

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. Tor Thor. 32/2559
Re: Rules, Conditions, and Procedures for Operation of
Securities Clearing Houses and Central Securities Depositories**

By virtue of Section 16/6, Section 223/3, and Paragraph 2 of Section 228 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 223 of the *Securities and Exchange Act B.E. 2535 (1992)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 July 2017.

**Chapter 1
General Provisions**

**Part 1
Objectives of the Supervision of Securities Clearing Houses
and Central Securities Depositories**

Clause 2 A securities clearing and settlement system is a fundamental system which has connection to the securities trading system and other relevant systems of the Stock Exchange. Meanwhile, an information technology system is necessary for *securities clearing houses* and *central securities depositories* to achieve their goals. Hence, determination of regulations on supervision of *securities clearing houses* and *central securities depositories*, efficient use of information technology (IT governance), and implementation of appropriate risk management and resource allocation by their *board of directors* and *executives* that is practical and meets the standards established by an international organization concerning capital market supervision is crucial and necessary. The regulations under this Notification set a standard for operation of *securities clearing houses* and *central securities depositories* so that their services are efficient, transparent, and examinable, in a bid to promote confidence towards, and integrity and security of, the overall financial system, and to improve the competitiveness and image of the Thai capital market.

**Part 2
Principles for Operation of Securities Clearing Houses
and Central Securities Depositories**

Clause 3 To encourage *securities clearing houses* and *central securities depositories*, which are financial market infrastructures, to deploy effective and secure risk management systems, provide services in a transparent and fair manner, and operate appropriately and correspond with the standards established by an international organization concerning capital market supervision, each *securities clearing house* and *central securities depository* shall follow principles in the following matters:

- (1) good governance and clear, transparent organization structure;
- (2) effective risk management for legal, credit, liquidity, operation, and other risks, with measures to appropriately monitor, control, and manage risks to ensure that these risks can be handled;
- (3) sufficient funding, appropriate systems and rules for membership and supervision of *members* to ensure efficient securities clearing and settlement, including in the case of default in securities clearing and settlement;
- (4) business continuity management, with measures that meet international standards in a bid to promote and maintain the readiness of important systems of *securities clearing houses* and *central securities depositories* so that they can operate continuously;
- (5) disclosure of information in a clear, transparent, and adequate manner to allow *members* and involved persons to be well informed of possible effects and risks from the operation of the business;
- (6) for *central securities depositories*, systems and rules with respect to provision of services to ensure that securities are safely kept and used efficiently.

Part 3 Subject Matters of this Notification

Clause 4 This Notification establishes regulations on the supervision of *securities clearing houses* and *central securities depositories* as follows:

- (1) good governance and organizational structuring, as detailed in Chapter 2;
- (2) risk management, as detailed in Chapter 3;
- (3) management of tiered participation arrangements in *securities clearing houses* and *central securities depositories*, as detailed in Chapter 4;
- (4) management and disclosure of information, as detailed in Chapter 5;
- (5) business continuity management and security of information technology systems, as detailed in Chapter 6;
- (6) outsourcing of services, as detailed in Chapter 7;
- (7) handling of complaints, as detailed in Chapter 8;
- (8) approval of rules or regulations, as detailed in Chapter 9;
- (9) preparation and disclosure of financial statements, as detailed in Chapter 10;
- (10) retention of information and documents, as detailed in Chapter 11;
- (11) additional regulations for operation of specific business, as detailed in Chapter 12.

Part 4 The SEC Office's Power

Clause 5 In order for this Notification to be complied with, the SEC Office may perform the following:

(1) establish rules in clear detail to enable *securities clearing houses* and *central securities depositories* to practice in a consistent manner;

(2) set out detailed guidelines of practice that is proper and in compliance with this Notification, with which conformity to be deemed as compliance with the relevant regulations under this Notification;

(3) to allow the SEC Office to ensure compliance with this Notification, require *securities clearing houses* and *central securities depositories* to submit to the SEC Office reports or any particular documents periodically or from time to time, within a time period specified by the SEC Office, provided that this requirement does not cause unreasonable burden to *securities clearing houses* and *central securities depositories*.

Part 5 Definitions

Clause 6 In this Notification,

“securities clearing house” means any securities clearing house according to the law on securities and exchange;

“derivatives clearing house” means any licensed derivatives clearing house according to the law on derivatives;

“central securities depository” means any central securities depository according to the law on securities and exchange;

“derivatives exchange” means any licensed derivatives exchange according to the law on derivatives;

“securities trading center” means any securities trading center according to the law on securities and exchange;

“Stock Exchange” means the Stock Exchange of Thailand according to the law on securities and exchange;

“board of directors” means the board of directors of a *securities clearing house* or a *central securities depository*, as the case may be;

“executive director” means any director who takes part in management as prescribed by the *Notification of the Capital Market Supervisory Board concerning Application for and Approval of Offer for Sale of Newly Issued Shares*;

