

เอกสารอ้างอิง

ภาษาไทย

หนังสือ

- กองทุนพัฒนาตลาดทุน. วิกฤตการณ์ และการแก้ไขปัญหาลตลาดหลักทรัพย์ในประเทศไทย
(จัดพิมพ์เนื่องในโอกาสที่ห้าปีบรรลุดประสงค์ของการดำเนินงาน 3 สิงหาคม 2522
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 หลักทรัพย์ และตลาดหลักทรัพย์ พ.ศ..... ร่างพระราชบัญญัติการประกอบธุรกิจ
 เงินทุน ธุรกิจหลักทรัพย์ ธุรกิจเครดิตฟองซิเออร์ (ฉบับที่) พ.ศ.....
 ร่างพระราชบัญญัติบริษัทมหาชน พ.ศ..... และร่างพระราชบัญญัติแก้ไขเพิ่มเติม
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ศูนย์วิทยทรัพยากร
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Section 17 Securities Act 1933.Section 24 Securities Act 1933.**Fraudulent Interstate Transactions**

Section 17. (a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) The exemptions provided in section 3 shall not apply to the provisions of this section.

Penalties

Section 24. Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

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Section 9 Securities Exchange Act 1934.

**Prohibition Against Manipulation of
Security Prices**

Section 9. (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange

(1) For the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the prices of such security.

(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security registered on a national securities exchange for the purpose of pegging, fixing, or stabilizing the price of such security in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) It shall be unlawful for any person to effect, by use of any facility of a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) any transaction in connection with any security whereby any party to such transaction acquires any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; or

Section 9 Securities Exchange Act 1934. (๓๐)

Section 10 Securities Exchange Act 1934.

(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege; or

(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege with relation to such security.

(c) It shall be unlawful for any member of a national securities exchange directly or indirectly to endorse or guarantee the performance of any put, call, straddle, option, or privilege in relation to any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d) The terms "put", "call", "straddle", "option", or "privilege" as used in this section shall not include any registered warrant, right, or convertible security.

(e) Any person who willfully participates in any act or transaction in violation of subsection (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant. Every person who becomes liable to make any payment under this subsection may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment. No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

(f) The provisions of this section shall not apply to an exempted security.

Regulation of the Use of Manipulative and Deceptive Devices

Section 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

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Section 15(c) Securities Exchange Act 1934.

(c)(1) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member by means of any manipulative, deceptive, or other fraudulent device or contrivance, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance. The Commission shall, for the purposes of this paragraph, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

(2) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(3) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempt-

ed security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(4) If the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of section 12, 13, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate

Section 15 (c) Securities Exchange Act 1934. (ต่อ)

Rule 10b-5 Under Securities Exchange Act 1934.

commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

Rule 10b-5. Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

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Rule 15c1-2 Under Securities Exchange Act 1934.Rule 10b-6 Under Securities Exchange Act 1934.**Rule 15c1-2. Fraud and Misrepresentation**

(a) The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c)(1) of the Act, is hereby defined to include any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) The term "manipulative, deceptive or other fraudulent device or contrivance," as used in section 15(c)(1) of the Act, is hereby defined to include any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading.

(c) The scope of this rule shall not be limited by any specific definitions of the term "manipulative, deceptive, or other fraudulent device or contrivance" contained in other rules adopted pursuant to section 15(c)(1) of the Act.

Rule 10b-6. Prohibitions Against Trading by Persons Interested in a Distribution

(a) It shall be unlawful for any person,

(1) Who is an underwriter or prospective underwriter in a particular distribution of securities, or

(2) Who is the issuer or other person on whose behalf such a distribution is being made, or

(3) Who is a broker, dealer, or other person who has agreed to participate or is participating in such a distribution, or

(4) Who is an "affiliated purchaser" as that term is defined in paragraph (c)(6) of this section, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, either alone or with one or more other persons, to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right, until after he has completed his participation in such distribution: *Provided, however,* That this section shall not pro-

hibit the following, if not engaged in for the purpose of creating actual, or apparent, active trading in or raising the price of any such security:

