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## Current Organizational and Regulatory Structure of The Stock Exchange (Thailand)

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### 22.1 Thai Capital Market Structure

#### 22.1.1 Regulatory Framework

Thailand's financial market is supervised by three main organizations: (1) The Ministry of Finance (MOF); (2) the Bank of Thailand (BOT); and (3) the Securities and Exchange Commission (SEC). The MOF is responsible for the country's overall economic and fiscal policies. The Ministry is also a major shareholder of state enterprises. Therefore, it plays an important role in Thailand's privatization policies and plans.

The BOT, like the central banks of many other countries, is in charge of monetary policy. It supervises commercial banks and finance companies, as well as oversees the capital flows and foreign exchange rate of the local currency.

The Thai SEC is more directly involved with the country's capital market. It is a relatively new body, set up by virtue of the *Securities and Exchange Act of 1992 (SEA)*. The *Act* empowered the Office of the Securities and Exchange Commission to be established as an independent state agency responsible for supervision and development of the capital market under the direction and guidance of the SEC.

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### 22.1.2 The Securities and Exchange Commission

The SEC is comprised of:

- Minister of Finance as the ex-officio Chairman;
- Governor of the Bank of Thailand;
- Permanent-Secretary of the Ministry of Finance;
- Permanent-Secretary of the Ministry of Commerce;
- four to six well-qualified persons, appointed by the Cabinet upon the recommendation of the Minister of Finance, that must include experts from the fields of law, accounting, and finance; and
- Secretary-General of the Office of the SEC.

### 22.1.3 Statutory Regulatory Roles of the Securities and Exchange Commission

*Public issuing and offering of securities.* The *SEC Act* allows business sector to issue and offer for sale various kinds of securities, namely equities, debt instruments or hybrid instruments to mobilize funds from the public. Any issuer who wants to make a public offering of securities must first obtain approval from the Office of the SEC. The issuer must file the registration statement and draft prospectus that discloses accurate, reliable, and sufficient information necessary for investors to make investment decisions. Furthermore, an issuer must report updated information for public disclosure.

*Securities businesses.* Under the *SEC Act*, securities businesses mean securities brokerage; securities dealing; securities underwriting; investment advisory service; mutual fund management; and private fund management. The private sector is allowed to take part in securities businesses by applying for licenses from the Minister of Finance upon the recommendation of the SEC. Prior to the launch of each mutual fund, a mutual fund management company must obtain approval from the Office of the SEC.

*The securities exchange.* The *SEC Act* empowers the SEC to supervise securities exchanges such as the Stock Exchange of Thailand (SET) and the Thai Bond Dealing Center (TBDC). In terms of the relationship between the SEC and the SET's Board of Governors, the SEC plays an

important role in setting out policies and approving main regulations for SET, for example, listing and delisting rules and commission fee structure. As for the day-to-day operation of the Stock Exchange of Thailand, SET is empowered by SEC to work independently in supervising the related personnel and institutions.

*Acquisition of Securities for Business Take-Over.* The SEC Act protects the interests of shareholders of listed companies on the stock exchange regarding the acquisition of securities for business take-over as follows:

- (i) *Disclosure of information.* A person acquiring or disposing of such securities must file an acquisition or disposition report to the Office of the SEC within the next business day when such action causes the aggregate holding of the same type of securities to reach or pass a multiple of 5% of the total number of the securities of a business sold.
- (ii) *Tender offer.* A person who acquires or holds securities of a business greater than or equal to 25%, greater than or equal to 50%, or greater than or equal to 75%, or greater than 5% while holding between 25-50% must make a tender offer to provide all securities holders with an equal opportunity to sell their securities to the offeror at the same price that must not be less than the highest price at which the acquirers had acquired such securities within 90 days prior to the tender offer.
- (iii) *Unfair securities trading practices.* The SEC Act states that unfair securities trading practices include dissemination of misleading information and any false news that become rumor, insider trading, and price manipulation. Unfair securities trading practices are criminal offenses with severe penalties under the SEC Act. The securities exchange is primarily responsible to monitor securities trading prior to submitting the cases to the Office of the SEC. The Office is empowered to examine the report and gather all related evidences prior to take further legal proceeding.