“executive” means a manager, deputy manager, assistant manager, department director, or any person who holds a position equivalent to any of the above regardless of the title, and includes any person who has authorization under an agreement, whether fully or partially, to manage;

“affiliate” means an affiliated company as prescribed by the *Notification of the Capital Market Supervisory Board concerning Outsourcing Operational Function relating to Business Operation to a Third Party*;

“member” means any member of a *securities clearing house* or a *central securities depository*, as the case may be;

“**controlling power**” means the power to control a business, as described in Section 89/1;

“**beneficial owner of shares**” means any person having the following power, whether directly or indirectly:

(1) the power to direct or control exercise of vote casting relating to the business of a **securities clearing house** or a **central securities depository**, as the case may be;

(2) the power to direct or control acquisition, sale, or creation of encumbrances on shares;

“**assets received from or possessed for a member**” means

(1) assets that a **securities clearing house** receives from a **member**, whether it is owned by the **member** or its client, for use as collateral for securities clearing and settlement that the **member** is responsible to the **securities clearing house**;

(2) assets that a **securities clearing house** receives from securities trading, whether it is owned by a **member** or its client;

(3) assets placed by a **member** with a **securities clearing house** for security of the trading and clearing and settlement of securities.

Chapter 2 Good Governance and Organizational Structuring

Clause 7 **Securities clearing houses** and **central securities depositories** shall establish clear written regulations on good governance, with approval of their **board of directors**.

Regulations under Paragraph 1 shall promote the integrity and efficiency of the **securities clearing houses** and **central securities depositories**, and benefits of the public and clients shall be taken into consideration. Said regulations shall include at least the following:

(1) policies on prevention and handling of conflicts of interest;

(2) adequate measures to prevent directors, **executives**, sub-committee members, advisors, staff members, employees, or persons who work for **securities clearing houses** or **central securities depositories** from unlawfully seeking benefits by using the information obtained during the performance of their duties, as well as adequate measures to keep information of **members** and their clients confidential.

Securities clearing houses and **central securities depositories** shall disclose their regulations on good governance to the public and involved persons after approval of their **board of directors** has been obtained.

Clause 8 To ensure that **securities clearing houses** and **central securities depositories** operate in an efficient and transparent manner and that their operation promotes integrity of the capital market and is in compliance with the regulations on good governance established pursuant to Clause 7, **securities clearing houses** and **central securities depositories** shall appoint a board of directors comprising the chairman of the **board**, **executive directors**, and independent directors, who have knowledge of and experience in the capital market or knowledge and experience useful for the operation of the **securities clearing house** or **central securities depository**, as the case may be.

For the purposes of Paragraph 1, *securities clearing houses* and *central securities depositories* shall take at least the following actions:

- (1) clearly determine roles and responsibilities of the *board of directors* and *executives*;
- (2) evaluate the performance of the *board of directors* and *executives*.

Clause 9 *Securities clearing houses* and *central securities depositories* shall take at least the following actions with respect to organizational structuring:

- (1) maintain independent directors under Paragraph 1 of Clause 8 in the following numbers:
 - (a) at least one third of the total number of directors, which shall not be less than two, in the case of a *securities clearing house*;
 - (b) one independent director, in the case of a *central securities depository*;
- (2) adopt an effective internal control system and an efficient, independent audit system.

In addition, a *securities clearing house* shall manage risks in the following manners:

- (1) establish a risk management committee, which sets out risk management policies and ensures compliance with such policies, comprising persons with knowledge and experience in securities trading, risk management, or management of a *securities clearing house*, provided that the chairman of the risk management committee and not less than half of all committee members shall not be *executives*, staff members, or employees of the *securities clearing house* or its *affiliate*;
- (2) set up a unit for managing risks according to policies concerning risks, provided that payment of consideration for such unit shall not create conflicts of interest.

Clause 10 Independent directors under Paragraph 1 of Clause 8 shall be able to perform their duties independently in an impartial and fair manner, taking into consideration the public's benefits and the security and integrity of the capital market.

An independent director of a *securities clearing house* or *central securities depository* shall not have any of the following characteristics:

- (1) is or was an *executive director*, *executive*, staff member, employee, or advisor, or is holding or held any other equivalent position, of the *securities clearing house* or *central securities depository*, as the case may be, or its *affiliate*, unless his/her term or employment has ended for at least two years as of the date of commencement as an independent director;
- (2) is a director, *executive*, staff member, or employee, holds any other equivalent position, or involved part in the management of a *member*;
- (3) is a shareholder with the *controlling power* of the *securities clearing house* or *central securities depository*, as the case may be;
- (4) is otherwise unable to provide independent opinion as to the operation of the *securities clearing house* or *central securities depository*, as the case may be.

Chapter 3 Risk Management

Clause 11 Each *securities clearing house* or *central securities depository* shall take at least the following actions with respect to risk management:

- (1) establish a written comprehensive risk management policy framework that covers all risk areas, with approval of its *board of directors* or the working group assigned by the *board of directors*;
- (2) establish risk management measures which are sufficient to effectively prevent and manage risks in different areas;
- (3) regularly review said policy framework and risk management measures to ensure that they are appropriate.

