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Thailand: Financial Sector Assessment Program—Detailed Assessment on the Implementation of the IOSCO Objectives and Principles of Securities Regulation

This Detailed Assessment on the implementation of the IOSCO Objectives and Principles of Securities Regulation for Thailand was prepared by a staff team of the International Monetary Fund as background documentation to the Financial Sector Assessment Program with the member country. It is based on the information available at the time it was completed in April 2008. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Thailand or the Executive Board of the IMF.

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FINANCIAL SECTOR ASSESSMENT PROGRAM UPDATE

THAILAND

DETAILED ASSESSMENT ON THE IMPLEMENTATION OF THE IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

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THE WORLD BANK
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VICE PRESIDENCY EAST ASIA AND PACIFIC REGION
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GLOSSARY

AIMC	Association of Investment Management Companies
BOT	Bank of Thailand
CIS	Collective Investment Scheme
CLOB	Central Limit Order Book
CPSS	Comité on Payment and Settlement Systems
DA	Thailand Derivatives Law
DOI	Department of Insurance
DSI	Department of Special Investigations
FAP	Federation of Accounting Profession
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IOD	Institute of Directors Association
IOSCO	International Organization of Securities Commissions
IPOs	Initial Public Offerings
ISA	International Standards of Auditing
LBDU	Limited Broker Dealer Underwriter License
MAI	Market for Alternative Investment
MOC	Ministry of Commerce
MOF	Ministry of Finance
MOU	Memorandum of Understanding
NAV	Net Asset Value
OAG	Office of the Auditor General
OECD	Organization for Economic Co-operation and Development
OTC	Over-the-Counter
ROSC	Report of Observance of Standards and Codes
RTGS	Real Time Gross Settlement System
RTP	Royal Thai Police
SEA	Securities and Exchange Act
SEC	Securities and Exchange Comisión
SET	Stock Exchange of Thailand
SETTRADE	SET Internet Trading System
SG	Secretary General of the Securities and Exchange Commission
SRO	Self-Regulatory Organizations
TBMA	Thailand Bond Market Association
TFEX	Thailand Futures Exchange
TIA	Thailand Investors Association
TSC	Thailand Settlement Committee
TSD	Thailand Securities Depository
TSI	Thailand Securities Institute

Table 1. Detailed Assessment of Implementation of the International Organization of Securities Commissions (IOSCO) Principles

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	The responsibilities of the Securities and Exchange Commission (SEC) are specified in the SEA and in the Derivatives Act of 2003 (DA). Sections 14, 15 of the Securities and Exchange Act (SEA) provide the SEC Board with the authority to issue orders, rules, regulations, notifications and directions under the SEA. Section 9 authorizes the Office of the SEC (the staff under the supervision of the Secretary-General (SG)) to perform any act necessary under the law or to implement the Board's resolutions. The acts contain comprehensive legal authority to perform all duties usually within the jurisdiction of a capital markets regulatory body. The staff relies upon its implementation authority to provide interpretations on compliance with the two acts. Each operating unit of the SEC has created a series of internal committees, with representation from other SEC offices to review all nonroutine interpretative decisions. Policy or regulatory interpretations are typically published in SEC Notification circulars and occasionally on its website as sets of Frequently Asked Questions (FAQ). The staff of the SEC provides oral interpretations of routine items by telephone. The SEC does not have full regulatory authority to grant broke-dealer or mutual fund operator licenses. They must review an application and submit it to the Minister of Finance for approval. The Ministry of Finance (MOF) has had a long standing policy of not granting new broker dealer licenses, as it believes that any more licenses would weaken the economic viability of the existing firms. New entrants must therefore buy an existing firm and its license at a substantial price. The SEC has publicly agreed to change this policy beginning in 2012. With regard to mutual fund operator licenses, the MOF has also attached certain requirements to the license for mutual fund operators. The requirements pertain to creation of private pension programs for employees of the operator and are unrelated to the regulatory standards for granting a license. It appears that the same practice could be applied to other licenses as well.
Assessment	**Broadly Implemented**
Comments	The law provides a clear statement of the responsibilities of the SEC and distinguishes authority of the Board to develop policy and regulations and the authority of the staff under the direction of the SG to implement policy and perform all operational responsibilities. The issue of whether to continue to limit broker-dealer licenses (and a related issue of imposing regulated fixed minimum brokerage commissions) has been discussed for several years. The SEC has indicated support for not limiting the number of licenses and eliminating fixed minimum commissions. However, while it has final authority over fixed commission (section 170(2) of the SEA), it does not have final

	authority for licensing. Transferring final licensing authority from the Minister of Finance to the SEC would enable the SEC to better regulate this key component of the capital markets and would likely contribute to overall capital market development. In addition in the past year the BOT utilized its authority over foreign currency exchange policy to impose substantive limitations on the ability of foreign investors to invest in Thailand. While of lesser significance, it also restricted, through exchange allocations, the ability of Thailand mutual funds to invest overseas, thereby restricting the ability of Thailand investors to invest in foreign markets. There does not appear to be a formal coordination mechanism, through which the SEC can be informed of policy decisions while they are still under consideration that might materially affect the Thailand capital markets and can communicate its views on the likely impact of such decisions. For this reason, the assessment is broadly implemented.
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	The SEC was created in 1992 with the enactment of the SEA. The SEC is headed by a Board comprised of 11 members. Six members are ex officio including the Minister of Finance, who is the Board Chair, the Governor of the Bank of Thailand (BOT), the permanent Secretaries of the MOF and Ministry of Commerce (MOC), the SG of the SEC and 4–6 members appointed by the Cabinet following the recommendation by the Minster of Finance. Board members are appointed for staggered fixed 6 year terms. The appointed members must include at least one legal expert, one accounting expert and one financial expert. None of the 4–6 expert members appointed by the Cabinet may be a political official. The Minister of Finance has indicated an interest in amending the law to replace the Minister of Finance as chairman with an expert appointed by the Cabinet upon the Minister of Finance's recommendation. Under his proposal other expert members would be nominated by a panel of former senior government officials and appointed by the Minister of Finance. The Governor of the BOT, the permanent Secretaries of the MOF and MOC would continue to serve as ex-officio members. SEC staff indicated that the proposal is under consideration of the Council of State. The Board generally does not play a direct role in the daily operations of the SEC. Its meets typically once a month and confines itself to consideration and approval of rules and regulations and fee-setting for license applications. However, under the law the Board could legally exercise greater day to day influence over the staff. In addition, section 262 of the SEA empowers the Minister of Finance, separately from his authority as Board Chair, with overall supervision and control for implementation of the act and for harmonization with the policies of the government or resolutions of the Cabinet. The SEC is self-funded from fees and has independent authority to set the salaries of

	its employees. In addition it has a permanent endowment that it may use in the case of a temporary shortfall in fee collection. The SEC Board has a permanent Audit subcommittee composed of 3 of its independent members and the Thailand government Audit Office performs an annual audit of the SEC. Section 31 of the SEA requires the Audit Office to submit a final audit report to the minister of Finance within 90 days from the end of the fiscal year. The SEC includes this audit report in its public annual report, available on the SEC website. The SEC Board and the staff and officers of the SEC have legal protection from personal liability in the lawful performance of duties. Under the law, the SEC relies heavily upon different advisory sub-committees to review and concur in staff recommendations on proposed regulations The members of these committees change at the discretion of the SEC and persons with a professional or direct interest in a particular matter under consideration are not invited. All SEC final actions are public. The SEC publishes notices of proposed new rules or amendments to rules and all final rules on its website and in the Government Gazette. Public comment is permitted and occasionally a public hearing will be held. Prior to publication, the relevant industry subcommittee reviews the proposal. Any action taken by the SEC may be challenged in the Administrative Court. The court may reverse an SEC action only if it finds that it exceeded the authority of the SEC or if it finds that the SEC failed to adhere to procedural requirements.
Assessment	**Partly Implemented**
Comments	While the history of the SEC Board is that it does not involve itself in day to day operations, the law suggests that a Board could do so. Therefore the composition of the Board potentially jeopardizes the independence of the SEC. More importantly the law clearly empowers the Minister of Finance to be directly involved, even though this has not been the practice. Because such involvement in the daily activities of the agency is legally permitted, even though not a current practice, the assessment is Partly Implemented. As noted above, the SEC publishes summaries of proposed rule or amendments and invites public comment. They do not publish the actual text of the rule. As capital market regulation can be highly technical in nature, the actual language of a rule can be of critical importance to understanding the rule's impact and cost. The SEC should consider publishing the actual rule text in addition to its summaries of the intent and effect of the proposal.
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to