(i) Transactions in connection with the distribution effected otherwise than on a securities exchange with the issuer or other person or persons on whose behalf such distribution is being made or among underwriters, prospective underwriters or other persons who have agreed to participate or are participating in such distribution;

(ii) Unsolicited privately negotiated purchases, each involving at least a block of such security, that are not effected from or through a broker or dealer; or

(iii) Purchases by an issuer effected more than forty days after the effective date of the registration statement covering the securities being distributed, or in the case of an unregistered distribution, more than forty days after the commencement of offers or sales of the securities being distributed, for the purpose of satisfying a sinking fund or similar obligation to which it is subject and which becomes due as of a date that does not exceed twelve months from the date of purchase; or

(iv) Odd-lot transactions and round-lot transactions that offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business by a person who acts in the capacity of an odd-lot dealer; or

(v) Brokerage transactions:

(A) Not involving solicitation of the customer's order, or

(B) Involving solicitation of the customer's order (1) in the case of securities qualified under paragraph (a)(4)(xi)(A) of this section, prior to the later of two business days before the commencement of offers or sales of the securities to be distributed or the time the broker-dealer becomes a participant in the distribution, or (2) in the case of other securities, prior to the later of nine business days before the commencement of offers or sales of the securities to be distributed or the time the broker-dealer becomes a participant in the distribution; or

(vi) Offers to sell or the solicitation of offers to buy the securities being distributed (including securities or rights acquired in stabilizing) or securities

Rule 10b-6 Under Securities Exchange Act 1934. (๗๐)

or rights offered as principal by the person making such offer to sell or solicitation; or

(vii) The exercise of any right or conversion privilege, set forth in the instrument governing a security, to acquire any security directly from the issuer, or the exercise of standardized call options that were acquired prior to the time a person became a participant in the distribution; or

(viii) Stabilizing transactions not in violation of Rule 10b-7; or

(ix) Bids for or purchases of rights not in violation of Rule 10b-8; or

(x) Transactions effected on a national securities exchange in accordance with the provisions of a plan filed by such exchange under Rule 10b-2(d) and declared effective by the Commission; or

(xi) Bids or purchases by an underwriter, prospective underwriter, or dealer, or by an affiliated purchaser, if all such bids or purchases are made:

(A) In the case of stock with a minimum price of five dollars per share and a minimum public float of 400,000 shares, or any security of the same class and series as such stock, or any right to purchase any such security, except for the exercise of standardized call options, prior to the later of two business days before the commencement of offers or sales of the securities to be distributed or the time such person becomes a participant in the distribution, or

(B) In the case of the exercise of standardized call options of securities qualified under paragraph (a)(4)(xi)(A) of this rule, which call options were acquired after the time such person becomes a participant in the distribution, prior to five business days before the commencement of offers or sales of the securities to be distributed, or

(C) In the case of other securities, prior to the later of nine business days before the commencement of offers or sales of the securities to be distributed or the time such person becomes a participant in the distribution, or

(D) In the case of unsolicited purchases, prior to the later of the date of commencement of offers or sales of the securities to be distributed or the time such person becomes a participant in the distribution; or

(xii) Bids or purchases by an issuer or other person on whose behalf a distribution is being made or by an affiliated purchaser (as defined in paragraph (c)(6) of this rule), if all such bids or purchases are made:

(A) In the case of stock with a minimum price of five dollars per share and minimum public float of 400,000 shares, or any security of the same class and series as such stock, or any right to purchase any such security, except for the exercise of standardized call options, prior to two business days before commencement of offers or sales of the securities to be distributed, or

(B) In the case of the exercise of standardized call options on securities qualified under paragraph (a)(4)(xii)(A) of this rule, which call options were acquired after the time that such person becomes a distribution participant, prior to five business days before the commencement of offers or sales of the securities to be distributed, or

(C) In the case of other securities, prior to nine business days before the commencement of offers or sales of the securities to be distributed, or

(D) In the case of unsolicited purchases, prior to the date of commencement of offers or sales of the securities to be distributed; or

(xiii) Transactions in nonconvertible debt securities or nonconvertible preferred securities: *Provided, however,* That at least one nationally recognized statistical rating organization, as that term is used in Rule 15c3-1 under the Act, has rated both the nonconvertible securities being distributed and those to be purchased in one of its generic rating categories that signifies investment grade.