Clause 12 *Securities clearing houses* and *central securities depositories* shall have sufficient sources of funds to support their operation and potential risks from their operation. The proportion of owner's equity shall not be less than the total expenses of the business operation over a period of 6 months as shown in the most recent financial statements, and shall be in the form of high quality assets with adequate liquidity.

Securities clearing houses and *central securities depositories* shall establish clear plans to obtain additional sources of funds in cases where their capital is not sufficient for the operation or various risks pursuant to Paragraph 1.

Clause 13 Each *securities clearing house* or *central securities depository* shall establish a plan for recovery or an orderly wind-down, with approval of its *board of directors*, which contains details at least in the following matters:

- (1) events and circumstances in which a *securities clearing house* or *central securities depository* may implement a plan for recovery or an orderly wind-down;
- (2) important tasks concerning clearing, settlement, and deposit of securities in a manner that enables the *securities clearing house* or *central securities depository* to continue its business;
- (3) guidelines or procedures for business recovery;
- (4) guidelines or procedures for administration of assets and liabilities of the *securities clearing house* or *central securities depository*, and its *members* and clients in cases where the business recovery fails.

Chapter 4

Tiered Participation Arrangements in Securities Clearing Houses and Central Securities Depositories

Clause 14 When providing services concerning securities clearing and settlement, or deposit of securities to *members* who provide services to an indirect client (tiered participant) who is a juristic person, *securities clearing houses* and *central securities depositories* shall also supervise and monitor potential risks of these *members*.

Clause 15 In cases where a *securities clearing house* provides tiered participation arrangements with another *securities clearing house* or a *central securities depository*, the *securities clearing house* shall first establish measures for risk management which cover at least the following:

(1) laws or regulations that allow for provision of tiered participation arrangements and protection of transactions due to differences in *securities clearing houses*;

(2) practical steps and procedures for dealing with the case of default in securities clearing or settlement which is enforceable on other *securities clearing house* or the *central securities depository* whose services are dependent with those of the *securities clearing house*;

(3) ability to demand or enforce collateral promptly;

(4) sufficient sources of funds to handle risks arising from connected services.

In cases where a *central securities depository* desires to provide tiered participation arrangements with another *central securities depository* or a *securities clearing house*, the *central securities depository* shall establish measures for risk management, at least as set out in subclause (1) of Paragraph 1, *mutatis mutandis*.

Chapter 5 Management and Disclosure of Information

Clause 16 *Securities clearing houses* and *central securities depositories* shall disclose or disseminate rules, regulations, news, or information about provision of services as a *securities clearing house* or *central securities depository* to the extent that *members* or their clients, or any involved persons understand risks from use of the services, and shall review the information disclosed or disseminated regularly or every time there is a change or an update so that the information is current.

Clause 17 *Securities clearing houses* and *central securities depositories* shall set up a system for management and storage of information concerning their business operation in an efficient, concise, and complete manner, which also allows such information to be compiled, processed, and made available for viewing within reasonable time.

Securities clearing houses and *central securities depositories* shall set up an alternative system for use when the system under Paragraph 1 cannot function properly so that the management and storage of information concerning their business operation can proceed normally.

Clause 18 *Securities clearing houses* and *central securities depositories* shall establish rules or regulations which allow for exchange of information about securities clearing and settlement, including any other information obtained during the normal course of operation as a *securities clearing house* or *central securities depository*, with the *Stock Exchange*, *securities trading centers*, *derivatives exchange*, *derivatives clearing houses*, *central securities depositories*, the SEC Office, and the Bank of Thailand, for the purposes of supervising and examining the financial status and risks of *members*.

Clause 19 To preserve the public interest and to protect investors, a *securities clearing house* shall disclose information about securities clearing and settlement, its *members*, breaches committed by its *members*, and punishment imposed on its *members*, as well as any other information obtained during the course of business operation as a *securities clearing house* that is material when doing a transaction with its *members*.

Information disclosed under Paragraph 1 shall be timely, and sufficient information shall be disclosed in a fair manner. The type of information, as well as methods and conditions for information disclosure shall be determined by the *securities clearing house*, with approval of the Capital Market Supervisory Board.

Chapter 6

Business Continuity Management and Security of Information Technology Systems

Clause 20 In this Chapter:

“computer system relating to clearing, settlement, and depository services with respect to securities” means an important computer system or network system relating to clearing, settlement, and depository services with respect to securities, a lack of continuity of which would significantly affect the relevant *securities clearing house* or *central securities depository*, or any person related to the *securities clearing house* or *central securities depository*, as the case may be.

Clause 21 This Chapter contains regulations on business continuity management and security of information technology systems in the following matters:

- (1) business continuity management, as detailed in Part 1;
- (2) review, monitoring, and examination of *computer systems relating to clearing, settlement, and depository services with respect to securities*, as detailed in Part 2;
- (3) reporting on material changes in a *computer system relating to clearing, settlement, and depository services with respect to securities*, as detailed in Part 3;
- (4) incident management, as detailed in Part 4;
- (5) establishment of policies and monitoring and analysis of information technology systems, as detailed in Part 5.

