

*(Unofficial Translation)\**

**Securities and Exchange Act**

**(No. 2)  
B.E. 2542**

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**BHUMIBOL ADULYADEJ, REX.,**

Given on the 26<sup>th</sup> day of December B.E. 2542;  
Being the 54<sup>th</sup> Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to amend the law on securities and exchange;

Be it, therefore, enacted by the Majesty the King, by and with the advice and consent of the Parliament, as follows:

*SECTION 1. This Act shall be called the "Securities and Exchange Act (No.2), B.E. 2542".*

*SECTION 2. This Act shall come into force on the sixtieth day after the following date of its publication in the Government Gazette, except Section 5 which shall come into force following the date of its publication in the Government Gazette.*

*SECTION 3. The definition "private fund management" in Section 4 of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provision:*

""private fund management" means the management of funds of a person or group of persons who has authorized the management of investment to acquire benefit from securities, whether or not investment in other assets is also made, which management is conducted as an ordinary course of business, in consideration of a fee or other remuneration, excluding the management of investment as specified in the notification of the SEC.

*SECTION 4. The provision in the first paragraph of Section 19 of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provision:*

**"SECTION 19.** The Office has the power and duty to perform any act necessary for the implementation of the SEC's resolutions and to perform any other acts under the provisions of this Act or other laws."

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\* Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference. The SEC, Thailand cannot undertake any responsibility for its accuracy nor be held liable for any loss or damages arising from or related to its use.

*SECTION 5. The provision in Section 96 of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provision:*

**“SECTION 96.** The SEC may or may not require a securities company to have a paid-up registered capital in an amount specified for operation of any particular category of securities business, except for a security company operating securities business in the category of securities dealing or securities underwriting or operating securities business in any of the following manners, for which the SEC shall specify the paid-up registered capital of at least one hundred million baht:

- (1) Keeping the client’s assets in its possession;
- (2) Investing in or holding securities for investment by the securities company itself;
- (3) Bearing a responsibility for the clearing and settlement for securities.

*SECTION 6. The provisions in Division 8 Private Fund Management, Section 133, Section 134, Section 135, Section 136, Section 137, Section 138, Section 139 and Section 140 of Chapter 4 Securities Business of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provisions:*

## **“DIVISION 8**

### **PRIVATE FUND MANAGEMENT**

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**SECTION 133.** The securities company shall manage a private fund with honesty and care to preserve the interests of the person who has authorized the management of the private fund, using knowledge and competence as a professional.

The securities company shall enter into a written agreement with a person or a group of persons who has authorized the securities company to manage the private fund, and shall manage the private fund in accordance with the rules, conditions and procedures as specified in the notification of the SEC. In this regard, the SEC shall have the power to specify the particulars which are material to the agreement.

**SECTION 134.** In managing a private fund, the securities company shall provide a private fund manager with the approval of the Office in accordance with the rules, conditions and procedures as specified in the notification of the SEC.

The provisions of the first paragraph of Section 133 shall apply *mutatis mutandis* to the performance of the private fund manager.

The private fund manager shall manage the private fund in accordance with the rules, conditions and procedures as specified in the notification of the SEC.

The Office shall have the power to revoke the approval for a private fund manager who fails to comply with the provisions of the second paragraph or the third paragraph.

**SECTION 135.** In the management of a private fund, the securities company shall arrange for the appointment of a custodian with an approval of the Office in accordance with the rules, conditions and procedures specified in the notification of the SEC.

The securities company may act as a custodian for the person who has authorized it to manage the private fund for which it is responsible, upon the consent of the person so authorizing and approval of the Office, in accordance with the rules, conditions and procedures specified in the notification of the SEC.

**SECTION 136.** The securities company shall segregate the assets of the person authorizing the management of the private fund from its assets, and in the event that the securities company is not a custodian of the person authorizing the management of the private fund for which it is responsible, the securities company shall deposit the assets with the custodian approved under the first paragraph of Section 135 within the business day following the day on which the securities company received such assets or within the time specified in the notification of the Office.

**SECTION 137.** In accepting assets into custody, the custodian shall segregate the deposited assets from its own assets, and shall deal with the deposited assets in accordance with the rules, conditions and procedures specified in the notification of the Office.

Any custodian who fails to comply with the provisions of the first paragraph shall be subject to revocation by the Office of the approval granted for such custodian.

**SECTION 138.** All assets of the person authorizing the management of the private fund shall be in the name of the person authorizing such management and the name of the securities company as the representative, unless otherwise permitted by the Office in accordance with the rules, conditions and procedures specified in the notification of the Office.

**SECTION 139.** In managing a private fund, the securities company shall be prohibited from:

- (1) investing in any assets for the person authorizing the management of the private fund other than those agreed upon in the agreement authorizing the management of the private fund;
- (2) accepting fees or any service charges from the person authorizing the management of the private fund, except for fees or service charges specified at the rate and according to procedures in the agreement authorizing the management of the private fund;
- (3) purchasing or selling assets in its own name with the person authorizing the management of the private fund without giving prior notice;
- (4) making a representation to the person authorizing the management of the private fund that there will be a profit or return at a certain rate or promising that the loss shall not be more than the rate already specified, except for a

representation or warranty given in accordance with the rules, conditions and procedures as specified by the notification of the Office;

- (5) doing any other act that may cause a conflict of interest as specified in the notification of the Office.

**SECTION 140.** The securities company shall prepare an account showing the financial condition of each private fund in the form specified in the notification of the Office and shall keep the supporting documents which evidence the correctness of such account.