	perform its functions and exercise its powers.
Description	The SEC has a broad range of legal authority consistent with its legal duties. It has full control over its financial budget, with funds generated from industry fees it sets and collects. If a budgetary shortfall occurs, the SEC has a permanent endowment that may be used. The Board sets salaries based upon prevailing private sector salaries for comparable positions. These salaries are usually higher than the salaries of other governmental workers. There are currently 421 employees of the SEC and over 50 percent have advanced degrees. The SEC reports that staff turnover is not excessive, absent unusual circumstances. As discussed in Principle 1, the SEC lacks the final legal authority for the approval of licenses for broker-dealers and mutual fund operators. It does have licensing authority over all other market intermediaries and over professional groups, such as auditors, financial advisors to companies, investment advisers and mutual fund supervisors.
Assessment	**Partly Implemented**
Comments	Under the IOSCO principles methodology it is permissible for regulatory functions to be assigned to more than one government entity or to a nongovernment entity functioning as an Self-Regulatory Organizations (SRO), provided that the licensing process is independent from governmental or commercial interests. The history of the licensing process for brokers highlights the issue of regulatory independence. Since the SEC was created, there has been a policy of not granting additional brokerage licenses, in order to reduce the risk that a brokerage firm will fail because there are too many competitors. New entrants must purchase the stock of an existing licensed broker (such as a firm that is no longer operating) and acquire its existing license. The final authority to grant a new license or to change the policy on the number of licenses rests with the MOF. While the SEC has publicly stated an intention to change this restriction in 2012 when brokerage commission rates are deregulated, only the MOF can make the change. With regard to mutual fund operators, the total number has not been restricted, but final approval has typically required firm agreement to create a provident (retirement) fund for its employees, thereby promoting a government initiative that is not related to the regulatory requirements for the license and has not been retroactively applied to previous entities receiving a license. While this may be entirely appropriate in furtherance of legitimate government initiatives, it highlights the fact that the regulatory function is not completely independent in its operation. Because the final decision on licensing may reflect governmental or commercial interests not related to the official licensing standards, the assignment of formal licensing responsibilities for securities firms and mutual fund operator to the Minister of Finance, after review and recommendation by the SEC, is a less than ideal process and this principle is rated Partly Implemented.
Principle 4.	The regulator should adopt clear and consistent regulatory processes.

Description	The Official Information Act, Section 7, requires all state agencies to publish in the Government Gazette its by-laws, regulations, orders, circulars rules, work pattern, policies or interpretations intended to be of general application. As discussed in Principle 2 above, the SEC has a system for soliciting the input of the industry through its consultative sub-committees and public comments. All SEC actions are available on its website, including all disciplinary actions, and all current and former SEC regulations are also on its website. The SEC also publishes on its website summaries of its inspection reports for securities firms and mutual funds, including an evaluation grade. The SEC has made investor education a priority program. It has held education seminars and published information materials. It also assisted in the creation of the Thailand Investors Association (TIA) and the Thailand Institute of Directors Association (IOD).
Assessment	**Fully Implemented**
Comments	The public release of inspection report summaries and grades is a positive innovation that should benefit investors and promote confidence in the integrity of the SEC inspection program. The SEC should be commended for its efforts leading to the creation of the Investors Association and the Independent Director's Association.
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	The SEC Board has adopted an employee code of conduct that covers confidentiality of information, personal stock trading by employees, negotiations for future employment and conflicts of interest. Employees are not permitted to purchase individual company stocks, but they may invest in mutual funds and government debt. All investments must be reported to the SEC within 3 days although there is no routine practice of monitoring compliance. Spouses and minor children are not prohibited from purchasing stocks but these transactions must be reported by the employee. The SEC internal auditor has the authority to investigate employee misconduct, including prohibited investments. While SEC employees are immune from personal civil liability for any lawful official actions, the SEC as an entity can be subject to civil liability and the staff can be subject to criminal action brought by a private person. The SEC staff indicated that these law suits are rarely successful.
Assessment	**Broadly Implemented**
Comments	The SEC should consider expanding its restrictions on employee investments in individual companies to the spouse and minor children of its employees and to any

	investment accounts over which an SEC employee has decisional authority. It should also consider periodically reviewing the brokerage accounts of its employees to verify compliance with ownership and reporting rules. The IOSCO methodology requires a Broadly Implemented assessment if the agency does not have a program to monitor staff compliance with the investment restrictions. SEC staff should be legally immune from prosecution for lawful exercise of official duties.
Principles of Self-Regulation	
Principle 6.	The regulatory regime should make appropriate use of SROs that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	The Stock Exchange of Thailand (SET) and the Thailand Futures Exchange (TFEX) (wholly owned by the SET) perform responsibilities of a SRO. In addition various other entities, such as the Federation of Accounting Profession (FAP) and the Thailand Bond Market Association (TBMA) and the Thailand Securities Depository (TSD) perform some self-regulatory functions.
Assessment	**Assessment under Principle 7 is appropriate**
Comments	This system warrants assessment under Principle 7.
Principle 7.	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	SET/TFEX/TSD oversight—The SEC has the authority to review and approve SET rules other than rules pertaining to trading and clearing operations. Typically, the SET submits draft regulations to the SEC for prior approval, unless urgent action is required. In such cases the SET must notify the SEC in writing of any emergency rules. The SEC does not have general authority to require the SET to amend its rules, although it may instruct the Board of the SET to take such action if it is necessary to safeguard against damage to the public interest. Consideration is being given to a proposed change in the SEA that would empower the SEC to instruct the SET to amend any rules when there is a change in the capital market and the SEC concludes that the rule is no longer appropriate. The SEC has authority to appoint 5 members of SET Board of Directors. The SEC conducts periodic inspection of the SET. One was conducted in 2004 focusing on market surveillance and SET responses to market rumors. The inspection focused on how the SET monitors ongoing disclosure by listed companies in response to market rumors. In 2005 the SEC inspected the SET internet trading system (SETTRADE). An inspection of the SET is planned in 2007. While the SET has primary responsibility for market surveillance, the SET submits to the electronic

	audit trails of all daily trading on a 24 hour delivery basis. The SEC reports that it uses the information to monitor SET trading surveillance and for enforcement investigations. The TSD, a wholly-owned subsidiary of the SET, also has rulemaking authority over its membership, subject to SEC review and approval via its authority over the SET. The TFEX has broad SRO powers and the Derivatives Law provides the SEC with all necessary oversight authority. There is no exception for trading rules. The TFEX must submit reports on member positions, large open positions, daily trading of members and any market irregularities, to the SEC. In cases where the TFEX violates or fails to comply with its rules, the SEC Board has the power to impose administrative sanctions on the TFEX. The sanctions can range from probation, public reprimand, administrative fine, limiting scope of business operation, suspension of license to license revocation. FAP oversight—The FAP was created in 2005. It has the authority to create Thailand accounting standards, to interpret their application, to license accountants in Thailand and to impose disciplinary sanctions. However its budget and staff resources are extremely small and the only function it is performing actively is the formal adoption (but not the formulation) of new Thailand accounting and auditing standards. TBMA oversight—The TBMA was created to oversee the operations of the over-the counter (OTC) bond market. SEC regulations require that all bond dealers must be members. The TBMA has created a price reporting and disclosure system for bond transactions. It also provides mutual funds with fair value prices of debt securities for which there is no recent last sale reported. The TBMA has the authority to adopt rules concerning trading and reporting in the debt market and these rules are subject to SEC review and approval. The TBMA also has the authority to discipline or expel members, although this authority has not been applied as yet. The SEC reports that it periodically conducts on-site inspections of the TBMA trading system. SEC staff indicated that they reviewed the TBMA trading surveillance and supervision program, member supervision and professional standards and complaint handling programs.
Assessment	**Partly Implemented**
Comments	The SEC reports that it has authority under section 170 to approve commission rates set by the SET. However, SET circuit breaker rules are considered excepted trading rules, as are the rules permitting investors to engage in “net trading.” This is a practice that enables a customer to buy and sell the same security on the same day and net the settlement without actually having sufficient cash in the account to make the initial purchase (in other countries termed “free riding”). The SEC should have the discretionary authority to review all SET rules and direct amendment of any rules

