

Seminar on Investigation & Enforcement

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Good Morning Ladies and Gentlemen

For any regulator to claim that his capital market is orderly and fair, effective investigation and enforcement is everything. It is a must.

The keys to effectiveness are clearly stated in IOSCO Principles 8, 9 and 10.

Principle 8: The regulators should have comprehensive power to inspect, to investigate and to make surveillance.

Principle 9: After they find a violation, the regulators should have comprehensive power to enforce the laws.

Principle 10: The regulatory system as a whole should build an effective compliance program into the capital market processes.

But investigation and enforcement is never easy. In all capital markets, one is dealing with financial interests to the tune of millions. The stakes are high, and so can the level of complication, depending on the legal system and the culture of a country.

I can only talk about Thailand, but I can assure you that we have our own fair share of difficulties.

Our difficulties do not lie in the process of surveillance.

Since I took over the office, I had set up a team that analyzes quarterly financial accounts of companies that we put on our watch list.

Balance sheet items are compared line by line. It was therefore possible to see unusually large financial transactions that look suspicious. Our officers would then telephone and ask the companies for explanation.

Using this technique, we were able to identify transactions that unfairly benefited the major shareholders to top executives. In some cases, the companies relented and reversed the transactions. In the cases that did not, we would start investigations which often led to prosecutions.

In addition to account analysis by our own staff, we also require companies that have transactions related to the major shareholders of the size that require shareholders' approval to send a copy of documents for shareholders' meetings to us.

When we detect an inadequate or a biased disclosure of information, we would also intervene, often through the press, to arouse shareholders' interest and attention. In some cases, after the public fight, the companies decided to withdraw the unfair proposals.

So I can say that we are quite satisfied with our surveillance process.

Our difficulties do not lie in the process of investigation either.

We have adequate power to summon people to give statements, as well as to request financial information from banks and brokers.

Our difficulties, in fact, start when the process goes outside the securities commission, onward to the police, the public prosecutors and the courts.

The process with the police used to take years. Capital market crimes are mostly complicated, sometimes crafted in a big series to transactions involving many parties.

It is often difficult to differentiate an act with a criminal intention from a normal transaction that causes financial losses to the company due to bad luck or an adverse business climate.

One can spend months gathering evidence and explaining the whole saga to a police officer only to have him transferred to another job, replaced by someone without any business background whatsoever.

If the case passes through the police, the same process to explain the rational and logic must again be repeated to the public prosecutor. Only after he is satisfied that the case has merit will he forward the case to the courts.

Finally the courts can be enigmatic. We have lost a few cases in court that I personally still do not see the clear reasons.

In all this process, should the case be dropped at any point outside the securities commission, or decided by the court against us, we can be sued personally. Yes, under the Thai laws, we can be open to personal law suits.

Nowadays, there has been some improvement. A special department has been set up segregated from the police dedicated to complicated financial crimes. In our commission, we also have a litigation committee to review the cases before we forward them to this special department to ensure against bias and incompleteness.

But the risk of personal law suits against officers still remains. It is in this area, therefore, that we must make further studies to see how we can amend the laws to give better protection to officers in their honest duties.

I very much hope that in your discussions and deliberations, some useful information can be gained to help us in this endeavor.

Let me take this opportunity to welcome you all to Thailand and also to wish the seminar all the success.