

# Capital Thailand

## APEC Financial Regulators Training

The SEC, with the Asian Development Bank (ADB), co-hosted another APEC Financial Regulators Training Initiative for the third consecutive year, during June 22-26, 2009.

This year's forum, with experts from Australian Securities and Investments Commission, Dubai Financial Service Authority, Monetary Authority of Singapore and US Commodities Futures Trading Corporation as guest speakers, highlighted the issues of derivatives and structured products and was attended by more than 60 delegates from financial and capital market regulators in the region.



“Financial regulation is like Schubert’s unfinished symphony. This is because financial business develops and changes all the time. We therefore find it necessary to revisit and improve financial regulation every so often. The present financial crisis has made it more urgent, and many proposals have already been made to try to prevent the next crisis.”

*Excerpt from SEC Chief’s opening address at the APEC Financial Regulators Training Initiatives Regional Seminar on June 22, 2009.*

## SEC Chairs IOSCO’s Working Group Meeting

Pravej Ongartsittigul, SEC Senior Assistant Secretary-General, chaired the IOSCO Emerging Markets Committee Meeting’s Working Group 2, featuring “Approaches to Market Surveillance in Emerging Markets” at the 34<sup>th</sup> IOSCO Annual Conference held in Tel Aviv, Israel during June 8-11, 2009.



## SEC Implements ASEAN and Plus Standards

On June 12, the SEC with the Securities Commission of Malaysia and the Monetary Authority of Singapore jointly announced the implementation of the ASEAN and Plus Standards Scheme to facilitate multi-jurisdictional offerings of plain equity and debt securities in ASEAN. The implementation reflects the desire of ASEAN securities regulators to promote cross-border fund raising activities and to enhance the visibility of ASEAN capital markets as an attractive investment destination for global investors.

Initiated by the ASEAN Capital Markets Forum (ACMF), the Scheme is part of the regional capital market integration plan (“the Implementation Plan”) earlier endorsed in April 2009 at the ASEAN Finance Ministers Meeting in Pattaya. Thailand, Malaysia and Singapore are the first three jurisdictions in ASEAN to implement the Scheme.

For greater efficiency and cost-effectiveness of cross-border offerings, the Scheme allows issuers to comply with one single set of common disclosure standards, known as the “**ASEAN Standards**,”\* together with limited additional requirements prescribed by each jurisdiction, known as the “**Plus Standards**.” More details on the ASEAN Standards and Thailand’s Plus Standards are available at [www.sec.or.th](http://www.sec.or.th), and the ASEAN Capital Markets Forum’s website at [www.theacmf.org](http://www.theacmf.org).

SEC Secretary-General Thirachai Phuvanatharanubala, as ACMF Chairman, confirmed ACMF’s strong commitment to enhance attractiveness of ASEAN as an integrated capital market for fund-raising, and ASEAN securities as an asset class. “The adoption of common disclosure standards of international level among ASEAN members is another important step toward our mutual goal of becoming a destination of choice for global investors and issuers.”

*Note: \* The ASEAN Standards are based on the International Organization of Securities Commissions (IOSCO) standards on cross-border offerings and fully adopt the International Financial Reporting Standards (IFRS) and the International Standards on Auditing (ISA).*

## Asset Management Updates

### • Auto-approval of Mutual Funds

To streamline approval procedure for establishment and management of mutual funds, the SEC has initiated an auto-approval scheme for plain vanilla funds whose investment policy does not have complicated features such as investment in derivatives products (except for hedging purpose), multi-class investment units and complex return payment. In applying for auto-approval, asset management companies must submit a certification that such fund meets all the specified criteria.

### • Classification of Mutual Funds

To promote product innovation, the SEC has allowed mutual funds to invest in products with more complex risk and return characteristics. In this regard, mutual funds will be classified into two categories, i.e., complex fund and non-complex fund, according to the levels of risks and returns. Complex fund will be required to disclose more information on risks and returns as well as a warning statement to ensure that sufficient information is available for investors' decision making.

### • Temporary Relaxation of the "One-Third Rule"

To alleviate impacts of economic crisis on existing property fund, the SEC has temporarily relaxed the limitation on the unitholding rule or "One-Third Rule," as follows:

- (1) Aggregate holding of investment units (combining new purchases with those previously held) shall not exceed 50 percent of the fund's total investment units sold;
- (2) New purchases must be completed within 1 year from the date on which the governing notification takes effect, and the purchased investment units must be held for at least 6 months after the date of final purchase and sold within 4 years from the effective date of the governing notification;
- (3) The portion of investment units in excess of the one-third limit shall not have voting rights but still be entitled to receive dividend payment during the period under (2).