Part 1

Business Continuity Management

Clause 22 *Securities clearing houses* and *central securities depositories* shall ensure their readiness in providing services. To that end, at least the following shall be produced in writing:

- (1) a business continuity policy, with approval of the *board of directors* or the working group assigned by the *board of directors*, in order to ensure that during a disruptive event, clearing, settlement, and depository of securities will continue without interruption or can be resumed and continued within reasonable time;

(2) a business continuity plan that corresponds with the policy set out under subclause (1), with approval of a manager or any person holding an equivalent position regardless of the title.

Clause 23 A business continuity plan under Clause 22(2) shall include at least the following details:

(1) measures to be implemented in the case of emergency which may affect the provision of services as a *securities clearing house* or *central securities depository*, with a defined scope that covers possible emergency events, including a detailed procedure and the responsible person for adhering to each step of the procedure;

(2) a list of *computer systems relating to clearing, settlement, and depository services with respect to securities*;

(3) evaluation of risks, and their probability, of discontinuity of a *computer system relating to clearing, settlement, and depository services with respect to securities*, and Business Impact Analysis (BIA);

(4) the recovery time objective;

(5) the recovery point objective;

(6) details of backup systems and alternative site which comply with the business continuity policy and business continuity plan.

Clause 24 *Securities clearing houses* and *central securities depositories* shall establish measures for supervising and communicating with *members* so that the business continuity policy and business continuity plan can be carried out effectively.

Clause 25 To ensure that business continuity management is effective, each *securities clearing house* and *central securities depository* shall take the following actions at least once a year:

(1) conduct testing on the business continuity plan with *members* and involved persons;

(2) have the results of the testing under subclause (1) evaluated by a person with required knowledge and skills who is independent from the persons who formulate or administer the plan;

(3) report the evaluation results under subclause (2) to the *board of directors* and the SEC Office within ninety days from the day the testing is completed.

Clause 26 In cases where there is a change to a *computer system relating to clearing, settlement, and depository services with respect to securities* to the extent that it affects the business operation of the relevant *securities clearing house* or *central securities depository*, the *securities clearing house* or *central securities depository* shall review and revise its business continuity plan without delay.

Part 2

Review, Monitoring, and Examination of Computer Systems relating to Clearing, Settlement, and Depository Services with respect to Securities

Clause 27 To ensure that steps or procedures concerning *computer systems relating to clearing, settlement, and depository services with respect to securities* are effective, each *securities clearing house* and *central securities depository* shall take the following actions:

(1) have the steps or procedures concerning *computer systems relating to clearing, settlement, and depository services with respect to securities* reviewed, monitored, and examined, according to an examination plan specifically designed to suit the level of risks for the particular organization, by an independent person with required knowledge and skills, such as an internal or external auditor, and submit to the SEC Office once a year a report on said review, monitoring, and examination, together with an examination plan specifically designed to suit the level of risks for the particular organization, within sixty days from submission of said report to the *board of directors* or the working group assigned by the *board of directors*;

(2) complete penetration testing on all *computer systems relating to clearing, settlement, and depository services with respect to securities* every three years, the order of systems tested being in accordance with their priority according to the results of risk evaluation, and submit to the SEC Office a report on said testing within the first quarter of the year following the year the testing is conducted.

Part 3

Reporting on Material Changes in Computer Systems relating to Clearing, Settlement, and Depository Services with respect to Securities

Clause 28 To ensure that the overall business operation of *securities clearing houses* and *central securities depositories* is supervised in an orderly, effective, and timely manner, *securities clearing houses* and *central securities depositories* shall report to the SEC Office on any material changes in *computer systems relating to clearing, settlement, and depository services with respect to securities* within January of the following year.

Part 4

Incident Management

Clause 29 In this Part:

“incident” means

(1) an event which cause disruption or degradation of a *computer system relating to clearing, settlement, and depository services with respect to securities*;

(2) an event which cause a *computer system relating to clearing, settlement, and depository services with respect to securities* to become non-compliant to any law, rules, regulations, or requirements set out by the Securities and Exchange Commission, the Capital Market Supervisory Board, the SEC Office, or the relevant *securities clearing house* or *central securities depository*;

(3) an event which cause a *computer system relating to clearing, settlement, and depository services with respect to securities* to be intruded.

Clause 30 When an *incident* occurs, the *securities clearing house* or *central securities depository* shall collect relevant information to identify the cause of the problems, suggest solutions to the problems, report the *incident* to *executives*, and retain relevant evidence and documents available for viewing or inspection by the SEC Office upon request.

Clause 31 In order to accurately and effectively address an *incident*, the relevant *securities clearing house* or *central securities depository* shall take at least the following actions:

- (1) create a written plan to be implemented when an *incident* occurs and adhere to that plan;
- (2) designate a unit or personnel as point of contact and report to *executives* or persons related to the *securities clearing house* or *central securities depository*, as the case may be, for escalation procedures.