	that it determines are inconsistent with the policies of the SEA and the promotion of fair markets. The SEC has indicated that this amendment to the SEA will be included in its package of reforms to be submitted to the Cabinet Council for introduction in Parliament. Also, the SEC does not have the authority to review disciplinary actions taken by the SET. Recently, a person disciplined by the SET appealed to the Thailand Administrative Court. Even though the SET is not a governmental body and the legal jurisdiction of the Administrative Court is limited to actions by governmental bodies, the court reviewed the disciplinary action. Consideration should be given to additional funding for the FAP to enable it to increase its staff to a level necessary to perform routine interpretive functions and to establish an effective disciplinary program.
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	The SEC has full powers to conduct surveillance, inspections and investigations. It may demand all relevant information from regulated entities without the need for formal process (Sections 264 of SEA and 103 of DA). However it has limited authority to compel testimony or production of documents if a person refuses to comply. The only response the SEC may take is to refer the matter to the criminal authorities for an obstruction of justice violation. Even if this is successful, the only remedy available is a fine. The court cannot order compliance with the demand for testimony or document production. Under various SEC regulations, regulated firms are required to maintain systems of books and records concerning all aspects of business and suitability files for all client investors. The typical retention period is 5 years (2 years for investment advisors). The SEC also now requires securities firms to tape record all phone calls with customers and last year the SEC conducted a "thematic" inspection of the tape recording systems and records of a series of firms. The SET has primary responsibility for market surveillance, including doing a preliminary inquiry before referring a matter to the SEC for investigation. The SEC staff does not perform real-time market surveillance, deferring to the SET. It does receive daily trading activity on a T+1 basis and analyzes it against insider transaction reports received to identify illegal insider trading or market manipulation. SEC staff conducts investigations when they receive information concerning a violation of the securities laws. To initiate an investigation, authorization must be obtained from the SEC SG. The SEC Board has no responsibility at the authorization stage.
Assessment	**Fully Implemented**

Comments	Trading in the TBMA is quite limited, fewer than 300 trades per day is common. The TBMA has oversight responsibilities over this market, but it is not clear whether it possesses meaningful surveillance resources. It may be appropriate for the SEC to examine whether the current surveillance practices in the bond market are sufficient. The inability of the SEC to obtain a court order requiring compliance with a testimony or document production request warrants an amendment to the SEA to make this possible.
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	The SEC staff has the authority to investigate possible violations of the securities and derivatives laws by any person or entity. Its authority to demand documents or compel testimony is not limited to registered persons or entities. However it may impose administrative sanctions only against any entity or person registered with the SEC. These sanctions include a reprimand, suspension, license revocation or imposition of a limitation on business activities. If the SEC staff determine that an administrative sanction is warranted, such as a written reprimand, an order to compel action, a limitation on activities, a suspension or bar from business, it must submit the recommendation for review to the internal SEC enforcement committee first. Following this review the recommendation is submitted for action to the SEC SG. Defendants may submit a written statement to the SG for reconsideration following notification. The subject of the action may then appeal to the SEC Board for review, which must act within 30 days of the appeal. Alternatively, the subject may appeal administrative sanctions to the Appellate Committee, an independent body of 5–7 experts appointed by the cabinet. Finally the defendant may request review by the Administrative Law court. While a money fine may be imposed administratively under the Derivative Act, it is not authorized under the Securities Act. The SEC also has the authority to suspend trading in the stock market but cannot suspend trading in an individual equity or debt security. The SET may temporarily suspend trading in a listed stock. More importantly, the SEC does not have civil enforcement authority. Any sanction against a registered entity stronger than the administrative sanctions identified above and any sanction against a nonregistered person or entity requires criminal prosecution. The SEC must refer requests for criminal action first to the Royal Thai Policy (RTP) or Department of Special Investigations (DSI), which then refers the matter to the Thailand Public Prosecutor. When the SG approves a referral for criminal action, the staff must notify the party to be charged and provide them with the option of submitting the matter to a Settlement Board (only for offenses specified in section 317 of the SEA). The Thailand

	Settlement Committee (TSC) is comprised of three persons appointed by the Minister of Finance. One member must be from the RTP, one from the BOT and one from the MOF. The TSC reviews the written recommendation of the SEC staff. If the Committee is convinced that the accused person is guilty, it will impose a criminal fine consistent with its written guidelines. This is considered an out-of court settlement and will be completed when the accused person consent to such fine and has paid the fine amount. This process is not available for charges of corporate fraud. When a matter is referred for criminal action, it must be reviewed by either the RTP or the DSI. Under Thai Law, one of the offices must review the investigative file and, if sworn testimony has been taken, it must be retaken by an investigative officer. This is because SEC staff are not considered criminal investigators under Thai Law. SEC staff estimates that this review takes one year or longer typically and approximately 20 percent of SEC criminal referrals are dropped at this stage by the police or the DSI (SEC staff indicate that the prosecution rate has improved since the DSI assumed responsibility). If criminal action is appropriate, it is referred for action to the Public Prosecutor for trial. Completion of the trial and entry of a final judgment typically requires one or more years. Sanctions in a criminal action may include a money fine or imprisonment. There is no remedy requiring a violator to reimburse or make restitution to injured investors. All money fines are paid to the government. While the time period between SEC referral and final disposition may be more than 2 years, it is the policy of the SEC to publicly announce the action when the referral to the DSI is made. In other words, a person or entity may be charged publicly with a crime and then subsequently, the matter may be dropped with no formal criminal complaint ever filed. Private actions for violations must be brought as breaches of contract or breaches of fiduciary duty rather than as private rights of action under the securities laws. One exception is the right of a shareholder in a public listed company to bring a private action against the company or its directors. Purchasers of securities in an initial public offerings (IPOs) may also bring a private action for damages arising from false statements or material omissions in the prospectus. There is a one year statute of limitations applicable. Class action law suits are not authorized, although the SEC has recommended an amendment of the law to permit class actions.
Assessment	**Partly Implemented**
Comments	The external legal and procedural impediments to successful and timely enforcement action by the SEC were identified previously in the 2005 Corporate Governance Report of Observance of Standards and Codes (ROSC). “Recent improvements in enforcement need to be reinforced… More severe sanctions on insiders for false and misleading disclosure should be introduced. The SEC should have full cooperation