## 22.2 The Stock Exchange of Thailand

### 22.2.1 Establishment of the Stock Exchange of Thailand (SET)

The SET was first established under the *Securities Exchange of Thailand Act*, BE 2517 (1974), or the *SET Act*, enacted on May 20, 1974. The exchange began its first trading day on 30 April 1975. On 1 January 1991 the Securities Exchange of Thailand officially changed its name to the Stock Exchange of Thailand (SET).

In 1992, the replacement of the *SET Act*, B.E. 2517 (1974), by the *Securities and Exchange Act*, BE 2535 (1992), or the *SEA*, became the next step towards the development of the modern Thai capital market, with regard to the creation of a concrete legal framework, progressive secondary markets and the improvement of securities business regulations. As defined in the *SEA* (1992), the SET's primary roles are,

- to serve as a center for the trading of listed securities, and to provide the essential systems needed to facilitate securities trading;
- to undertake any business relating to the Securities Exchange, such as a clearinghouse, securities depository center, securities registrar, or similar activities; and
- to undertake any other business approved by the SEC.

### 22.2.2 Ownership Structure and Corporate Governance

The SET is a juristic, non-profit organization without ownership structure. The SET Board of Governors is comprised of a maximum of eleven people, five of whom are appointed by the SEC, and five who are elected by SET members (brokerage companies). The SET President, appointed by the board, is an ex-officio member of the board. The persons appointed by the SEC shall have an excellent knowledge of, and experience in, the operations of the securities exchange, securities or financial businesses and at least one person shall be a senior executive of a company whose securities are listed in the securities exchange. The board of directors of the securities exchange shall elect a director, who is not the manager of the securities exchange, to be the chairman and may also elect another director of the securities exchange to be the vice-chairman. The board is also responsible for formulating SET policies

and supervising exchange operations; however, certain rules and regulations prescribed by the board must also be approved by the SEC.

### **22.2.3 Business of the Exchange**

In addition to the listing of entities, the stock exchange also provides:

- listed companies trading system;
- information dissemination;
- market surveillance, listed company and member company supervision;
- back-office services for clearing and settlement, shares depository and shares registrar by SETs wholly-owned subsidiary, Thailand Securities Depository Co., Ltd.(TSD);
- management of open-ended mutual fund and non-voting depository receipt (by SET wholly-owned subsidiaries, Thai Trust Fund Management Co., Ltd. and Thai NVDR Co., Ltd, respectively) to encourage foreign investment in the stock exchange;
- services to develop and lay down computer systems, information technology, and other communication network systems which relate to or connect with trading of securities, payment and delivery of security (by SETTRADE.COM Co., Ltd., joint venture between the SET and an IT company);
- investor education; and
- education and training programs for industry practitioners by Thailand Securities Institute (TSI) established by SET.

### **22.2.4 Listing Data**

At day end 2 August 2001, there are 379 listed companies, and the market capitalization stood at THB1,466.31 billion (approximately US\$ 32.23 billion).

### 22.2.5 Trading Rights

Only member companies of the SET are authorized to buy or sell securities on the exchange. Firms which have obtained a securities license from the Ministry of Finance (following recommendation by the SEC) to engage in the securities business as stockbrokers may apply for membership at SET. Membership status is obtained once approval is granted by the stock exchange's Board of Governors. At present, the stock exchange has 28 member firms. Nonmember brokerage companies have to send their trading transactions via SET's members.

The board of governors has the authority to determine the number of members in the Exchange (currently unlimited) and admission fee—with the approval from the SEC. In general, a member must have the following qualifications:

- (i) being a securities company which has been licensed to undertake securities business in the category of securities brokerage;
- (ii) having sound financial status and operations according to the nature of its business;
- (iii) having efficiency and readiness for business operation; and
- (iv) having executives who are competent and experienced in the securities business with business integrity and ethics.