Clause 32 In the case of a *serious incident*, in addition to the actions under Clause 30 and Clause 31, the relevant *securities clearing house* or *central securities depository* shall also report that *serious incident* to the SEC Office in accordance with the following rules:

- (1) produce a report verbally or via an email immediately after that *serious incident* is known;
- (2) produce a written investigation report after said *serious incident* has been resolved within thirty days from the day the *board of directors* or the working group assigned by the *board of directors* is reported of that *serious incident*, but no longer than ninety days from the day that *serious incident* takes place.

An investigation report under subclause (2) shall contain a detailed explanation of the *serious incident*, its effects on the *securities clearing house* or *central securities depository*, and its *members*, the root cause, steps taken to resolve the problems, and measures to prevent events of the same nature.

For the purposes of Paragraph 1, “*serious incident*” means:

- (1) an incident that causes disruption to a *computer system relating to clearing, settlement, and depository services with respect to securities*;
- (2) an incident which affects a *computer system relating to clearing, settlement, and depository services with respect to securities* to the extent that it may seriously affect the credibility of the organization.

Part 5 Establishment of Policies and Monitoring and Analysis of Information Technology Systems

Clause 33 To ensure that information technology systems of *securities clearing houses* and *central securities depositories* are effective and secured so that they can maintain confidentiality, accuracy, and credibility of information, remain active for use, and properly monitor potential risks to *computer systems relating to clearing, settlement, and depository services with respect to securities*, *securities clearing houses* and *central securities depositories* shall take at least the following actions:

(1) establish policies and measures to ensure security of information technology systems so that they meet standards acceptable to the SEC Office, or other standards accepted by the industry which also enable such objectives to be achieved, with approval of a manager or any person holding an equivalent position regardless of the title, and review and revise such policies and measures so that they are fit and suitable for current information technology risks;

(2) monitor and analyze potential risks to *computer systems relating to clearing, settlement, and depository services with respect to securities* by recording and maintaining usage information and log files.

Chapter 7 Outsourcing of Services

Clause 34 For actions which the applicable laws or regulations do not specifically require a *securities clearing house* or *central securities depository* to perform by itself, and which are necessary to enhance its business operation efficiency, the *securities clearing house* or *central securities depository* may outsource that service to an outsourced service provider, provided that its outsourced service provider is capable of providing that service in compliance with the applicable laws and regulations, and that by such outsourcing, it cannot be considered that the *securities clearing house* or *central securities depository* does not operate its business.

To outsource a service, a *securities clearing house* or *central securities depository* shall establish at least the following:

(1) a written policy, scope, or definition of work to be outsourced, with approval, whether on a general or case-by-case basis, of the *board of directors* or the working group assigned by the *board of directors*;

(2) measures for appropriate and effective management of risks from outsourcing;

(3) measures for examination of services provided by outsourced service providers so that the outsourced services comply with the objectives of the particular organization.

Paragraph 2 shall not apply to cases where the *Stock Exchange* holds more than fifty percent of the total paid-up capital of the *securities clearing house* or *central securities depository* and the outsourced service provider is the *Stock Exchange* or is a company of which more than fifty percent of the total paid-up capital is held by the *Stock Exchange*.

Chapter 8 Handling of Complaints

Clause 35 Each *securities clearing house* and *central securities depository* shall create a system for effective handling of complaints and disputes arising from clearing, settlement, and depository services with respect to securities, or from use of its services, by taking at least the following actions:

(1) set out written rules on handling of complaints and disputes, which also consider protection of complainants;

(2) designate a unit or personnel to be responsible for handling of complaints and disputes;

(3) monitor and examine handling of complaints and disputes, and inform complainants or disputants of the results of consideration of the complaints or disputes;

(4) submit to the SEC Office a summary report on complaints and disputes every 6 months, which includes a summary of the relevant subject matters and the results of consideration or actions taken by the relevant *securities clearing house* or *central securities depository*.

Chapter 9 Approval of Rules or Regulations

Clause 36 Rules or regulations of a *securities clearing house* or *central securities depository* shall come into force upon approval of the Capital Market Supervisory Board.

In cases where any rules or regulations of a *securities clearing house* or *central securities depository* may affect the business operation or interest of *members*, the *securities clearing house* or *central securities depository* shall hold a hearing to receive opinions of *members* and submit a report on the hearing to the Capital Market Supervisory Board for consideration.

Approval of rules or regulations under Paragraph 1 and holding of hearings under Paragraph 2 do not apply to rules or regulations concerning internal administration of a *securities clearing house* or *central securities depository*.

Clause 37 After a *securities clearing house* or *central securities depository* has proposed rules or regulations to the Capital Market Supervisory Board for consideration and approval, the Capital Market Supervisory Board shall inform the *securities clearing house* or *central securities depository* of the results of consideration within forty-five days from receipt of the rules or regulations, together with all supporting evidence as required in Clause 38.