	from other criminal authorities to improve effectiveness of criminal enforcement actions." The report also stated that "Although criminal enforcement is improving, the process is still lengthy and involves a high standard of proof. The authorities should, therefore, consider the introduction of civil penalties and administrative sanctions as a more efficient alternative to impose on violators." Similarly the report recommended legal action to create a private class action law suit right. Legal action to enable the SEC to bring civil enforcement actions on its own behalf is critical to an effective enforcement program. Proving violations of complex and often technical securities law requirements is a difficult endeavor. It becomes even more difficult when a criminal standard of proof is required. While a high criminal standard of proof may be warranted if the sanction involves imprisonment, a lesser civil law standard of proof may be appropriate if the maximum standard is a money fine or an order to refrain from further misconduct. For this reason, it is strongly recommended that the SEC obtain the legal authority to bring civil enforcement actions on its own initiative. If this is authorized it would also substantially reduce the time delays involved in the criminal referral process and provide defendants with an immediate opportunity to respond to and defend against charges of misconduct, rather than having to wait for completion of a criminal referral process that might take years and eventually result in no action taken, and thus no opportunity to formally respond to the earlier public allegation. Any amendments to the law should also include authority to require violators to disgorge ill-gotten gains, or losses avoided, and to authorize the SEC, a TSC or a civil court to order restitution/compensation to injured parties. Finally the SEC should also have the authority to use its administrative power to bar persons from serving as a Director of a listed company if they have been found to have violated the securities laws.
Principle 10.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	The SEC has a staff of 25 responsible for inspection of securities firms and a comparable number responsible for inspection of mutual funds and investment advisers. Typically the SEC conducts annually 12–15 routine inspections, 3–4 "for cause" inspections and 1–2 "thematic" inspections. A risk-based approach is used to select firms for inspection and to determine which areas to inspect. Routine inspections focus on 4 key areas—prudential risk, operational risk, risk to client and information technology risks. SEC staff estimates that a routine exam will require 3–4 staff working onsite for 2 weeks. The SEC staff estimates that all securities firms are inspected on a 4 year cycle.

	Following completion of the inspection, the firm is graded and this information is made public on the SEC website. During the past 3 years the inspection staff referred 64 inspection reports to the TSC for imposition of a fine. As noted in Principles 7, 8, real-time market surveillance is conducted by the SET, which has the responsibility to conduct preliminary inquiries of unusual trading and then refer to the SEC. The SET utilizes a commercial market oversight software package, which automatically flags aberrant trading volumes, or price movements. When patterns are identified, SET staff typically contacts the company and key traders to identify reasons for the trading. The TFEX has also installed a commercial market surveillance package. The SEC accepts public complaints by telephone, letter, the internet or in person. Its staff is expected to respond to the inquiry within 30 days. SEC regulations require securities firms, derivatives agents and asset management companies to have adequate internal systems to monitor compliance with regulatory duties. Under these regulations, securities and derivatives firms must separate sales, trading and analysis functions and sales and back office functions. Every firm must have a separate compliance department and internal auditor that randomly inspects sales activities. SEC inspections review the activities of the compliance and internal audit units. The SEC has authority to bring administrative actions for firm failures adequately to supervise employees, although only two cases have been brought by the SEC (in 1999 and in 2005). With regard to persons and entities registered/licensed by the SEC (e.g., securities firms, asset management companies, advisers, financial advisors, auditors, and listed company Directors), the SEC has administrative authority to reprimand, suspend, revoke licenses and place limitations on business activities. It does not have the authority to impose money fines under the SEA. This authority is provided in the derivatives Act. Because the SEC does not have the authority to initiate civil enforcement actions and the administrative process is restricted to regulatory violations by registered persons and entities, all serious matters and all matters involving persons or entities not directly regulated by the SEC must be prosecuted as criminal violations. Criminal prosecution of these matters is a complex and time consuming process. Following internal SEC review by the staff Enforcement committee, a recommended action must be approved by the SG. At that point, the alleged violator is notified and given an opportunity to respond and to seek reconsideration by the SG and/or the SEC Board (SEC Board reconsideration is an extremely rare occurrence). Following this, the person may agree to consent, without admitting or denying the

	violation, to assessment of a money sanction to be determined by a TSC. The TSC consists of three members appointed by the Minister of Finance, representing the RTP, the MOF, and the BOT. The decision of the TSC is final and upon payment of the fine, the matter is concluded. This option is not available if the charges involve corporate fraudulent conduct. If the alleged violator does not agree to a decision by the TSC, then the SEC must refer the matter to the DSI for criminal investigation. Until 2004, this referral went to the RTP. The DSI reviews the recommendation and evidence submitted by the SEC, but under Thai Law, it must conduct its own investigation, including re-interviewing witnesses and re-examining all documentary evidence. This process typically requires one year for completion. The DSI then must decide whether to refer the matter to the public prosecutor, which must make its own decision on whether to go forward with a prosecution. The public prosecutor typically is involved in the DSI review and so is knowledgeable about the case before it is formally referred. According to SEC staff, the decision by the Prosecutor is typically made one month after the formal referral. If a trial is held, a decision occurs typically one year later. The SEC reported that, in the 15 years since the law was enacted, 21 of 84 criminal referrals (5 of the most recent 7 criminal referrals) were eventually prosecuted. Sixteen convictions resulted, two cases were dismissed and three cases are pending.
Assessment	**Partly Implemented**
Comments	With regard to surveillance, the SET has clear authority to conduct market surveillance functions, utilizes respected commercial surveillance software and apparently there is a healthy interaction between SET surveillance staff and SEC enforcement staff. Nonetheless, it was suggested that the timeliness of SET referrals of suspicious conduct could be improved. Since an investigation of suspicious behavior often requires compulsory action to obtain trading records, often with limited retention periods, and to interview individuals to determine motivation for action, whose memories may fade with time, unnecessary delays in making a referral may adversely affect the ability to take action. It is recommended that the extent of delays be examined and, if appropriate, procedures for reference be revised. As discussed in comments to Principle 8, further examination of OTC debt trading surveillance capacity may be warranted. The SEC has made a significant commitment of resources to its enforcement program and the responsible staff appears capable, committed and provided with adequate training. During this assessment the SEC sponsored a special enforcement training program for its staff and the staff of other agencies in the region, with experts from the United Kingdom, the United States, and Singapore as trainers. However, the overall effectiveness of the SEC enforcement program has been hampered by several important externalities, involving the clarity and scope of legal standards defining critical market misconduct, procedural inefficiencies in the criminal referral process and lack of vital remedies available to the SEC to pursue and impose noncriminal

	sanctions, when appropriate. The issues pertaining to legal definitions of market misconduct are discussed in the comments to Principle 28.
Principle 11.	The regulator should have authority to share both public and nonpublic information with domestic and foreign counterparts.
Description	Sections 316 of the SEA and Section 153 of the DA, which require the SEC to maintain confidentiality of information obtained, permits the SEC to share confidential information with foreign and domestic regulators of securities markets, entities and other financial institutions. The SEC SG has delegated authority to approve information sharing to the Asst. SG for Enforcement. There is no requirement for prior approval from the SG, the SEC Board or another governmental body or official. No formal request is required and dual illegality is not a prerequisite to information transfer. There are no limitations based upon the type of information or the purposes for which it will be used.
Assessment	**Fully Implemented**
Comments	The SEC has clear authority to broadly share information that it possesses. Impediments to the affirmative collection of information upon request of a foreign regulator are discussed in Principle 13.
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.
Description	The SEC has entered into formal bilateral memoranda of understanding (MOU) with 13 other countries. It has applied to become a signatory to the IOSCO multilateral MOU and has been listed in Appendix B of the IOSCO agreement. Formal acceptance requires resolution of one impediment, discussed below in Principle 13. Domestically, the SEC has formal MOUs with the Department of Insurance (DOI) and the DSI. There is an agreement in principle with the BOT, however the BOT believes it is limited in its ability to provide certain confidential information, as its legal authority does not contain the same explicit information sharing exception, contained in Section 316 of the SEA. The BOT is able to provide information on individuals and entities for SEC review of licensing applications. The SEC reports that, in 2006, it made 9 requests for information concerning licensing applications to the BOT and obtained the requested information. The SEC responded to one BOT request for information. However, there is not a formal process or clear authority to share information in other areas, for example advance information on capital or regulatory problems of a bank that could have an impact on securities firms or the clearance and settlement process; or information or collaboration on BOT regulatory policy matters that might affect the regulatory policies or oversight by the SEC. The SEC reported that in 2006 it responded to 28 foreign requests for assistance,

