

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 Office of the Securities and Exchange Commission
No. Nor Jor. 1/2545
Re: Guidelines for Consideration of Book Building and
Securities Pricing for Offering to the Public and Any Persons**

The Office of the Securities and Exchange Commission (“the SEC Office”) deems it is appropriate to issue guidelines for considering the determination of securities offering price in the registration statement for securities offering (“the Registration Statement”) and draft prospectus to ensure accurate and consistent understanding of relevant parties. In this regard, since the consideration of such matter may involve the issue of book building before the Registration Statement becomes effective, the SEC Office therefore has issued guidelines for such consideration under the *Notification of the Office of the Securities and Exchange Commission No. Nor Jor.1/2543 Re: Book Building before the Registration Statement and Draft Prospectus Become Effective* dated 11 October 2000. To consolidate relevant matters, the SEC Office hereby repeals the *Notification of the Office of the Securities and Exchange Commission No. Nor Jor.1/2543* and replaces it with the guidelines for such consideration hereunder.

Background

1. Section 65 of the *Securities and Exchange Act B.E.2535 (1992)* prescribes that an offer for sale of securities to the public or any person may be made only when the Registration Statement and draft prospectus have been submitted to the SEC Office and **have become effective**;

2. Section 69 prescribes that the Registration Statement shall contain at least details of the specified particulars, including **the expected offering price per unit of securities**;

3. In previous cases of securities offering to the public or any person, the securities issuers usually determined a fixed offering price in the Registration Statement and draft prospectus to facilitate subscription of investors, which raised the following issues:

3.1 Would it be possible for the securities issuer to **determine the offering price in the form of price range** instead of readily indicating a fixed offering price in the Registration Statement and draft prospectus to become effective?; and

3.2 In the case where the securities issuer wishes to determine a fixed offering price in the Registration Statement and draft prospectus as well as to build a book at different price levels before determining the offering price, would such action be liable to a public offering before the Registration Statement and draft prospectus become effective in contravention of Section 65?

Supervisory Guidelines of the SEC Office

1. Determination of the securities offering price in the form of price range

As Section 69 only specifies that the expected offering price shall be indicated in the Registration Statement and draft prospectus, and there are no additional requirements in this matter specified in the Notifications of the Securities and Exchange Commission issued by virtue of the said Section, the SEC Office therefore considers that it is

acceptable to **determine the securities offering price in the form of price range without indicating a fixed offering price before the Registration Statement and draft prospectus become effective**, provided that the disclosure of information is clear and sufficient.

However, since a fixed offering price has not yet been determined, investors do not know the exact amount of money for subscription. Thus, the securities issuer may have to require investors to pay for their subscription at the highest price in advance. If the final offering price is lower than the specified highest price, the securities issuer shall return the excessive amount of the subscription money paid in advance to the investors. In this regard, by choosing this method of securities offering, the securities issuer should demonstrate the capability of returning the excessive amount to the investors and the securities issuer shall not seek benefits on such money.

2. Book building before the Registration Statement and draft prospectus become effective

For the benefit of determining the securities offering price in the Registration Statement and draft prospectus, the securities issuer may wish to build a book before the Registration Statement and draft prospectus become effective. The SEC Office considers that the objective of Section 65 whereby a securities offering may be made only when the Registration Statement and draft prospectus become effective is to allow general investors to receive complete and accurate information for making investment decisions and to have sufficient time for acknowledging such information. Meanwhile, the book building is a necessary process in practice to ensure appropriate determination of the offering price in the Registration Statement and draft prospectus, which will subsequently have complete information and become effective. **Therefore, book building is not inconsistent with the objective of Section 65**; otherwise, the securities issuer would be unable to use market mechanism in determining the offering price efficiently. In this regard, the above consideration is limited to the book building without widespread impacts on investors who are protected in accordance with the objective of law. In any case, such book building shall have the following characteristics:

(1) eligible investors with whom the securities issuer conducts a book building shall be the following entities:

- (a) commercial banks;
- (b) finance companies;
- (c) securities companies for proprietary assets or for managing private funds or for managing investment projects, established under the *Laws on Undertaking of Finance Business, Securities Business and Credit Foncier Business*;
- (d) credit foncier companies;
- (e) insurance companies;
- (f) juristic persons established under specific laws which are not a person in (i);
- (g) Bank of Thailand;
- (h) international financial institutions;
- (i) governmental agencies and state enterprises under the *Law on Budgetary Procedures*;
- (j) Financial Institutions Development Fund;
- (k) Government Pension Fund;
- (l) provident funds;
- (m) mutual funds;
- (n) juristic persons having securities investment at the amount of one

hundred million baht or more, as shown in the latest annual financial statements audited by an auditor;

(o) juristic persons whose shareholders are persons under (a) to (n) and hold shares at an aggregate amount of more than seventy-five percent of the total voting shares;

(p) foreign investors whose characteristics are similar to the investors under (a) to (o), *mutatis mutandis*.

In any case, the characteristics of the aforesaid investors are consistent with those of the investors specified in the *Notification of the Securities and Exchange Commission concerning Filing and Exemption for Filing of the Registration Statement for Securities Offering* whereby securities issuers could be exempted from filling the Registration Statement with the SEC Office before an offering commences. The reason for such exemption is that the investors in these groups should have good knowledge and understanding of investment and have a bargaining power over securities issuers to demand accurate and sufficient disclosure of information to support decision making. However, the investors with whom securities issuers build a book shall **exclude** any investor who subscribes for securities at the amount of ten million baht or more because such investor's characteristics are not different from general investors except for their interest in purchasing a large amount of securities. Therefore, a book building with such investor may have a widespread impact on general investors, which may contradict the spirit of laws.

(2) a period for book building shall be close to the date of determining the offering price; if the book building period spans further away from the date of determining the offering price, it shall not be deemed an action for determining the securities offering price under this scope of consideration;

(3) draft prospectus under Section 77 has been distributed to investors for book building, which fully contains information in other parts except the information on the offering price and details of underwriting. Therefore, investors in these groups are considered to have received complete information for expressing their interest in securities purchase in accordance with the spirit of laws;

(4) the purposed offering price during the book building period is not the final price and may be purposed in the form of price range whereby investors specify the number of securities likely to be purchased at different price levels.

In case of private placement which is not subject to Section 65, the issuer is nevertheless required to obtain an approval from the SEC Office for an offering of newly issued securities of certain types in accordance with Section 32, Section 33 or Section 34. Occasionally, securities issuers may wish to build a book and file an application for securities offering simultaneously. In such regard, the SEC Office views that the issues to be considered in this matter are not much different from the above case and therefore will apply the same consideration approach, *mutatis mutandis*.

The SEC Office hereby notifies accordingly for common acknowledgement.

Notified this 5th day of February 2002.

(Mr. Prasarn Trairatvorakul)
Secretary-General
Office of the Securities and Exchange Commission