In managing a private fund of the nature specified by the notification of the Office, the securities company shall prepare financial statements of the private fund pursuant to its actual conditions, and shall comply with the rules, conditions and procedures specified by the notification of the SEC, which shall take into account the standards approved by the Board of Auditing Practices under the law relating to auditors.

The financial statements under the second paragraph must be examined and given opinion by an auditor approved by the Office, and such auditor must not be a director, staff member or employee of such securities company.

The auditor of the private fund must adhere to the code of conduct and perform the auditing to provide opinion on the financial statements in compliance with the requirements of the law relating to auditors and additional requirements as specified in the notification of the SEC.

In the case where the securities company prepares the supporting documents for entry into accounts or disclose information in the financial statements inaccurately or incompletely, the auditor shall disclose the facts and material impact on the financial statements in his audit report on which he is to sign in order to give his opinion.

Any auditor who fails to comply with the provisions of the fourth paragraph or the fifth paragraph shall be subject to revocation by the Office of the approval given for such auditor.”

*SECTION 7. The provisions in Section 282 and Section 283 of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provision:*

**“SECTION 282.** Any securities company which violates or fails to comply with Section 92, Section 94, Section 96, Section 97, Section 98, Section 100, Section 101, Section 102, Section 103, Section 104, Section 105, Section 106, Section 108, Section 109, Section 110, Section 112, Section 113, Section 114, Section 115, Section 116, Section 117, Section 122, Section 123, Section 124, Section 125, Section 126, Section 129, Section 130, the first paragraph of Section 134, Section 135, Section 136, Section 139 (1), (2), (3) or (4), the first paragraph, second paragraph or third paragraph of Section 140, Section 151 or the first paragraph of Section 195 or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 92,

Section 98(7) or (10), the second paragraph of Section 100, Section 117, Section 135, Section 139(4), the second paragraph of Section 140, Section 141, Section 142, Section 143, Section 144, or Section 150 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

**SECTION 283.** In cases where any securities company commits an offence under Section 92, Section 96, Section 102, Section 105, Section 106, Section 108, Section 109, Section 110, Section 113, Section 114, Section 115, Section 116, Section 117, Section 123, Section 129, Section 130, Section 135, the first paragraph, second paragraph or third paragraph of Section 140, Section 151 or the first paragraph of Section 195 or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with Section 92, Section 117, Section 135 or Section 150, and if it can be proved that the commission of such offences resulted from the instruction from, the act of, or the failure to give instruction or to act which is a duty required to be performed by, the director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding two hundred thousand baht, or both.

In cases where any securities company commits an offence under Section 97, Section 98, Section 112, Section 122, Section 124, Section 125, Section 126, the first paragraph of Section 134, Section 136, or Section 139 (1), (2), (3) or (4) or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 98(7) or (10), Section 139 (4), Section 141, Section 142, Section 143 or Section 144, and if it can be proved that the commission of such offences resulted from the instruction from, the act of, or the failure to give instruction or to act which is a duty required to be performed by, the director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.”

**SECTION 8.** *The following provisions shall be added as Section 285bis and Section 285 ter of the Securities and Exchange Act B.E. 2535:*

**SECTION 285 bis.** Any securities company which violates or fails to comply with the second paragraph of Section 133 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

If the commission of offence under the first paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable for a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation or failure continues.

In case of commission by a securities company of an offence under the second paragraph of Section 133, if can be proved that the commission of offence by the securities company resulted from the instruction from, the act of, or the failure to

give instruction or to act which is a duty required to be performed by, any director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

If the commission of offence under the third paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

**SECTION 285 ter.** Any private fund manager who fails to comply with the rules, conditions and procedures specified in the notification under the third paragraph of Section 134 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

If the commission of offence under the first paragraph is also a violation of the second paragraph of Section 134, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

**SECTION 9.** *The following provision shall be added as Section 286 bis of the Securities and Exchange Act B.E. 2535:*

**SECTION 286 bis.** Any securities company which violates or fails to comply with Section 138 or Section 139 (5) shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

In case of commission of offence by any securities company under Section 138 or Section 139 (5), if it can be proved that the commission of offence by the securities company resulted from the instruction from, the act of, or the failure to give instruction or to act which is a duty required to be performed by any director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

**SECTION 10.** *The provision in Section 287 of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provision:*

**SECTION 287.** Any auditor of a company which issues securities in accordance with Section 32, Section 33 or Section 34, a securities company, a mutual fund, a private fund, or a company whose securities are listed in the Securities Exchange or traded in an over-the-counter centre, who performs audit work in order to give his opinion on financial statements which does not comply with the provisions of the law relating to auditors or additional requirements as specified in the notification of the SEC or makes false reports or violates the first paragraph of Section 62 or Section 107 or the fourth paragraph or fifth paragraph of Section 140 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

**SECTION 11.** *The provision in the first paragraph of Section 317 of the Securities and Exchange Act B.E. 2535 shall be repealed and replaced with the following provision:*

**“SECTION 317.** A Settlement Committee appointed by the Minister shall have the power to settle offences under Section 268, Section 269, Section 270, Section 271, Section 272, Section 273, Section 274, Section 275, Section 276, Section 277, Section 279, Section 280, Section 281, Section 282, Section 283, Section 284, Section 285, Section 285 bis, Section 285 ter, Section 286, Section 286 bis, Section 287, Section 290, Section 291, Section 292, Section 293, Section 294, Section 295, Section 296, Section 297, Section 298, Section 299, and Section 300.”

Countersigned by:

Chuan Leekpai  
Prime Minister