	with no requests refused. 23 of the requests involved a series of foreign investigations of "boiler room" sales frauds, where the boiler rooms may have been operating out of Thailand. All foreign requests must include an appropriate agreement on confidentiality and the SEC staff are similarly subject to a confidentiality restriction, as they are for all other nonpublic information obtained and retained by the SEC.
Assessment	**Broadly Implemented**
Comments	While the SEC has the legal authority to provide confidential information to the BOT and the BOT does not believe that it has the same broad ability to provide confidential information to the SEC. This inconsistency should be resolved through amendment of the Bank's legal authority.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	As noted above, the SEC has the authority to provide to a foreign regulator all of the information it possesses. Similarly, the SEC may lawfully obtain the information requested by a foreign regulator, if it may involve a violation of Thai Law. However, while the SEC has the authority to obtain information to assist a foreign regulator under the Derivatives Act, even if the information is not sought due to a possible violation of Thai Law, similar authority does not exist in the Securities Act. For this reason, the SEC does not qualify to become a signatory to the IOSCO multilateral MOU. The SEC does not have the authority to file civil lawsuits on its own behalf and as such does not have the authority to provide assistance to a foreign regulator seeking to enforce an injunctive order or similar court order from a foreign court. Similarly, while the SEC has the authority under the SEA to seek a court order to seize assets if there are reasonable grounds to believe that wrongdoer will remove or dispose of assets, this authority is limited to violations of Thai Law and cannot be used to assist foreign regulators seeking to freeze assets. Finally any foreign requests for information on financial conglomerates would be subject to the same limitation. The SEC could provide the information only if it possessed the information or could obtain it voluntarily.
Assessment	**Not Implemented**
Comments	Under the IOSCO Assessment Methodology, a not implemented assessment is required if the regulator is unable to seek and provide information unless it has its own interest in the matter. The SEC is aware of this problem and will propose an amendment to the SEA. While not required for a fully implemented assessment, if Thai Law is amended, it may be beneficial for the SEC to seek authority to provide foreign regulators, when appropriate, with assistance in seeking all legal remedies available to the SEC.
Principles for Issuers	

Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	The Thailand disclosure system began as a merit-based system of registration and has evolved into a disclosure-based system incorporating certain principles of merit regulation. The SEC no longer requires that companies be profitable or have a specified debt to equity ratio. They continue to prohibit companies from having multiple classes of equities with different voting rights. All companies that intend to sell equity securities to more than 35 investors must do an initial registration of the securities with the SEC, typically followed by listing on the SET. The registration statement, incorporating the prospectus to be provided to investors, is a comprehensive statement of all relevant information concerning the company and the proposed offering. The SEC states (English translation of pertinent regulation not available) that the contents of the registration statement and prospectus substantially conforms to IOSCO disclosure standards, with certain 4 deviations: (1) 3 years of financial statements, not 5 years; (2) executive compensation to the top 5 executives is provided as an aggregate amount; (3) major shareholders are defined as holding 10 percent of the company's stock; and (4) 12 months of historical share price are included. All securities registrations must be signed by the company's Board of Directors and its Financial Adviser. Company assets must be appraised by a professional appraiser, included on an SEC list of appraisers, in accordance with Thailand accounting standards. The SEC permits the deletion from public copies of certain confidential trade information. All initial offerings undergo a full review by SEC staff. This review includes an examination of the work papers of the independent auditor of the company and a visit by SEC staff to the company headquarters. At the visit, the SEC staff meets with the company Board of Directors and reviews the internal controls procedures of the company. The goal is to complete this process within three months of filing. There are a limited number of debt offerings in Thailand and they also receive a full review by the SEC. Debt offerings must be rated by one of the two private rating agencies in Thailand. In 2005, there were 57 effective IPOs and in 2006 there were 20. The decline in 2006 has been attributed to a change in tax law in 2005 that caused many companies to complete the IPOs during that year, as well as an unfavorable investment climate. After the IPOs, a company must register all subsequent general securities offerings. However private offerings of securities, debt or equity, do not require filing a registration statement with the SEC and the purchasers may sell them on the SET. IPOs in Thailand are typically on a firm commitment basis. While banks are not permitted to underwrite equity offerings (except large offerings, usually privatizations), they may participate in the initial distribution syndicate and they may underwrite debt offerings.

	All public companies have a continuing disclosure obligation. They must file quarterly reports, containing financial statements reviewed by their auditor, within 45 days of the end of the quarter. An annual report must be filed with the SEC and distributed to shareholders within 110 days of the company's fiscal year end. It must contain audited financial statements, a discussion of the company's business operations, any changes during the past year, management's discussion and analysis of operations, a discussion of the company policy on control of nonpublic inside information, the Board's assessment of company compliance with internal controls, material risk factors, and pertinent information about major shareholder groups, the Board of Directors activities and any affiliated transactions. The company must also discuss its compliance with the 15 principles of good corporate governance required by the SET, and identify and discuss any shortcomings. Finally it must identify audit and non-audit service fees paid to the independent auditor. The SEC reviews a selected number of annual reports and may order restatements if appropriate. The number reviewed is largely a factor of the number of IPOs filed during the year. A notice of shareholder meetings must be sent at least 7 days prior to the meeting and published in a newspaper at least 3 days prior to the meeting. The notice must contain information on the time and place of the meeting and the meeting agenda. There is a 14 day notice requirement if the meeting pertains to extraordinary business transactions such as employee stock option programs or share offerings to specific investors or groups of investors at a discount. Also, the SET requires 14 days notice for a delisting, acquisition or disposal of major assets or affiliated transactions equal to or exceeding 3 percent of a company's net tangible assets. Companies must also file special reports immediately upon the occurrence of specified events.
Assessment	**Fully Implemented**
Comments	The SEC disclosure system is comprehensive and its procedures for review, entailing onsite visits by SEC staff and a review of auditor work papers, are notable. The process also appears efficient. Anecdotal comments indicate that the industry believes that the process is sound and timely. While not required, the SEC may want to consider whether it should adopt a procedure for advance notice to the secondary market of large sales by insiders or major shareholders of stock issued in a private transaction and not previously traded in the secondary market.
Principle 15.	Holders of securities in a company should be treated in a fair and equitable manner.
Description	Thai Law prohibits issuance of company shares with more than 1 vote and requires a vote of 75 percent of participating shareholders to amend company by-laws, to issue

	new shares, to waive shareholder preemptive rights, to approve mergers and acquisitions or to sell or dispose of material company assets. In addition if the company proposes to offer shares at a price more than 10 percent below market price, it must be approved by 75 percent of shareholders attending the meeting and not opposed by any attending shareholder with 10 percent or more of the voting shares. A minimum of 20 percent of total issued shares or 25 shareholders holding 10 percent of the total if controlled by at least 25 shareholders is required to call for a special shareholders meeting. While individual shareholders, holding 33 percent of all issued shares, may submit matters for inclusion at the meeting, the company is not required to consider them at the annual meeting, if time does not permit. A request to appoint an examiner of a company's books requires 20 percent of all shares issued or 33 percent of the total number of shareholders. Thai Law has a detailed set of requirements governing tender offers and other acquisitions of public listed companies. Any person or entity acquiring or disposing of stock (or convertible securities in the case of an acquisition) equaling 5 percent of company paid up capital must disclose their holdings. The disclosure must be updated within one business day when total holdings increase or decrease in 5 percent increments. When a person or entity reaches 25 percent of voting rights in the company there is a mandatory full tender offer requirement. For persons or entities with more than 25 percent of voting rights, this mandatory tender offer applies at the 50 percent or 75 percent voting rights level. Voluntary partial tender offers may be made by owners of less than 25 percent if the tender offer will result in the offer or owning less than 50 percent. However, the acquisition through partial tender offer must be approved by the shareholders' meeting. Tender offers must remain open for 25–45 business days and shareholders have a 20 business day withdrawal window. A tender offer must be at a price not less than any price paid by the acquirer during the previous 90 days before the bid. The tender offer or and the company must each separately retain a financial adviser to provide fairness opinions on the transaction. The SEC has created a special Tender Offer Committee, comprised of private sector experts appointed by the SG of the SEC that has authority to review and grant waivers of some regulatory requirements. Thai Law requires disclosure of significant shareholders and transactions. Persons or entities (including institutional investors) holding 5 percent or more of the stock of a company must report to the SEC any change in holding within one business day of surpassing the next 5 percent increment (i.e., 10 percent, 15 percent, and 20 percent). A prospectus and a company's annual report must identify and list the 10 largest shareholders and the identities of any beneficial shareholders of those identified. Corporate governance has been a major priority of the SEC. It issued a director's