(b) The distribution of a security (1) which is immediately exchangeable for or convertible into another security, or (2) which entitles the holder thereof immediately to acquire another security, shall be deemed to include a distribution of such other security within the meaning of this rule.

(c) The following shall be applicable for the purposes of this rule:

(1) The term "underwriter" means a person who has agreed with an issuer or other person on whose behalf a distribution is to be made (i) to purchase securities for distribution or (ii) to distribute securities for or on behalf of such issuer or other person or (iii) to manage or supervise a distribution of

Rule 10b-6 Under Securities Exchange Act 1934. (ต่อ)

securities for or on behalf of such issuer or other person.

(2) The term "prospective underwriter" means a person (i) who has decided to submit a bid to become an underwriter of securities as to which the issuer or other person on whose behalf the distribution is to be made, has issued, directly or indirectly, an invitation for bids, or (ii) who has reached an understanding, with the issuer or other person on whose behalf a distribution is to be made, that he will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon.

(3) A person shall be deemed to have completed his participation in a particular distribution as follows: (i) the issuer or other person on whose behalf such distribution is being made, when such distribution is completed; (ii) an underwriter, when he has distributed his participation, including all other securities of the same class acquired in connection with the distribution, and any stabilization arrangements and trading restrictions with respect to such distribution to which he is a party have been terminated: *Provided, however,* That an underwriter will not be deemed to have completed his participation if he has obtained an option in connection with that distribution pursuant to which he purchases from the issuer an additional amount of securities not necessary to cover any syndicate short position that remains in connection with that distribution; (iii) any other person, when he has distributed his participation. A person, including an underwriter or dealer, shall be deemed for purposes of this paragraph (c)(3) to have distributed securities acquired by him for investment.

(4) The term "plan" shall include any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees or shareholders of an issuer or its subsidiaries.

(5) For purposes of this section only, the term "distribution" means an offering of securities, whether or not subject to registration under the Securities Act of 1933, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

(6)(i) The term "affiliated purchaser" means:

(A) a person, directly or indirectly, acting in concert with a distribution participant in connection with the acquisition or distribution of any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or

(B) an affiliate who, directly or indirectly, controls the purchases of such securities by a distribution participant; whose purchases are controlled by a distribution participant, or whose purchases are under common control with those of a distribution participant, or

(C) an affiliate that is a broker or a dealer, *Provided, however,* That this paragraph (C) shall not include a broker or a dealer whose business consists solely of effecting transactions in "exempted securities" as defined in Section 3(a)(12) of the Act, or

(D) an affiliate (other than a broker or a dealer) that regularly purchases securities, through a broker-dealer or otherwise, for its own account or for the account of others, or recommends or exercises investment discretion with respect to the purchase or sale of securities: *Provided, however,* That this paragraph (D) shall not apply to an affiliate that satisfies the following conditions: (1) the affiliate is a separate and distinct organizational entity from, with no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with, the distribution participant; (2) The affiliate and the distribution participant have separate employee compensation arrangements; and (3) The affiliate's bids for, purchases of, and inducements to purchase the securities subject to this section are made in the ordinary course of its business.

(ii) For purposes of this paragraph (c)(6), the term "distribution participant" means

(A) the issuer or other person on whose behalf the distribution is being made, and

(B) an underwriter, prospective underwriter, dealer, broker, or other person who has agreed to participate or is participating in the distribution.