### • Eligible Assets for Property Fund Investment

The SEC has allowed property funds to invest in large distribution centers. Such premises must provide rental spaces for the general public, not for specific individuals or groups. This is to minimize the difficulty in seeking new tenants when the leases expire.

### • Private Fund Custodian

The SEC revised regulations governing private fund custodian as follows:

- (1) Private fund, whose total assets are invested overseas or whose beneficiary is not a Thai resident, may appoint a licensed custodian abroad. In cases where the private fund's client is a financial institution, such client may take custody of its own assets.
- (2) Upon client's approval, client's assets kept with a sub-custodian may not be titled after the names of the client and the asset management company, which is the main custodian. This is to accommodate the commercial practices regarding confidentiality of client information pertaining to the sub custodial businesses. However, the main custodian and the sub-custodian must have in place a proper record keeping system to segregate and reconcile client assets.

### • Private Fund Management

The SEC revised the rules governing private fund management to reduce operating costs and increase flexibility for business operators. According to the revised rules, asset management services provided to companies under the same business group do not require a private fund management license. Nevertheless, the structural relationship between the provider and the receiver of services must be based on more than 50 percent shareholding, or clearly indicates that they are in the same group.

## Market Updates

### • New Products Launch

To offer variety of investment and risk management tools, Thailand Futures Exchange Plc. (TFEX) on June 22 launched 11 single stock futures (SSF) with the underlying stocks from SET50 Index, namely Bangkok Bank Plc. (BBL), Krung Thai Bank Plc. (KTB), Kasikorn Bank Plc. (KBANK), Siam Commercial Bank Plc. (SCB), Bank of Ayudhya Plc. (BAY), Land & Houses Plc. (LH), Italian-Thai Development Plc. (ITD), Quality Houses Plc. (QH), Banpu Plc. (BANPU), Siam Cement Plc. (SCC) and Thoresen Thai Agencies Plc. (TTA). Combined with the existing underlyings – Advanced Info Service Plc. (ADVANC), PTT Plc. (PTT), and PTT Exploration and Production Plc. (PTTEP) – making the total of 14 SSFs available in the market at the end of Q2/2009.

In addition, trading of the first derivatives warrant (DW) issued by private sector on the SET took place on July 9, launched by KGI Securities (Thailand) Plc. with initial traded amount of 7.3 million units.

### • FX Futures

The SEC has encouraged the Association of Securities Companies (ASCO) to conduct a study for a launch of additional derivatives products particularly using foreign exchange as the underlying FX futures. This is to provide importers and exporters with hedging tools against currency risks which may arise from foreign exchange fluctuations. Clearing and settlement risks would also be eliminated through the exchanges mechanism. The study should cover feasibility and scope of FX business to be operated by brokers, which at the initial stage would be limited to wholesale market. If the project is feasible, the SEC will consult the Bank of Thailand for further development.

### • Gold Futures Market Makers Allowed to Trade Overseas

As proposed by the SEC and TFEX, the Central Bank in May approved a USD50 million quota for TFEX gold futures market makers to trade gold futures and gold exchange traded funds (Gold ETFs) in foreign exchanges. This will further facilitate the efficiency and liquidity of gold futures market. Currently, TFEX has appointed three gold futures market makers – Globlex Securities Co., Ltd., Trinity Securities Co., Ltd. and Thanachart Securities Co., Ltd.

## Promoting Corporate Governance

SEC Secretary-General Thirachai Phuvanatanarubala granted another 1.5 million baht to Charnchai Charuvastr, President/CEO of Thai Institute of Directors Association (IOD) to support the IOD's survey project on Corporate Governance Report of Thai Listed Companies 2009. This survey series, in which the SEC has continuously provided financial contributions, has proven successful in helping listed firms identify their areas for improvement in corporate governance practices.