	handbook to assist listed company directors understand and discharge their duties. SEC and SET rules require every listed company to have an audit committee, comprised of at least three independent directors (one must have accounting expertise), responsible for ensuring the integrity of financial statements, the sufficiency of company internal controls, and reviewing all company transactions with affiliates. The SET, the SEC and the BOT also created the IOD to provide training programs for directors of companies and to create a public list of qualified independent directors. The SEC also supported creation of the TIA, an organization that purchases small amounts of listed company stock, attends company shareholder meetings, solicits proxies and reports on the fairness of company corporate governance. In March 2006, the SET released an updated version of the Principles of Good Corporate Governance, reflecting revisions to the Organization for Economic Co-operation and Development (OECD) Principles of Corporate Governance and recommendations arising from the World Bank corporate governance ROSC issued in September 2005. The 2005 ROSC found that "basic shareholder rights are largely in place in Thailand" and it highlighted the reforms identified above. However, due to limitations in the law and the heavy concentration of ownership in most Thailand companies, further reform is necessary. Among its recommendations, the ROSC included additional legal amendments to promote or mandate cumulative voting on company directors, empower the SEC to regulate the timing of annual meeting, the solicitation of shareholder proxies and continued efforts to promote, implement or enforce regulation on the fiduciary duties of directors (including removal of company directors), the performance of audit committees.
Assessment	**Broadly Implemented**
Comments	The SEC has implemented several of the 2005 corporate governance ROSC recommendations. This includes requiring annual corporate disclosure of the effectiveness of company internal controls, all self-dealing affiliate transactions, a corporate code of conduct, an audit committee of independent directors, and an auditor rotation requirement. Following the ROSC, the SEC has recommended a series of amendments to the law. These included an amendment to the law reducing the overall number of shareholder votes required to call a shareholder meeting to 10 percent and providing the SEC with the authority to adopt regulations concerning the timing of an annual meeting and the information that must be disclosed. Another amendment would provide that shareholders with 5 percent of total votes would be entitled to add items to the agenda prior to sending out the agenda, with the Board retaining the right to exclude certain specified categories of items. Another ROSC recommendation which the SEC has proposed would create a private

	class action law suit right. The SEC should consider requiring timely changes in the shareholdings of the major beneficial shareholders. The SEC and the SET are together considering amendment to the requirements regarding independent directors to require that all IPOs and listed companies must have a number of independent directors equivalent to at least one-third of board size, but not less than 3.
Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	The FAP is the official accounting standard setter. It is a new organization created in 2004. The FAP has adopted the IAS as its standard rules on accounting, as well as the International Standards of Auditing (ISA). Thirty five IAS standards have been formally adopted by the FAP, and 10 other standards are under review. The FAP states that standards are adopted after review by its standards committee, including a public hearing and opportunity for public comment. These standards committees are comprised of representatives of major accounting firms, smaller accounting firms, the SEC**,** the BOT, the Department of Business Development, the DOI, the Office of the Auditor General (OAG) and experts from academia. While there is no formal governmental review of these standards, the Oversight Committee of the FAP is heavily weighted with ex officio members representing key government agencies. The Permanent Secretary of the MOC is the Committee Chair. The Oversight Committee has established a sub-committee to review the standards proposed by the FAP. The sub-committee plays an active role to ensure that the standards are consistent with the international standards. The FAP is also the official interpreter of Thailand accounting and auditing standards. However the FAP at this time has very limited full-time staff and it relies heavily upon the accountants at the SEC and industry participants on its various standards committees to assist in making interpretive decisions. Any general interpretive guidance developed with the input of the SEC is available on the SEC website. SEC/SET regulations require all listed companies to have an independent audit subcommittee of its Board, with authority to oversee the preparation of annual audited financial statements and to review quarterly financial statements. Auditor independence regulations have also been adopted which require audit partner rotation after five years and mandatory disclosure of company fees paid to auditors, the audit firm and affiliates for audit and non-audit services. It appears that these provisions would not be applicable to listed companies with majority government ownership, as they are audited by the OAG.
Assessment	**Broadly Implemented**

Comments	The Broadly Implemented assessment reflects the fact that the FAP is in a transitional period. It is completing the transition from the current Thailand Accounting standards to IAS, scheduled for completion at the end of 2007. It is also adjusting to a new standard setting body, the FAP, created in 2004. While the current Thailand accounting and auditing system was not examined, informal comments suggested that it has been adequate. It is also assumed that, with the completion of the adoption process, the FAP will be in a position to focus its limited resources to the ongoing responsibility to provide timely, authoritative and uniform interpretations of its standards. If the FAP is unable to perform this function due to a lack of resources, this assessment would be lower. For this reason if it appears that the FAP lacks sufficient full-time resources to perform this critical function, efforts should be made by the SEC, the MOC and the MOF to identify additional sources of funding sufficient to enable the FAP to fulfill its mandate. Under Thai Law, SET listed companies that are majority owned by the government are audited by the OAG rather than by a private auditing firm. The OAG applies the same set of generally accepted auditing standards as private firms. However, it was not possible to identify or assess any differences in the quality of these audits or whether this arrangement affects the independence of the audit function. Investor confidence and readiness to invest in a company is often based upon confidence in the quality and independence of the independent auditor. For this reason, it may be appropriate to examine whether reliance upon a government auditor to audit government controlled companies has an adverse effect on investor decisions. While the focus of the IOSCO assessment is on the accounting and auditing policies for publicly held companies, the FAP has broad authority for accounting standards nationally. In Thailand there are 518 listed companies, and there are a total of 285,711 registered companies and 831 public companies. Given that the FAP has only been in existence for slightly more than one year, the number of companies in Thailand not subject to SEC or SET oversight and relying upon FAP guidance, and the number of accountants that it licenses which are not subject to SEC disciplinary oversight, consideration should be given to initiation of Accounting and Auditing ROSCs.
Principles for CIS	
Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme (CIS).
Description	The SEC has a comprehensive program to regulate persons and entities seeking to operate a CIS and or market shares in a CIS. Operators must apply for and obtain a Mutual Fund management license, considered a special category of brokerage license. As with a brokerage license, the application is reviewed by the SEC which makes a recommendation for approval or rejection to the Minister of Finance. Unlike a general brokerage license the MOF does not restrict the total number of licenses granted. However, only financial institutions may obtain a license. During the first 5 years of operation a CIS operator may not have majority foreign