After the time period under Paragraph 1 has ended, if the Capital Market Supervisory Board has not informed the *securities clearing house* or *central securities depository* of the results of consideration or instructed it to amend the proposed rules or regulations, it shall be deemed that the Capital Market Supervisory Board grants approval of said rules or regulations.

Clause 38 When proposing rules or regulations for approval of the Capital Market Supervisory Board, the *securities clearing house* or *central securities depository* shall submit the following evidence in support of its application for approval:

(1) the principles, rationale, and necessity of the rules or regulations, as well as the benefits and impacts and proposed enforcement approach of the rules or regulations;

(2) minutes of *board of directors'* meetings with respect to consideration of the rules or regulations, as well as supporting documents, such as foreign rules or regulations on similar matters, and, in cases where the board of directors has non-unanimous resolutions, the number of directors who disapprove of the rules or regulations and a summary of their opinions;

(3) a memorandum opinion of the subcommittee of the *securities clearing house* or *central securities depository* assigned to consider and provide opinion on the rules or regulations, in cases where the rules or regulations are proposed to a subcommittee;

(4) a report on hearing of *members* and supporting documents, as well as the *securities clearing house* or *central securities depository's* opinion.

Clause 39 When facts and circumstances have changed, the Capital Market Supervisory Board may instruct the relevant *securities clearing house* or *central securities depository* to amend, repeal, or revise its existing rules or regulations, or take any action as the Capital Market Supervisory Board deems appropriate.

Clause 40 If it is necessary, a *securities clearing house* or *central securities depository* may issue temporary rules or regulations without complying with Clause 36.

If the Capital Market Supervisory Board is of the opinion that a *securities clearing house* or *central securities depository* exercises its right under Paragraph 1 in bad faith or without reasonable cause, the Capital Market Supervisory Board may instruct the *securities clearing house* or *central securities depository* to repeal or amend the rules or regulations, or take any action as the Capital Market Supervisory Board deems appropriate.

Chapter 10

Preparation and Disclosure of Financial Statements

Clause 41 Each *securities clearing house* and *central securities depository* shall prepare and submit to the SEC Office one original copy of its annual financial statement which has been audited and provided an opinion by an auditor, and take at least the following actions:

(1) make available balance sheets, profit and loss statements, and auditor's reports at the SEC Office of the *securities clearing house* or *central securities depository*, as the case may be, for review by the general public;

(2) publish balance sheet, profit and loss statement, and auditor's report in at least one local daily newspaper or on its website, and provide the SEC Office with evidence of such publication.

The actions in Paragraph 1 shall be taken within twenty-one days from approval of the financial statements by the shareholders' general meeting, but not later than 4 months from the end of that accounting year.

Clause 42 Each *securities clearing house* and *central securities depository* shall hire an auditor to audit and give opinion on its financial statements. An auditor shall have the following qualifications:

(1) is not a shareholder or *beneficial owner of shares* issued by that *securities clearing house*, or a director, staff member, or employee of that *securities clearing house*;

(2) has been approved by the SEC Office to conduct audits, sign audit reports, and give opinion on financial statements of securities companies, according to *the Notification of the Securities and Exchange Commission concerning Approval of Auditors*, and is not being suspended from acting as an auditor.

In their agreement with an auditor, *securities clearing houses* and *central securities depositories* shall contractually require their auditor to collaborate with the SEC Office by providing an explanation or submit any other information with respect to accounting practice and any other matters as requested by the SEC Office.

Clause 43 Financial statements prepared by each *securities clearing house* and *central securities depository* shall be produced and disclose information in accordance with accounting standards under the law on accounting.

In cases where Thai accounting standards do not cover production or disclosure of a certain matter, *securities clearing houses* and *central securities depositories* shall comply with the following accounting standards:

(1) accounting standards of the International Accounting Standards Board;

(2) In the case of a lack of accounting standards under subclause (1), accounting standards of the American Institution of Certified Public Accountants or the Financial Accounting Standards Board.

In cases where a *securities clearing house* or *central securities depository* complies with any of the accounting standards under subclause (1) or subclause (2) of Paragraph 2, the *securities clearing house* or *central securities depository* shall specify the source of the accounting standards.

Chapter 11 Retention of Information and Documents

Clause 44 Each *securities clearing house* and *central securities depository* shall retain information and documents for the time periods prescribed below:

(1) for information about business operation under Clause 17, for a period of not less than ten years from the day the information is obtained or relevant action taken;

(2) for a business continuity plan under Clause 22(2), for a period of not less than three years from the day that plan is created;

(3) for an amended business continuity plan under Clause 26, for a period of not less than three days from the amendment;

(4) for evidence of usage information and log files from use of an information technology system under Clause 33(2), for a period of not less than that prescribed by the law on computer crime;

(5) for evidence for examination of services provided by outsourced service providers under subclause (3) of Paragraph 2 of Clause 34 and other documents relating to outsourcing of services, for a period of not less than three years from the examination of outsourced services;

(6) for evidence relating to a complaint or dispute and results of consideration under Clause 35(4), for a period of not less than three years from the day of settlement of said complaint or dispute.