(7) For purposes of paragraphs (a)(3)(xi) and (xii) of this rule, the "minimum price" will be computed (i) in the case of a stock for which last sale informa-

Rule 10b-6 Under Securities Exchange Act 1934. (續)

Rule 10b-7 Under Securities Exchange Act 1934.

tion is reported pursuant to Rule 11Aa3-1 under the Act, by use of the average of the closing prices so reported during a two consecutive calendar week period commencing within thirty business days prior to the commencement of offers or sales of the securities to be distributed, (ii) in the case of stocks listed and registered on a national securities exchange for which last sale information is not available pursuant to Rule 11Aa3-1, by use of the average of the closing prices for such stock on such exchange during such period, or (iii) in the case of all other stocks, by use of the average of the best independent bids or the best independent closing bids during such period. For purposes of such paragraphs, the "minimum public float" will be computed by the total number of shares, of the stock outstanding minus shares held by officers, directors, and any persons who, directly or indirectly, are the owners of ten percent or more of the stock in distribution.

(d) The provisions of this rule shall not apply to any of the following securities: (1) "exempted securities" as defined in Section 3(a)(12) of the Act, including securities issued, or guaranteed both as to principal and interest, by the International Bank for Reconstruction and Development; or (2) face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management company or a unit investment trust. Any terms used in clause (2) of this paragraph (d) which are defined in the Investment Company Act of 1940 shall have the meanings specified in such Act.

(e) The provisions of this rule shall not apply to any distribution of securities by an issuer or a subsidiary of an issuer to employees or shareholders of the issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the account of such employees or shareholders pursuant to a plan, as that term is defined in paragraph (c)(4) of this section.

(f) The provisions of this rule shall not apply to bids for or purchases of any security of an issuer, any security of the same class and series as such security, or any security immediately convertible into, or exchangeable or exercisable for, any such security solely because the issuer or a subsidiary of such issuer has outstanding securities which are immediately convertible into, or exchangeable or

exercisable for, such security.

(g) A bid for or purchase of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer, as that term is defined in Rule 10b-18(a)(6) under the Act.

(h) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a

Rule 10b-7. Stabilizing to Facilitate a Distribution

(a) *Scope of Rule.* The provisions of this rule shall apply to any person who, either alone or with one or more other persons, directly or indirectly, stabilizes the price of a security to facilitate an offering of any security. It shall constitute a "manipulative or deceptive device or contrivance," as used in section 10(b) of the Act, for any such person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to effect, either alone or with one or more other persons, any transaction or series of transactions prohibited by this rule.

(b) *Definitions.* Unless the context clearly indicates otherwise, for the purposes of this rule the following terms shall have the meaning indicated:

(1) The term "offering at the market" shall mean an offering in which it is contemplated that any offering price set in any calendar day will be increased more than once during such day.

(2) The term "transaction" shall mean a bid or a purchase.

(3) The terms "stabilize," "stabilizes," "stabilizing" or "stabilized" shall mean the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or stabilizing the price of any security: *Provided, however,* That a bid shall not constitute a stabilizing bid unless or until it is shown in the market.

(c) *Transactions Must Be Necessary.* No stabilizing bid or purchase shall be made except for the purpose of preventing or retarding a decline in the open market price of a security.

Rule 10b-7 Under Securities Exchange Act 1934. (ต่อ)

(d) *Priority Must Be Granted.* Any person placing or transmitting a bid which he knows is for the purpose of stabilizing the price of any security shall disclose the purpose of such bid to the person with whom it is placed or to whom it is transmitted. Any person placing a stabilizing bid or effecting a stabilizing purchase on a securities exchange shall grant priority to any independent bid at the same price irrespective of the size of such independent bid or the time when it is entered. Any person placing a stabilizing bid or effecting a stabilizing purchase otherwise than on a securities exchange shall grant priority to any independent bid at the same price placed with or transmitted to him irrespective of the size of such independent bid or the time when it is entered.

(e) *Control of Stabilizing.* No sole distributor or syndicate or group stabilizing the price of a security nor any member or members of such syndicate or group shall maintain more than one stabilizing bid in any one market at the same price at the same time: *Provided, however,* That more than one such bid at the same price may be maintained otherwise than on a securities exchange by or for the account of such distributor, syndicate or group.

