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(SEC logo and contact information)

4 September 2015

To: Managers
Securities Companies

No. SEC. Nor Phor. (Wor) 27/2558 Re: Clarification on Short Selling and Settlement of Securities for Management of Market Maker's Risks Borne by Securities Companies and Management of Clients' Assets In case of Internal Short.

Reference is made to the policy of the Stock Exchange of Thailand (SET) and Thailand Future Exchange Public Company Limited (TFEX) to increase the liquidity of products on SET and TFEX through promotion of increase of Market Makers (MM), and the provision of the segregated account service by Thailand Securities Depository Co., Ltd. (TSD) to securities companies (SC).

The SEC Office would like to clarify as follows:

1. **In case of Acting as a Market Maker**

To manage risks arising from acting as MM, it may be necessary to make short selling of securities. However, to date, MM has been having misconception on related rules. Hence, to ensure that SC is able to manage risks arising from acting as MM in an effective manner under appropriate costs, and to make clarification on compliance with the intention of Clause 6 of the *Notification of the Capital Market Supervisory Board No. Tor Thor. 47/2552 Re: Sale of Securities by a Securities Company Which Does Not Have Possession of the Securities* dated 6 August 2009, which provides that prior to making a short sale for its proprietary portfolio, a securities company shall procure a source for borrowing securities in order to assure delivery of securities sold short within the time period prescribed by the clearing house under the law on securities and exchange or within the time period agreed upon by the parties, as the case may be, a meeting was held between the SEC Office, SET, TFEX and SC acting as MM for the purpose of reducing issues and obstacles from providing services as MM, and adhering to the intention of the rules of the SEC Office which is to raise confidence in the clearing and settlement system. The meeting concluded that following actions shall be undertaken by SC:

1.1 SC shall procure the source for borrowing securities prior to placement of the short sale order, for example, execution of the standing agreement between SC and securities lender;

1.2 SC shall adopt the procedures for operational audit and control to ensure that SC has in possession the deliverable securities. For example, prior to the opening time of the morning session of the stock exchange, SC has verified the number of lendable securities of the lender under the standing agreement, including adopting procedures for controlling the number of securities sold short to be equivalent to or lower than the lendable securities;

1.3 The risk management and compliance units of SC shall inspect the securities borrowing process and any placement of order in an inappropriate manner in order to prevent the use of short selling of securities in such manner as the means for commission of an offense or misconduct;

1.4 SC shall keep documents and evidence relating to the aforementioned operations for a period not less than five years for inspection by the SEC Office.

However, SC which has made short sale of securities and fails to borrow securities for delivery but instead buys securities for such purpose may be considered violating Section 98 (5) of the *Securities and Exchange Act B.E. 2535(1992)* which prohibits sale of securities by SC which does not have possession of such securities. Therefore, in case of such event, the documents and evidence relating to the securities borrowing process, the efforts taken to borrow such securities and the reason for such action recorded by SC for the inspection by the SEC Office shall be included in the SEC Office's consideration as to whether or not SC has violated Section 98 (5).

2. In case of Custody of Clients' Assets

The discussion between the SEC Office, TSD and Association of Thai Securities Companies on the provision of segregated account service by TSD and the related operations of SC may be summarized as follows:

2.1 SC may voluntarily choose to receive the segregated account service from TSD;

2.2 By reason that certain types of clients such as foreign institutional clients procure their own custodians and do not place their securities in the custody of SC, if any such client fails to make delivery of securities within the delivery period (T+3), SC may encounter internal short without default by SC against TCH, in which case, if the omnibus account structure is used, the internal short data will not appear at TSD and may lead to delivery of other clients' securities by SC. However, if SC uses the segregated account structure, the data on the client's shortage of the securities will appear on the depository register system of SC at TSD.

Nevertheless, the *Notification of the Capital Market Supervisory Board No. Tor Thor. 43/2552 re: Custody of Clients' Assets by Securities Companies* dated 3 August 2009 prohibits SC from using clients' assets for the benefit of another client, other persons or itself without a written order or consent from the client. As a result, whether the omnibus account structure or the segregated account structure of the registration system of securities depository is used, SC may not make delivery with securities of other clients. Accordingly, to prevent default

of delivery of securities, if the client fails to make delivery of the securities within the time period prescribed by TCH, SC may take the following actions:

(1) where SC obtains the license to operate securities borrowing and lending business, it may lend securities to, or borrow securities from other lenders (including TSD), so that the defaulting client shall make delivery to TCH in accordance with its obligation;

(2) where SC does not obtain the license to operate securities borrowing and lending business, it may:

(a) borrow securities from the securities borrowing and lending business operators (including TSD) for the purpose of making delivery under the obligation with TCH only, without presenting itself as the operator of the securities borrowing and lending business which is able to borrow or lend securities to the clients;

(b) apply for the license to operate securities borrowing and lending business and if SC desires to limit scope of the securities borrowing and lending business to the sole purpose of prevention of default of settlement and delivery of securities by its clients against TCH, it may apply for the license with limited scope of business from the SEC Office.

(3) where SC is not able to borrow securities for such client to make delivery to TCH within the specified time period, SC shall process the same day buy-in on the delivery date (T+3).

SC shall adopt management measures for clients in default of settlement and delivery of securities to prevent risk to the clearing and settlement system, for example, determination of the penalty for delivery of securities in delay, improvement of guideline on reconciliation with clients prior to the delivery date, inspection of cause, behavior, and frequentness of the default of delivery of securities by the client and determination of measures for prevention of default of securities delivery by such client.

For your acknowledgement and compliance.

Yours Sincerely

-Signature-

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