## SEC Executive Appointments



### Mr. Chalee Chantanayingyong

Deputy Secretary-General (Securities Business and Corporate Strategy)

- Joined the SEC since its establishment in 1992
- Previously Senior Assistant Secretary-General – Corporate Finance
- BBA in Money and Banking, Thammasat University, Thailand
- MBA in Finance, Texas A&M University, USA



### Mrs. Waratchya Srimachand

Assistant Secretary-General & Acting Director of Enforcement Department

- Joined the SEC since its establishment in 1992
- Previously Director of Enforcement Department
- BA in Accounting (Finance & Banking) (First Class Honors), Chulalongkorn University, Thailand
- MBA, Kellogg School, Northwestern University, USA



### Mrs. Paralee Sukonthaman

Director of Change Management Project

- Joined the SEC since its establishment in 1992
- Previously Director of Accounting Supervision Department
- BA in Accounting (with honors), Chulalongkorn University, Thailand
- M in Accounting, University of Tennessee, USA



### Mr. Thawatchai Kiattkwankul

Director of Accounting Supervision Department

- Joined the SEC in 1993
- Previously Senior Assistant-Director of Accounting Supervision Department
- BA in Business Administration, Assumption University, Thailand
- MBA, California State University, USA

*Note: To enhance operational efficiency toward the implementation of its strategic plan, the SEC also restructured the organization effective from July 1, 2009. More details in the SEC Release No. 53/2009.*

## Regulatory Updates

### • Domestic Distribution of Foreign Research Reports

The SEC is in the process of revising relevant rules to allow Thai securities companies to distribute foreign research reports or partner with foreign analysts to distribute investment advice to investors locally, provided that such research reports are issued by securities firms or analysts licensed and regulated by a regulatory body that is an ordinary member of the International Organization of Securities Commissions (IOSCO). The revised rules will come into force around Q4/2009. This will enable investors to have sufficient information on Thai and foreign securities under the ASEAN market linkage initiative.

### • Streamlining Investor Contact Rules

The SEC is revising the approval criteria for investor contacts personnel in order to strengthen qualification requirements in relation to educational background, work experience and examination on business and regulatory knowledge. This will facilitate the application for investor contact registration on both securities and derivatives. Renewal of registration in both categories can also be completed concurrently with an attendance of at least 15 hours of refresher training course comprising three hours on regulatory and ethical knowledge and at least six hours on derivatives knowledge for the status of derivatives investor contacts.

In addition, the SEC is revising the qualification requirements for securities company executives seeking approval for investor contact status thereby eligible executives must hold the position of chief executive officer (CEO) or managing director (MD). Meanwhile, current investor contacts earlier approved by virtue of their executive positions lower than CEO or MD may continue to perform duties until December 31, 2011. The new rules will take effect in early 2010.

### • Trust for Transactions in Capital Market

Following the promulgation of Trust for Transactions in Capital Market Act B.E. 2550 (2007) last year, the SEC issued regulations specifying two types of transactions eligible for trust creation. They are (1) **Active Trust** such as Real Estate Investment Trust (REIT) and Special Purpose Trust, etc., and (2) **Passive Trust** such as trust for securities issuance and offering according to employee stock option plan (ESOP) and trust for issuance of derivatives warrants, etc. The regulations governing approval for undertaking trust business was also issued. In this regard, the applicants must be commercial banks, financial institutions established under specific laws or securities companies licensed to operate mutual fund management, private fund management or securities brokerage, dealing or underwriting. The applicants must have paid-up registered capital of not less than 100 million baht (≈ USD2.94 million), sound financial condition, and readiness of work system and personnel. In addition, their directors, executives and major shareholders must not possess any prohibited characteristics as specified by the SEC.

## Enforcement

### • Sanctions on SECC Auditor

Having filed a criminal complaint late last year against former S.E.C. Auto Sales and Services Plc. (SECC) Chairman Sompong Witthayaraksan and other four accomplices on account of corporate fraud, the SEC continued its extensive investigation on SECC directors and auditor. On June 17, the SEC filed another criminal complaint with the Department of Special Investigation (DSI) against Somchai Kurujitkosol, the SECC auditor, for failing to comply with the auditing standards and proper audit on the SECC financial statements during 2005 to 2007, misled the public that the documents were accurate and reliable.

Apart from the SECC case, Somchai was also found negligent in performing an audit on the financial statements of Kuang Pei San Food Products Plc. (POMPUI) for the year ended 31 December 2004, by failing to audit the adequacy of allowance for doubtful accounts on long-term loan granted to POMPUI parent company. His approved auditor status is suspended for two years, starting from June 17, 2009. More details in the SEC release No. 50/2009.