(f) *Stabilizing at Prices Resulting From Unlawful Activity.* No stabilizing shall be initiated at a price which the stabilizer knows or has reason to know is the result of activity which is fraudulent, manipulative, or deceptive under the Act or any rule or regulation thereunder.

(g) *Stabilizing Prohibited in Offerings at the Market.* No person shall effect any stabilizing transaction to facilitate any offering at the market.

(h) *Stabilizing Securities Traded in More Than One Market.* If a security is traded in more than one market, stabilizing shall not be initiated at any price which would be unlawful in the market which is the principal market for such security in the United States open for trading at the time when such stabilizing is initiated: *Provided, however,* That if the principal market for such security in the United States is a securities exchange, stabilizing may be initiated in any market after the close of such exchange at the price at which stabilizing could have been initiated on such exchange at the close thereof unless the person stabilizing knows or has reason to know that other persons have offered or sold such security at a lower price after such

close, except that special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price.

(i) *Entering Stabilizing Bid on Exchange Prior to Opening.* No person shall place a stabilizing bid on a securities exchange prior to the time the opening quotations for the security on such exchange are available, unless he has been and is lawfully stabilizing such security at such price: *Provided, however,* That a stabilizing bid may be made immediately prior to the opening of a securities exchange at a price not in excess of the price at which stabilizing could have been initiated on such exchange at the previous close thereof, unless the person stabilizing knows or has reason to know that other persons have offered or sold such security at a lower price after such close, except that special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price.

(j) *Stabilizing Levels.* (1) Except as provided in subparagraphs (2), (3) and (4) of this paragraph (j), no person shall (A) begin to stabilize a security at a price higher than the highest current independent bid price for such security or (B) raise the price at which he is stabilizing. If no bona fide market for the security being distributed exists at the time stabilizing is initiated, stabilizing may be initiated at a price not in excess of the public offering price.

(2) If the principal market for a security is a securities exchange and stabilizing is initiated on such exchange the initial stabilizing bid or purchase may be made at a price not in excess of the last independent sale price on such exchange if (A) the security has been traded on such exchange on the day when stabilizing is begun, on either of the 2 preceding calendar days, or on the last preceding business day, and (B) the current asked price is equal to or above the last independent sale price. If both conditions (A) and (B) are not met, no person shall begin to stabilize the security at a price in excess of the highest current independent bid price for such security: *Provided, however,* That if a stabilizing bid has been entered at such independent bid price and the first sale thereafter on the exchange is an independent sale at a higher price, the security may be stabilized at a price not in excess of such independent sale price.

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(3) If a stabilizing bid or purchase is made before the initial public offering price of the security to be distributed is determined, and such offering price is higher than such stabilizing bid or purchase price, then stabilizing may be resumed after determination of such public offering price at the price at which it could then be initiated: *Provided, however*, That special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not constitute the initial public offering price for purposes of this subparagraph (3).

(4) A stabilizing bid lawful when made may be continuously maintained or reduced irrespective of changes in the independent bid, asked or sale price of such security: *Provided, however*, That no stabilizing shall be done at a price higher than the price at which stabilizing is being done in the principal market for such security. Except as provided in subparagraph (3) of this paragraph (j), if stabilizing is discontinued for less than 3 business days it shall not be resumed in connection with the same distribution except at the lower of the two following prices: (A) the last lawful stabilizing price, or (B) the price at which stabilizing could then be initiated. If no stabilizing purchases have been effected for 3 consecutive business days then stabilizing may be continued or resumed at the price at which it could then be initiated.

(5) No person shall stabilize a security at a price above the price at which such security is currently being distributed: *Provided, however*, That special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price.

(6) If a security goes ex-dividend, ex-rights, or ex-distribution, the price at which such security is being stabilized shall be reduced by an amount equal to the value of the dividend, right, or distribution, computed to the nearest trading differential: *Provided, however*, That if the dividend, right or distribution has a value of not more than 50 percent of the minimum price differential, the stabilizing price need not be reduced.