Admission fees that members paid varied considerably. The fee specified for the latest lot of admission back in 1996 was THB 300 million. Members can transfer trading/membership rights to another qualified securities company. The admitted transferee shall pay to the exchange the transfer fee of 10% of the value of the rights being transferred as agreed with the transferring member. The fee however must not be less than THB 10 million

### 22.2.6 Risk Management

The stock exchange employs in-house self-regulatory functions through the Regulation and Risk Management Division. The division housed the following departments: Market Surveillance; Market Regulation; Risk Management; and Enforcement.

The Clearing and Depository Department of TSD, is responsible with the establishment and running of the schemes for risk management relating to clearing and settlement.

### **22.2.7 Memorandum of Understanding (MOU) Between the Stock Exchange of Thailand and Securities and Exchange Commission**

In August 2000, the SET and the Office of SEC entered into an MOU between the two organizations to promote clarity and enhance roles of the Office as the regulator in formulating policies and supervising capital market participants. As a result, (i) information disclosure and good corporate governance of companies offering securities for sale to the public, (ii) information disclosure of listed companies, and (iii) supervision and examination of securities companies as well as registration of their marketing staff who provide services to clients and the public, would come under direct responsibility of the Office.

The MOU has the effect of reducing the burden of capital market participants and also enhancing comprehensibility and flexibility of law enforcement which is an integral factor in establishing standard of long-term capital market development in accordance with the rapidly changing capital market environment. Moreover, this would pave the way for the smooth transition in the role of SET from being a market regulator to a business-oriented and market-driven focus company. It represents an important step in support of the corporatization of the stock exchange and its transformation into a private company.

The significant result after entering into the MOU is that procedures will be shortened and are in line with international standards. Market participants will be positively affected as follows:

- *Reduced burden on listed companies in submission of information disclosure.* Beginning from the fiscal year of 2001, reporting of financial statements and annual registration statements are to be submitted to the Office only.
- *Reduced burden of securities holding report:* Beginning from January 1, 2001, management and auditors of listed companies are to submit securities holding report to the Office only.
- *Consolidated the supervision and inspection of securities companies:* Beginning January 1, 2001, the Office will be the sole agency to

supervise and conduct inspection of securities companies. Registration of marketing officer will be transferred from the stock exchange to the Office.

- *Reduced time for approving public offerings and listing on the SET:* The Office and SET agree to work together to reduce a maximum time frame that new public offerings of securities and listing on the stock exchange can be made.

Finally, the Office and the SET will closely coordinate to formulate a guideline and a definite time frame for the implementation of other measures whose principles are contained in the MOU.

### **22.2.8 Corporatization of the SET**

In July 2000, the SET Board of Governors approved in principle a resolution supporting the transformation of SET from its current non-profit statutory structure towards corporatization.

Under this corporatization approach, the SET Board also agreed in principle to restructure SET current operations into two separate and independent entities: OpCo and Fund Entity. OpCo will be an incorporated public company that will act as the market operator. It will provide trading, clearing and settlement services on a commercial basis, develop a wide range of instruments and promote investment opportunities, transferring all the current staff, assets and operations of the stock exchange and its subsidiaries. OpCo's board of directors will consist of representatives of Thai capital market stakeholders. Fund Entity, on the other hand, is a statutory non-profit body, established to invest funds exclusively for the development of Thai securities industry and Thai capital market.

The stock exchange has then conducted two hearing sessions with stakeholders in September 2000 and in July 2001 about the principles of and framework for SET corporatization. The Corporatization Working Committee has not finalized its report on the latest hearing results and its recommendation to the Board of Governors.

Full implementation of the SET's corporatization requires legislative change. No time frame has been formally announced, but should corporatization be agreed upon and approved, the process could take at least three more years to complete.