Regarding retention of information under Paragraph 1, the Capital Market Supervisory Board may also instruct *securities clearing houses* and *central securities depositories* to perform such other actions as it thinks fit.

Retention of information, documents, and evidence under Paragraph 1 shall be in a manner that allows them to be available for viewing or inspection by the SEC Office upon request.

Chapter 12 Additional Regulations for Operation of Specific Business

Part 1 Additional Regulations for Operation as a Securities Clearing House

Clause 45 In providing clearing and settlement services, a *securities clearing house* shall implement a system that ensures that clearing and settlement of securities is in accordance with each securities trading agreement, and shall be bound or replace itself as a counterparty to the buyer and seller immediately after the *Stock Exchange* has informed the *securities clearing house* of the relevant trading transaction that takes place on the *Stock Exchange*. The *securities clearing house* or any involved person may not cancel, amend, or change a trading transaction.

Clause 46 A *securities clearing house* shall establish clear rules and procedures with respect to clearing and settlement of securities so that the clearing and settlement of securities runs efficiently. To that end, it shall perform at least the following:

- (1) process securities trading transactions and inform *members* of their net settlement obligations;
- (2) establish procedures and set time frames for securities clearing and settlement, and clearly define in rules the timing of settlement finality;
- (3) establish clear procedures and methods for events of default in securities clearing and settlement so that events of default can be handled efficiently and timely, disclose such procedures and methods to the general public, and coordinate with *members* and involved persons to test and review such procedures and methods at least once a year;
- (4) in cases where clearing is done through a commercial bank, determine criteria for choosing a commercial bank so that clearing is carried out efficiently, and set out risk management measures;
- (5) create a Delivery versus Payment (DvP) system.

Clause 47 A *securities clearing house* shall establish transparent and fair membership criteria, which shall focus on the suitability, financial standing, and risk management systems of applicants.

Clause 48 To ensure that *members* comply with relevant rules and regulations, *securities clearing houses* shall perform the following:

- (1) establish rules or regulations applicable to *members*;
- (2) establish measures to ensure that *members* comply with the rules or regulations;

(3) establish measures to be implemented when a *member* violates or does not comply with rules or regulations;

(4) evaluate *members*' compliance with rules or regulations over a reasonable time period;

(5) produce reports on the evaluation and actions taken against *members* who violate or do not comply with rules or regulations, and submit them to the SEC Office for information.

Clause 49 Each *securities clearing house* shall establish a system for supervision and examination of the overall financial standing and risks of *members*, which at least regularly evaluates and monitors their financial status, financial stability, and risk management systems, and shall implement measures to ensure that *members*' financial standing and risk management systems comply with the *securities clearing house*'s rules and regulations.

Clause 50 In cases where a *securities clearing house* makes investment or deposits assets with a commercial bank, either in Thailand or in another country, the *securities clearing house* shall evaluate potential risks from the use of the commercial bank's services to make sure that the commercial bank has an effective system for storage of assets, is able to repay debts upon demand, and is under the supervision of a credible organization. Said investment and deposit of assets shall not be overly concentrated at a particular commercial bank, either in Thailand or in another country.

Clause 51 Regarding custody of *assets received from or possessed for a member*, a *securities clearing house* shall perform the following:

(1) create and maintain for each *member* an accurate and current register of assets *received from or possessed for the member* separately from the *securities clearing house*'s assets and from clients;

(2) store the assets *received from or possessed for a member* in a safe and secure manner, and ensure that the assets are in conformity with the register in subclause (1);

(3) store the assets *received from or possessed for a member* separately from the *securities clearing house*'s assets in a manner that allows said assets of the *member* to be identified precisely without doubt;

(4) report the deposit of said assets to the relevant *member* within reasonable time.

The *securities clearing house* shall set out rules on how to carry out the actions under Paragraph 1.

Clause 52 A *securities clearing house* may not use an outsourced service provider with respect to custody of *assets received from or possessed for a member*.

By taking the following actions, it shall not be considered that the *securities clearing house* uses an outsourced service provider and it shall be considered that the assets is kept separately pursuant to Section 51(3).

(1) In the case of cash, the *securities clearing house* shall take the following actions:

(a) deposit it with a commercial bank or any other bank established under a specific law, or invest it within the scope of investment or according to investment policy which the *securities clearing house* sets out by taking into consideration the liquidity, risks, and possible effects on the integrity of the securities clearing and settlement system;

(b) in the case of investment, report to the SEC Office the scope of investment or investment policy set out under subclause (a) and, if any, any amendments without delay, and also disclose them to *members*;

(c) clearly identify the objectives of the storage and demonstrate that such storage or investment by the *securities clearing house* is for the purpose of complying with Section 223/3.

(2) In the case of securities, the *securities clearing house* shall deposit them with a *central securities depository* or the Bank of Thailand. The *securities clearing house* shall clearly identify the objectives of the deposit and demonstrate that such deposit by the *securities clearing house* is for the purpose of complying with Section 223/3.