(7) When two or more securities are being offered as a unit, the component securities shall not be stabilized at prices the sum of which exceeds the offering price of the unit: *Provided, however*, That special prices available to any group or class of persons (including employees or holders of warrants

or rights) shall not limit the stabilizing price.

(8) If a security is being called or redeemed it shall be unlawful to stabilize such security at a price above such call or redemption price plus accruals, if any: *Provided, however*, That if such security is immediately convertible into or exchangeable for another security or securities, and if the amount of such other security or securities (into which it is convertible or for which it is exchangeable) multiplied by their highest lawful stabilizing price exceeds the call or redemption price plus accruals, then the security may be stabilized at a price not in excess of such price, to the nearest trading differential.

(k) *Disclosure of Stabilizing.* Any person subject to this rule who sells to, or purchases for the account of, any person, any security or any right or warrant to subscribe to any such security, where the price of such security, right or warrant has been stabilized, shall give or send to such person, at or before the completion of each transaction entered into while the distribution is in progress, written notice that stabilizing purchases may be or have been effected. If, however, at or before the completion of the transaction, the purchaser receives a prospectus, offering circular, confirmation or other writing containing a statement similar to that comprising the legend provided for in Item 502(d) of Regulation S-K, then no other written notice with respect to stabilizing need be given to such purchaser.

(l) *Reporting Requirements.* A person subject to this rule shall keep the information and make the notification required by Rule 17a-2 even though he is not subject to that rule as a broker, dealer, or member of a national securities exchange.

(m) *Limitation of Liability.* Whenever any act done or omitted by any person subject to this rule would involve a violation of such rule only if some other person had previously done or omitted to do some other act, the act or omission of such first-mentioned person shall not involve a violation unless such first-mentioned person knew or had reason to know that such other person had previously done or omitted to do such other act.

(n) *Exempted Securities.* The provisions of this rule shall not apply to "exempted securities," as defined in section 3(a)(12) of the Act, including

Rule 10b-7 Under Securities Exchange Act 1934. (ต่อ)

(3) If a stabilizing bid or purchase is made before the initial public offering price of the security to be distributed is determined, and such offering price is higher than such stabilizing bid or purchase price, then stabilizing may be resumed after determination of such public offering price at the price at which it could then be initiated: *Provided, however,* That special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not constitute the initial public offering price for purposes of this subparagraph (3).

(4) A stabilizing bid lawful when made may be continuously maintained or reduced irrespective of changes in the independent bid, asked or sale price of such security: *Provided, however,* That no stabilizing shall be done at a price higher than the price at which stabilizing is being done in the principal market for such security. Except as provided in subparagraph (3) of this paragraph (j), if stabilizing is discontinued for less than 3 business days it shall not be resumed in connection with the same distribution except at the lower of the two following prices: (A) the last lawful stabilizing price, or (B) the price at which stabilizing could then be initiated. If no stabilizing purchases have been effected for 3 consecutive business days then stabilizing may be continued or resumed at the price at which it could then be initiated.

(5) No person shall stabilize a security at a price above the price at which such security is currently being distributed: *Provided, however,* That special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price.

(6) If a security goes ex-dividend, ex-rights, or ex-distribution, the price at which such security is being stabilized shall be reduced by an amount equal to the value of the dividend, right, or distribution, computed to the nearest trading differential: *Provided, however,* That if the dividend, right or distribution has a value of not more than 50 percent of the minimum price differential, the stabilizing price need not be reduced.

(7) When two or more securities are being offered as a unit, the component securities shall not be stabilized at prices the sum of which exceeds the offering price of the unit: *Provided, however,* That special prices available to any group or class of persons (including employees or holders of warrants

or rights) shall not limit the stabilizing price.