	ownership. After 5 years, a foreign owner may apply to the MOC for a license to become a majority owner. However foreign firms that have a financial institution subsidiary registered in Thailand are not considered foreign. While the implementing regulations for licensing are prepared by the SEC, the SEA requires that they be ministerial regulations issued by the Minister of Finance. In granting a license, The Minister of Finance has typically imposed requirements consistent with other governmental policies, such as requiring mutual fund operators to agree to create provident funds (retirement programs) for its employees. The review process entails a "fit and proper" review of the entity and its management and 10 percent shareholders, a review of management and operating structure and a requirement for adequate financial resources. The fit and proper review includes a background check for prior violations, no personal financial problems, minimum educational or work experience and passing the relevant qualifications examination. The review of management structure entails consideration of the adequacy of staffing, a clear organizational structure and assignment of supervisory responsibilities. As part of the review process, SEC staff conducts an onsite examination of the CIS to assess operating capacity and resources. CIS operators have a continuing obligation to obtain prior SEC approval of changes in management, ownership or control. CIS operators must also comply with ongoing minimum net worth standard of B 20 million. Firms with B 30 million net worth must notify the SEC and submit a rectification plan. In addition firms must have indemnity insurance against fraudulent acts by operator officers and directors. Operators with assets under management of less than B 25,000 million must have a combined net worth and insurance totaling B 120 million. Larger operators must have a combination totaling B 220 million. Licensed securities firms may sell mutual fund units. Other financial institutions, such as banks, insurance and finance companies, must obtain a limited broker-dealer-underwriter license (LBDU) from the Minister of Finance upon the recommendation of the SEC. As discussed in Principle 8 above, the SEC has an extensive inspection program for mutual fund operators and for marketing entities with an LBDU license. The SEC also requires ongoing reporting by all mutual fund operators. Funds must report monthly, fund assets held, all affiliate transactions, and investments in the funds by fund operators and affiliates. There is also a clear regulation concerning affiliate transactions for mutual funds and operators. Licensed and unlicensed CIS operators, employees and agents, may be subject to criminal prosecution for violations. Licensed CIS operators, employees and agents are also subject to administrative sanctions by the SEC.
Assessment	**Fully Implemented**

Comments	As described above, there exists a comprehensive system for licensing of fund operators and approval of funds and for continuing oversight of the activities of the fund and its operator, including regular reporting and onsite inspection. The authority of the Minister of Finance to make the final license decision and impose nonregulatory obligations on a fund operator has been discussed in Principle 3 above. Unlike broker licensing, the MOF does not restrict the number of mutual fund operator licenses. It merely includes a requirement to establish a private pension program. As the Thailand system appears to comply with all required aspects of Principle 17, the imposition of this tangential, additional obligation, is not an issue that affects the final assessment under this principle and doesn't seem to warrant a lowered grade.
Principle 18.	The regulatory system should provide for rules governing the legal form and structure of CIS and the segregation and protection of client assets.
Description	Under SEC rules, the mutual fund operator is licensed by the SEC. The fund operator then files a prospectus to obtain approval for each mutual fund before sale. Mutual fund assets must be deposited with a fund supervisor (also approved by the SEC). A fund supervisor must not be affiliated with the fund operator. Typically the supervisor is an unaffiliated bank. Fund supervisors are also responsible for monitoring a fund's net asset valuation process. Any change in a mutual fund's operations that constitutes a material change in the rights of an investor must be submitted to a vote of shareholders and a majority vote of all shares is required. If the change is not significant a fund operator may submit it for approval by the SEC in lieu of a shareholder vote. It would then take effect 15 days after notification of shareholders. Funds must be independently audited annually. The audit must examine the appropriateness of fund expenses and adequacy of asset valuation.
Assessment	**Fully Implemented**
Comments	An unusual problem was identified during this assessment. If a new or amended SEC regulation requires an existing fund to change its by-laws or materially affects the rights of fund shareholders, a fund will be required to seek a shareholder vote to achieve regulatory compliance. Obtaining the vote of 51 percent of fund shareholders can be an expensive and lengthy process. It is questionable whether the benefits of obtaining this vote outweigh the costs, when the action is required to comply with governmental regulation. The SEC should examine this problem. If the SEC concludes that the problem exists, then it should consider adoption of a regulation waiving the requirement of a shareholder vote, if it is required by a fund to comply with a new government regulation. If the SEC or the Minister of Finance lacks the authority to adopt such a regulation, legal amendment may be warranted. This problem, if significant, only applies to changes that materially affect shareholder

	rights. If the change does not materially affect shareholders, a fund may forgo obtaining shareholder approval by obtaining the approval of the SEC. In this case the change will be effective 90 days after shareholders have been notified, so that they may have the opportunity to sell their units.
Principle 19.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the scheme.
Description	SEC rules require investors to receive a fund prospectus containing a summary of material information and a detailed explanation of the fund, including all information specified in the IOSCO methodology. The summary portion must be structured in a question and answer format and include the fund investment strategy, explanation of risks including a warning statement, all fees and expenses. The fund prospectus must be updated annually and material changes require immediate update. Funds must also prepare and provide to the SEC semi-annual and annual reports every six months and for the annual report within 3–4 months of the end of the calendar or accounting year and the semi-annual report must be provided within two months. They must provide these reports to potential investors upon request. There is no requirement for delivery of earning statements on a quarterly basis. However, the earning statements are normally included in both the semi-annual and annual reports. In addition, investors can request these statements from the AMC any time. These reports must contain information concerning the portfolio holdings, and performance information about the fund and the fund operator. Any advertising material must be submitted to the SEC for review 7 days prior to usage. False or misleading or unauthorized advertising material may be the basis for administrative sanctions and fines. All mutual funds must be audited annually.
Assessment	**Fully Implemented**
Comments	No comments
Principle 20.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a CIS.
Description	All mutual funds must do a daily net asset value (NAV) calculation in accordance with Association of Investment Management Companies (AIMC) guidelines, approved by the SEC. Fair market value must be applied to all assets. When alternative pricing methods are used, a record must be maintained. Mutual fund supervisors (trustee, custodian) must check NAV calculation daily. Illiquid debt securities are priced by reliance upon daily price tables prepared by the TBMA. Illiquid equity investments are priced according to the last executed trade on the SET, or if there no recent trades, based upon the best bid price available. Open-end funds must publish its NAV daily in the newspaper and closed-end funds must publish weekly, on the next business day. There are a small number of interval funds

	that do not redeem shares daily. These funds must publish NAV on a monthly basis, next business day. Funds are permitted under SEC rules to suspend redemption for one business day under specified circumstances. Longer redemption suspensions require approval of the SEC or may be ordered by the SEC. Under SEC rules, if a fund fails to apply AIMC pricing guidelines and it results in a pricing error greater than 0.5 percent of the true price, then the fund operator must compensate injured investors.
Assessment	**Fully Implemented**
Comments	Thailand mutual funds are permitted to invest a maximum of 15 percent of fund assets in nonpublic companies, with a maximum of 5 percent of fund assets in the securities of a single company. As there is no meaningful OTC market for these companies, accurate pricing is difficult. Similarly, reliance upon a bid price for a thinly traded stock may also be problematic. With regard to debt securities, the TBMA pricing information has become the standard utilized by all mutual funds. While there are a substantial number of public companies that are not listed in Thailand, persons interviewed consistently stated that mutual funds do not purchase equity interests in these companies, with the exception of the 2 "venture capital" funds operating in Thailand. The regulatory restriction for OTC equity applies, in a technical way, to IPOs. When a fund purchases IPOs shares they are technically unlisted company shares until the IPOs is complete and the equity is listed on the SET. The SEC in its inspection program randomly selects a sample of these securities held by a fund and examines how the fund operator priced them for NAV calculations.
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	Securities firm license applications in Thailand are reviewed by the SEC, which makes a recommendation to approve or reject to the Minister of Finance. The SEC retains the authority to approve applications licenses as derivatives operators and investment advisors. In its review process for securities firms and derivatives firms the SEC considers the management and operating capacity of the firm, its risk management and internal control systems. The SEC also reviews and must approve the firms' directors, executives, and 10 percent shareholders. Other firm executives may be reviewed by the SEC and prohibited from the industry. The SEC applies a fit and proper test, based upon prior violations of securities or banking laws as well as relevant educational degrees or work experience or a combination. The SEC also reviews a firm's Board of Directors and ¼ of the firm's Board must be independent. A securities or derivatives firm must obtain prior SEC approval for any changes in firm control, its Board, its managing directors or its major shareholders. The SEC may order a firm to change its management or take necessary actions to protect the public from serious damage. The SEC may also recommend that the Minister of Finance revoke its license.