(3) In the case of other asset, the *securities clearing house* shall be stored together with evidence to prove that the asset belongs to a particular *member* or a client of a particular *member* without a doubt.

Clause 53 In taking the actions under Section 51 and Section 52, a *securities clearing house* shall examine and ensure that its staff strictly complies with the applicable notifications and rules set out by the *securities clearing house*. If it appears to the SEC Office that a *securities clearing house* violates or does not comply with its notifications or rules, or takes inappropriate action with respect to its operation as a *securities clearing house*, the SEC Office may instruct the *securities clearing house* to comply with said notifications and rules or take any action as it deems fit.

Part 2

Additional Regulations for Operation as a Central Securities Depository

Clause 54 To promote and maintain credibility, transparency, and equality with respect to the provision of services as a *central securities depository*, the rules or regulations of a *central securities depository* concerning the following matters shall not limit, obstruct, or lessen the rights of a *member* or limit its provision of services as a *central securities depository* without reasonable cause:

(1) types of securities which can be deposited with the *central securities depository* and types of persons permitted for membership;

(2) provision of services regarding depository, withdrawal, and transfer of securities or any other related services of a *central securities depository*;

(3) rates of fees, expenses, and fines with respect to the provision of services as a *central securities depository*;

(4) actions to be taken against *members* who violate or do not comply with the rules or regulations of the *central securities depository*.

Clause 55 In providing services as a *central securities depository*, the *central securities depository* shall implement efficient systems as follows:

(1) a system for depository, withdrawal, and transfer of securities and related systems to ensure complete, accurate, and current transactions and able to be implemented efficiently within reasonable time;

(2) a system for management, compilation, processing, storage, and viewing of information about depository, withdrawal, and transfer of securities and any other information with respect to provision of services by the *central securities depository*, and a backup system for when such system cannot be used;

(3) a system for reporting information about securities that enables a *member* to examine its remaining securities in an account each day and check accuracy of its transactions;

(4) a system for verifying that a transaction order with respect to securities in an account of a *member* is the *member* itself or its authorized representative.

Clause 56 A *central securities depository* shall enter into written agreement with each *member*, whereby the scope and conditions of service for deposit of securities are clearly defined.

Clause 57 Transfer of securities from an account of a *member* to that of another *member* or another account of the same *member* by a *central securities depository* operated by the Stock Exchange under Section 224 may be done only when the *central securities depository* receives such request from the *member* or when the *securities clearing house* has informed about settlement of securities among *members* who traded securities in the *Stock Exchange* at the end of each day. Such transfer of securities shall be in accordance with the rules or regulations set out by the *central securities depository*. Upon recording of a transfer transaction according to such rules or regulations, it shall be deemed that such transfer is lawfully valid.

In the case of transfer of securities among *members* who trade securities in the *Stock Exchange* under Paragraph 1, the *central securities depository* may proceed with the transfer only when a *securities clearing house* confirms that clearing has been done. Upon recording of a transfer transaction according to such rules or regulations, it shall be deemed that the transfer becomes final (finality of settlement), and the *central securities depository* or any involved person may not cancel, amend, or make any change to the transaction.

Clause 58 In cases where a *central securities depository* makes an investment or deposits asset with a commercial bank, either in Thailand or in another country, the *central securities depository* shall evaluate potential risks from the use of the commercial bank's services to make sure that the commercial bank has an effective system for storage of asset, is able to repay debts upon demand, and is under the supervision of a credible organization. Said investment and deposit of asset shall not be overly concentrated at a particular commercial bank, either in Thailand or in another country.

Chapter 13 Transitional Provisions

Clause 59 All notifications of the SEC Office of the Securities and Exchange Commission, orders, and circulations which were issued by virtue of or set out guidelines in accordance with the provisions under the *Notification of the Capital Market Supervisory Board No. Tor Dor. 94/2552 Re: Rules, Conditions, and Procedures for Operating Securities Clearing House and Central Securities Depository*, dated 28 October 2009 and the *Notification of the Capital Market Supervisory Board No. Tor Dor. 97/2552 Re: Custody of Assets that Clearing House has Received and has Possession for Members*, dated 28 October 2009, which had been in effect prior to the day this Notification comes into force, shall remain in full force to the extent that they are not contrary to nor inconsistent with this Notification until relevant notifications, orders, and circulations which are issued by virtue of or set out guidelines in accordance with this Notification come into force.

Clause 60 Any reference made in any other notifications to the *Notification of the Capital Market Supervisory Board No. Tor Dor. 94/2552 Re: Rules, Conditions, and Procedures for Operating Securities Clearing House and Central Securities Depository*, dated 28 October 2009 or the *Notification of the Capital Market Supervisory Board No. Tor Dor. 97/2552 Re: Custody of Assets that Clearing House has Received and has Possession for Members*, dated 28 October 2009 shall mean reference to this Notification.

Notified this 3rd day of August 2016.

(Rapee Sucharitakul)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board