellant has rectified the appeal within period specified by order of the Secretary-General under the first paragraph of Clause 21, the department in charge of appeal consideration shall record the receipt of the appeal and shall issue a receipt or a notice of acceptance of the appeal, as the case may be, to the appellant.

The receipt or notice of acceptance of the appeal under the first paragraph shall include the date, month and year of such acceptance.

⁴ Amended by the Notification of the Securities and Exchange Commission No. KorKhor. 4/2555
Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.3) dated 25 April, 2012.

⁵ Amended by the Notification of the Securities and Exchange Commission No. KorKhor. 4/2555
Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.3) dated 25 April, 2012.

Clause 23.⁶ When an appeal has been accepted, the department in charge of appeal consideration shall prepare a memorandum on consideration of appeal which clearly identifies the matter of appeal or the argument brought by the appellant and shall demonstrate reasons or consideration in the process of issuing the administrative order which is the matter of appeal. The appeal and the memorandum on consideration of appeal shall then be proposed to the Securities and Exchange Commission for further consideration.

Clause 24. In considering an appeal against an administrative sanction, the SEC shall complete its consideration on the appeal within sixty days from the date on which the SEC Office receives the appeal.

Where it is necessary in the light of circumstances that the consideration cannot be completed within the period specified in the first paragraph, the SEC may extend the period of consideration not exceeding thirty days from the last date of such retiring period. In this regard, the SEC Office shall issue a written notice to the appellant prior to the last date of the period to be extended.

Clause 25. In considering an appeal against an administrative sanction, the SEC may review the order both factual and legal issues including appropriateness of order making; providing that the SEC may request the appellant or the SEC Office to submit additional documents or to explain any fact relating to the matter of appeal within the specified period or at its discretion, may allow the appellant or any person to give opinion as considered appropriate.

Clause 26. In cases where the SEC considers that the appellant should be allowed to make an oral statement, the SEC Office shall notify the appellant of the appointment date at least seven days in advance except for the case of urgency, the appointment date may be notified less than the said.

In making the oral statement, the appellant shall file with the SEC a brief statement on or before the appointment date. The brief statement shall not introduce any fact which has never been raised in the appeal except where the appellant can prove that failure to introduce such fact was due to necessity or special circumstance.

The oral statement of the appellant shall be concise and within the issues, providing that it shall not bring up any factual or legal issue not stated in the written statement, unless otherwise the SEC may not allow to make such oral statement.

Clause 27. For the purpose of considering the appeal against the administrative sanction, the SEC may appoint any of the commissioners, or a panel comprising of not more than three persons to summarize factual and legal issues together with giving an opinion in the matter of appeal to the SEC for its consideration.

⁶ Amended by the Notification of the Securities and Exchange Commission No. KorKhor. 4/2555

Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.3) dated 25 April, 2012.

Where the SEC does not appoint any commissioner or any panel to perform the duty in accordance with the first paragraph, or such appointment has been made but consideration on the matter of appeal requires expertise, the Chairman of the SEC or the Vice-Chairman as appointed by the Chairman shall be empowered to appoint the commissioner or the panel in accordance with the first paragraph on the SEC's behalf.

Clause 28. When the SEC completes its consideration on an appeal, the SEC Office shall notify the appellant of such consideration and supporting reasons in writing, providing that Clause 16 shall, *matatis mutandis*, be applicable.

Clause 29. Filing of an appeal shall not be a cause of relief as to the enforcement of the administrative sanction. The appellant, however, may file a motion for relief together with the appeal and explain urgent and necessary causes supporting the grant of relief.

Department in charge of appeal consideration shall consider the motion under the first paragraph urgently and prepare an opinion to the Securities and Exchange Commission for further consideration, providing that Clause 27 shall, *mutatis mutandis*, be applicable.⁷

Where SEC considers that the motion under the first paragraph is filed on urgent causes and supporting reasons are proper, [the SEC] may issue an order [on such matter] as considered appropriate and with or without any condition. In this regard, the SEC Office shall, in writing, notify the appellant of such consideration.

Notified this 13th day of October 2008.

-signature-

(Vijit Supinit)

Chairman

Securities and Exchange Commission

⁷ Amended by the Notification of the Securities and Exchange Commission No. KorKhor. 4/2555

Re: Administrative Procedure under the Derivatives Act B.E. 2546 and the Trust for Transactions in the Capital Market B.E. 2550 (No.3) dated 25 April, 2012.