

-Unofficial translation-

Ministerial Regulation

No.3 (B.E. 2537)

Promulgated under the Securities and Exchange Act B.E. 2535

As amended

By virtue of Section 7 and the fourth paragraph of Section 90 of the Securities and Exchange Act B.E. 2535, Finance Minister prescribes the Ministerial Regulation as follows:

Clause 1 Application and issuance of securities business license for a finance and securities company intending to separate finance business from securities business by means of establishing new limited or public limited company to undertake the business shall be governed by this Ministerial Regulation.

Clause 2 The finance and securities company in accordance with Clause 1 shall prepare a scheme for establishment and business undertaking of a limited or public limited company to be set up for undertaking of securities business already licensed to such finance and securities company including a plan of the finance company after the separation of business and transfer of assets and liabilities. The scheme shall be filed with the SEC via the SEC Office and the SEC shall give recommendation and propose such scheme to the Minister for approval. The scheme shall be prepared with the details and supplementary documents specified by Form 90-2 attached herewith.

(1) the shareholders' meeting of the finance and securities company has passed the following resolutions:

- 1.1 approving the separation of finance and securities businesses;
- 1.2 determining shareholding proportion of the finance and securities company's shareholders in the newly established limited or public limited company, during the establishment and after obtaining securities business license, provided that during the establishment the finance and securities company shall hold shares in the

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newly establish company not less than ninety- nine percent of its total number of shares sold;

(2) the newly established limited and public limited company shall be capable of undertaking securities business efficiently and in compliance with the SEC's Notifications and the SEC Office's Notifications concerning undertaking securities business in the licensed category;

(3) the newly established limited and public limited company shall be capable of maintaining net liquid capital as of the date on which the securities business license becomes effective at the level not less than the rate specified by the SEC;

(4) in cases where the finance and securities company has determined or has agreed in advance to allow any legal entity or individual to be the shareholder, either directly or indirectly, in the amount exceeding ten percent of the total number of shares with voting right of the newly established limited and public limited company when the company obtains the securities business licenses, the finance and securities company shall demonstrate that such any legal entity or individual does not have any of the following disqualified characters:

(a) in cases of legal entity:

1. not have financial condition which may cause damage, or have any other behavior indicating unsound financial condition;

2. within five years prior to the date of filing the application, the does not have tainted history or undertake any business fraudulently or indicating lack of responsibility or caution, or reflecting unfair or incredible manner, except where it is proper, the Minister upon the SEC's recommendation may give a waiver of such disqualified characters to such person or entity;

3. chairman, director, and manager of the entity shall-

i. not have the disqualified characters under 1. And 2., mutatis mutandis;

ii. within ten years prior to the date of filing the application, such person has never been sentenced to imprisonment by the final judgment in the offense relating to property committed dishonestly;

iii. within five years prior to the date of filing the application, such person has never been removed from the positions of chairman, director, manager, or person empowered to manage the securities company, the finance company pursuant to law on undertaking of finance, securities and credit foncier businesses or the commercial bank pursuant to law on commercial bank by the regulators;

iv. within five years prior to the date of filing the application, such person has never been chairman, director, manager, or person empowered to manage the

securities company the securities company, the finance company pursuant to law on undertaking of finance, securities and credit foncier businesses or the commercial bank pursuant to law on commercial bank whose license was revoked or suspended, or whose business was under control, except where it is proper, the Minister upon the SEC's recommendation may give a waiver of such disqualified characters to such person;

(b) for individual, [such individual] shall not have the disqualified characters under (a)(iii), *mutatis mutandis*.¹

Clause 3 When the Minister approves the scheme under Clause 2, the finance and securities company under Clause 1 shall set up the limited or public limited company in compliance with the approval. Upon the establishment of the limited or public limited company, the newly established company shall file an application for securities business license with the Minister via the SEC via the SEC Office together with supplementary documents specified by Form 90-3 attached herewith.

In cases where the finance and securities company fails to set up a limited or public limited company or the newly established limited or public limited company fails to comply with the approval or the limited or public limited company fails to file an application for securities business license within six months from the date of the Minister's approval, the approval shall be terminated except where the Minister, upon the SEC's recommendation, grants a waiver or specifies otherwise.²

Clause 4 In filing the application under Clause 3, the newly established limited or public limited company shall be entitled to apply for securities business license in the category already licensed to the finance and securities company under Clause 1.

Clause 5 When the newly established limited or public limited company files an application for securities business license, the finance company under Clause 1 shall file an application to discontinue undertaking securities business already licensed to the company. The Minister shall issue securities business license to the newly established limited or public limited company and order revocation of securities business license of the finance company under Clause 1.

¹ Inserted by the Ministerial Regulation No.12 (B.E. 2541) Promulgated under the Securities and Exchange Act B.E. 2535 dated 17th July, 1998.

² Amended by the Ministerial Regulation No.12 (B.E. 2541) Promulgated under the Securities and Exchange Act B.E. 2535 dated 17th July, 1998.

Clause 6 In cases where the finance and securities company under Clause 1 which applying to discontinue undertaking securities business under the first paragraph of Clause 5 is a member of the Stock Exchange of Thailand and intending to transfer its membership to the newly established limited or public limited company, the Minister shall specify conditions that the securities business license to be issued and the order to revoke the license [of the finance company] shall be in effect upon the transfer of such membership.

Clause 7 When the newly established limited or public limited company has obtained the securities business license and has accepted transfer of assets and liabilities as well as the membership of the Stock Exchange of Thailand under the scheme approved by the Minister, the surviving finance company after the separation of the businesses may decrease the shareholding proportion in the newly established securities company.³

Clause 7*bis* When the newly established limited or public limited company has obtained the securities business license, any change in shareholding structure which is likely to cause any person to be a shareholder of such securities company, either directly or indirectly, in the amount exceeding ten percent of the total number of shares with voting right of such securities company shall be approved by the SEC Office under the criteria, conditions and procedures specified by the SEC.

The provision of the first paragraph shall not be applicable to the change of shareholding structure of the securities company as demonstrated by the finance and securities company under the second paragraph of Clause 2 except where such person has any disqualified characters similar to those specified under (4) of the second paragraph of Clause 2 after the finance and securities company has filed the scheme.⁴

³ Amended by the Ministerial Regulation No.12 (B.E. 2541) Promulgated under the Securities and Exchange Act B.E. 2535 dated 17th July, 1998.

⁴ Inserted by the Ministerial Regulation No.12 (B.E. 2541) Promulgated under the Securities and Exchange Act B.E. 2535 dated 17th July, 1998.

Clause 8 In filing an application for approval of the scheme under Clause 2 and for securities business license under Clause 3, [the applicant] shall pay the application in the amount of 500 baht per application. The fee for securities business license issued by the Minister under the second paragraph of Clause 5 shall be exempted.⁵

Given on the date of 1st August B.E. 2537

Tarrin Nimmanhaeminda
Finance Minister

Note:

Clause 2 of the Ministerial Regulation No.19 (B.E. 2545) Promulgated under the Securities and Exchange Act B.E. 2535 reads “The newly established limited or public limited company by the finance and securities company applying for separation of businesses and has obtained securities business license shall be liable for the finance and securities company’s unpaid fee within the date of obtaining the license except where the SEC grants a waiver to extend the payment schedule.”

⁵ Amended by the Ministerial Regulation No.19 (B.E. 2545) Promulgated under the Securities and Exchange Act B.E. 2535 dated 31st January, 2002.