### • Unlicensed Derivatives Businesses

Following a criminal complaint filed by the SEC in 2008, the Southern Bangkok Criminal Court on May 7 sentenced seven offenders, namely (1) Glory Bullion (Thailand) Co., Ltd., (2) Thanaphol Saengrangsee, (3) Thanit Teoythong, (4) Kum Yoo Boon (Jack or Jackel), (5) Thammarat Taikum, (6) Wattana Songthanasak and (7) Abhichai Dejthanatham, for jointly engaging in derivatives business without license. The Court imposed a fine of 74,300 baht (USD2,185) on Glory Bullion, sentenced Thanaphol, Thanit, Thammarat, Wattana and Abhichai to a three-month imprisonment, a two-year suspension and a fine of 74,300 baht each. Meanwhile, Kum Yoo Boon was sentenced to a six-month imprisonment, a two-year suspension and a fine of 79,300 baht (USD2,332). More details in the SEC release No. 43/2009.

On June 25, the SEC filed a criminal complaint with the Economic and Cyber-Crime Division (ECOTEC) of the Royal Thai Police against five companies, namely (1) Wang Lee Global Market Co., Ltd., (2) Glory Prosperity (Thailand) Co., Ltd., (3) World Trading Prosperity Co., Ltd., (4) WSD International (Thailand) Co., Ltd. and (5) WSD Financial (NZ) Ltd., for operating derivatives business without license. WSD Financial (NZ) Ltd., in particular, solicited derivative business to the public at large while its registration status allows only to institutional investors. More details in the SEC release No. 54/2009.

## • Enforcement Summary (Jan 1 - Jun 30, 2009)

### Administrative Sanctions

Category	Probation	Suspension	Revocation
Investor contact	4	5	3
Auditor	-	1	-

### Criminal Sanctions

Fine Settlement			Criminal Complaint	
No. of Cases	No. of Persons	Fine Payment	No. of Cases	No. of Persons
51	38	B120,947,486.91 (≈ USD3.56 million)	4	19

## Raising Financial Advisors' Standards of Practice



Chalee Chantanayingyong, SEC Deputy Secretary-General, presided over the opening of "Financial Advisor Workshop" jointly organized by the SEC, SET and IB Club. The workshop is intended to provide a forum for exchange of views and experiences of financial advisors in relation to their roles and duties so as to enhance their standard of practice.

In shifting from a merit-cum-disclosure toward a full disclosure-based regulation, the SEC and the Investment Banking Club (IB Club) agreed on the following step-by-step-preparation:

1. The SEC will no longer focus on making reviews and ordering rectification on the registration statement, but instead will raise questions and publish the answers provided by issuers and financial advisors on the SEC website along with the registration statement. Information on the issues that may materially affect investors' decision such as tender offer for business takeover or connected transactions, against which audit committees or financial advisors have expressed their opinions, will also be publicized;
2. The SEC will raise problems occurred in the past for discussion and exchange of views to ensure understanding of the IB Club;
3. The IB Club will improve its code of conduct and working standards in line with international practices.
4. The IB Club members will discuss and design the best way to disclose track records of financial advisors. This is to raise awareness of professional responsibilities while offering a convenient access of information to the public.

## Securities Offerings (Jan 1 - Jun 30, 2009)

### Equities

Type of Offerings	No. of Companies*	
	Q1	Q2
Initial public offerings (IPO) - shares	1	3
Public offerings (PO) - shares	0	1
Public offerings (PO) - warrants	0	1

Note: \*Some have not started the offering process.

### Debt Securities

Type of Securities	Offering Value (million baht)	
	Q1	Q2
Short-term debt securities	112,532	130,419
Long-term debt securities	138,130	118,513
Other debt securities*	124	87

Note: \*Including convertible bonds, structured notes and securitized bonds.

**Disclaimer: This newsletter is for information purposes only. Any analyses, opinions or conclusions presented herein are those of the editorial team. There shall be no binding effect to the SEC Thailand.**

# Capital

Corporate Affairs Department

Securities and Exchange Commission, Thailand

16<sup>th</sup> Floor, GPF Witthayu Towers, 93/1 Wireless Road, Lumpini, Patumwan, Bangkok 10330, Thailand

Tel: (66) 2695 9503-5 Fax: (66) 2256 7755

E-mail: [info@sec.or.th](mailto:info@sec.or.th) Website: <http://www.sec.or.th>