(8) If a security is being called or redeemed it shall be unlawful to stabilize such security at a price above such call or redemption price plus accruals, if any: *Provided, however,* That if such security is immediately convertible into or exchangeable for another security or securities, and if the amount of such other security or securities (into which it is convertible or for which it is exchangeable) multiplied by their highest lawful stabilizing price exceeds the call or redemption price plus accruals, then the security may be stabilized at a price not in excess of such price, to the nearest trading differential.

(k) *Disclosure of Stabilizing.* Any person subject to this rule who sells to, or purchases for the account of, any person, any security or any right or warrant to subscribe to any such security, where the price of such security, right or warrant has been stabilized, shall give or send to such person, at or before the completion of each transaction entered into while the distribution is in progress, written notice that stabilizing purchases may be or have been effected. If, however, at or before the completion of the transaction, the purchaser receives a prospectus, offering circular, confirmation or other writing containing a statement similar to that comprising the legend provided for in Item 502(d) of Regulation S-K, then no other written notice with respect to stabilizing need be given to such purchaser.

(l) *Reporting Requirements.* A person subject to this rule shall keep the information and make the notification required by Rule 17a-2 even though he is not subject to that rule as a broker, dealer, or member of a national securities exchange.

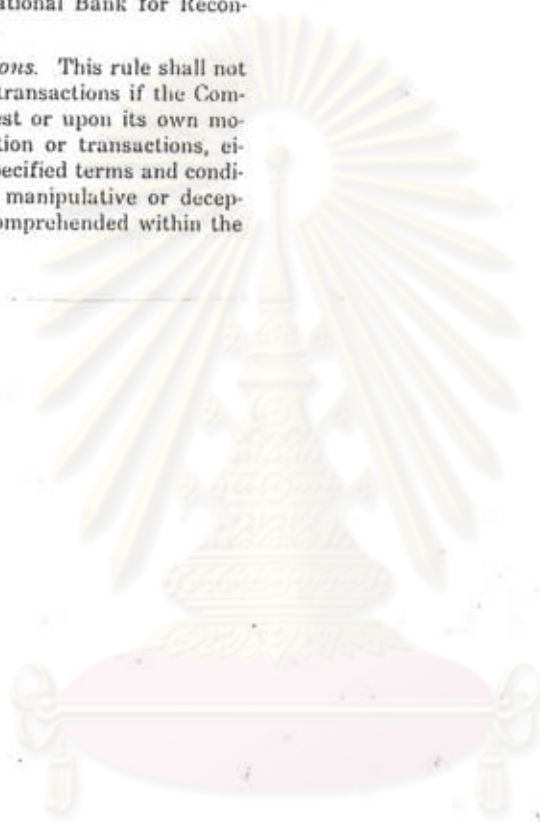
(m) *Limitation of Liability.* Whenever any act done or omitted by any person subject to this rule would involve a violation of such rule only if some other person had previously done or omitted to do some other act, the act or omission of such first-mentioned person shall not involve a violation unless such first-mentioned person knew or had reason to know that such other person had previously done or omitted to do such other act.

(n) *Exempted Securities.* The provisions of this rule shall not apply to "exempted securities," as defined in section 3(a)(12) of the Act, including

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securities issued, or guaranteed both as to principal and interest, by the International Bank for Reconstruction and Development.

(o) *Exempted Transactions.* This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance comprehended within the purpose of this rule.



ศูนย์วิทยุทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ประวัติผู้เขียน

นายนพพร บุญนอม เกิดวันที่ 8 พฤศจิกายน 2507 ที่อำเภอเมืองชลบุรี จังหวัด
ชลบุรี สำเร็จการศึกษาระดับปริญญาตรีนิติศาสตรบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา
2527 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต สาขากฎหมายธุรกิจ ที่บัณฑิตวิทยาลัย
จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ. 2531 ปัจจุบันเป็นผู้จัดการฝ่ายกฎหมาย บริษัท แสนสำราญ
จำกัด



ศูนย์วิทยพัชยากร
จุฬาลงกรณ์มหาวิทยาลัย