	The SEC also licenses 2 categories of securities firm sales personnel, sales representatives and analysts. These personnel must pass a qualifications exam prepared by the SEC and administered by the SET's Thailand Securities Institute (TSI). As discussed under Principle 8, the SEC conducts a risk based examination program and publicly discloses the results of its inspections and the grade the firm received. Periodic reporting of updated financial information is discussed below in Principle 22. As previously discussed, the final authority to grant a license rests with the Minister of Finance. To protect the economic viability of existing securities firms, no new securities firm license has been granted for many years. New entrants in the Thailand market have been required to purchase, for substantial amounts, the stock of an existing securities firm and thereby acquire its license. In many cases the purchase has been from an existing firm that is no longer in business and the license is the only valuable asset of the firm. The MOF and the SEC have publicly announced that this policy, along with the regulation of minimum commission rates, will expire at the end of 2012.
Assessment	**Partly Implemented**
Comments	The methodology for assessment requires that licensing decisions be made in a fair and equitable manner. It is difficult if not impossible to conclude that a system is fair and equitable when it requires prospective new entrants to purchase the stock of a defunct entity in order to acquire its license. The Partly Implemented assessment reflects the public announcement that the current system will be changed, albeit in 2012. If this date is extended, it might warrant an assessment of not implemented. As a technical matter the initial capital requirement of B 100 million contained in the SEA is of little practical significance as it is determined as of the time when the initial license was granted rather than whenever a new company acquires the stock, and thus the license, of a defunct company. The SEC regulations governing net capital adequacy are the meaningful prudential standard.
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	Securities firms must have an initial capital of B 100 million, derivatives firms must have B 25 million initially and private advisors or private fund managers that do not retain custody of client assets must have B 20 million. Securities firms must maintain a net capital ratio of 7 percent plus a minimum liquid capital of B 15 million or B 25 million if it is a joint securities firm and derivatives firm. Firms must submit monthly reports on financial adequacy (14 days after the end of the month) to the SEC, audited semi-annual and annual financial statements, monthly client asset statements and margin loan reports. SEC rules permit a firm to request approval to use alternative value at risk capital

	models. Currently one firm, a Thailand subsidiary of a major foreign firm has obtained approval for a value at risk capital methodology.
Assessment	**Fully Implemented**
Comments	The SEC reports that it is rare for a securities firm to have a reduced capital level that approaches the warning level of 1.5 times minimum. In practice most securities firms have ample net capital. This is largely due to the lack of proprietary trading by the typical securities firm, the fact that securities firms do not engage in market-making activities and limited underwriting operations. Firms in Thailand are largely reliant upon revenue from executing trades for customers at fixed commission rates. This creates little market exposure for most firms, as a daily business activity. One risk that securities firms may be exposed to is risk of a customer failure to make payment when the customer engages in extensive daily "net trading." While the SET requires that "netting" accounts have a minimum cash balance of 10 percent of open positions, distinct from margin requirements, this may be insufficient protection for a firm during a period of a sharply declining market. This appears to be the only common business activity that may create a market risk/customer default risk that could expose the firm to a capital deficiency. Since the level of derivatives trading is very limited, there do not appear to be any net capital risks to note. The initial capital requirement is not a significant prudential protection, as a securities firm is not required to maintain this level of capital, apart from the separate daily minimum net capital requirement. The net capital requirements of the SEC are the more significant prudential requirement.
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	SEC regulation 42/2543 for all brokers and regulation 65/2547 for derivatives firms requires them to have an internal compliance unit and internal independent audit unit, as well as internal control and risk management systems approved by the broker's board of directors. It must also have internal control procedures over access to nonpublic confidential information, including the separation of sales and analyst staff from its internal trading staff and a system to supervise staff engaged in sales activities. There is an SEC regulation that imposes a know your customer duty upon securities firms and the SEC requires firms to tape record all phone calls between customers and the firm and retain the tapes for one month. Investor complaint files must be kept for two years. Investor complaint reports must be submitted to the SEC quarterly. Customer assets must be kept in a segregated account at the TSD. Assets must be deposited in the segregated account within 24 hours.

	Recently some firms have begun offering a stock borrow/loan program. Investors must authorize every stock loan on a transactional basis.
Assessment	**Fully Implemented**
Comments	The SEC tape recording rule requires firms to retain the recordings for only one month, unless a customer complaint is received. In those cases, if the tape has not been destroyed, it must be retained until any pertinent examination has been completed. This may substantially reduce the utility of the tapes to oversee misconduct, especially in the context of an SEC inspection that may occur annually or longer (although the SET may request a tape without prior SEC approval). Given the existence of computerized phone storage systems that facilitates long term storage, consideration should be given to imposing a longer record retention requirement. The SEC has a guideline on the creation and operation of a compliance unit within a securities firm. The responsibilities focus on regulatory advice, monitoring activity and appropriate notification to a decisional Board whenever evidence suggests a regulatory violation. The compliance unit of a firm is not required to have the authority to correct misconduct or to direct firm employees to refrain from taking action. It merely must refer such matters to an appropriate Board.
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	The SEC net capital reporting requirement provides an early warning system to identify potential failure by a market intermediary. If a firm falls below the early warning system level of 1.5 times minimum net capital, it must immediately notify the SEC and submit a plan to correct the problem. It may not expand its business until the problem has been corrected. It must continue to provide daily reports to the SEC until it has exceeded the 1.5 level for two consecutive business days. The SEC may order an intermediary to take steps to correct the problem identified. If a firm's capital falls to equal to or below its general liabilities for 5 consecutive business days or the firm fails to settle its positions with either the TSD or its clients, it must cease operations. The TSD may order a member firm to deposit additional collateral if the firm's unsettled positions for three days combined reaches or exceeds 8 times its net liquid capital. Firms that fall below 1.5 times its minimum net capital must submit daily capital reports to the SEC until the 1.5 ratio has been exceeded for 2 consecutive business days. The SEC lacks the authority to order appointment of a receiver or liquidator for a failing firm and there is no procedure to request such action by an appropriate court. It believes that it may rely upon its general authority under Section 143 of the SEA to order firms to take corrective action in the event of a failure, including ordering a firm to transfer its customer accounts and assets to another securities firm. The Minister of Finance has general authority to revoke a license.

	In the event of a firm failure, it is not clear under existing Bankruptcy law whether customer assets held in the legal name of the firm for the beneficial ownership of its customers would be clearly protected. The TSD maintains a customer protection fund to be utilized to settle outstanding trades (currently valued at B 500 million). Member firms of the TSD must contribute B 900,000 initially and provide a monthly contribution into the clearing fund at the rate, reviewed quarterly by the TSD, between 0.008 percent and 0.016 percent of its total monthly trades, depending on each firm's risk level exposed to the clearing system. As further protection the SET maintains a security fund of B 100 million and may borrow up to B 2 billion.
Assessment	**Partly Implemented**
Comments	The Partly Implemented assessment reflects the IOSCO methodology requirement that "the regulator have clear plans for dealing with the eventuality of a firm's failure, including a combination of activities to restrain conduct, to ensure assets are properly managed and to provide information to the market as necessary." The SEC is aware of the gap in its legal authority and is proposing an amendment to the SEA to obtain necessary authority. In the interim, its interpretation of its authority under section 143 is creative but untested. The TSD and SET fund is available only for the settlement of outstanding trades. It may not be used to reimburse a firm's investors in the event that the firm fails and has stolen customer assets that should have been on deposit in the customer segregated account or has stolen excess customer cash credit balances. Under this principle, regulators must have a coordination plan to communicate with banking and other regulators. Coordination, ideally, should include a system to provide early warning advisories of possible failures and to receive them from other regulators. The SEC is strongly encouraged to solicit support from other Thailand regulators for the creation of such a system. The SEC has reported that it is working on a MOU with the BOT and DOI on coordination and the exchange of information.
Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	There are two trading systems in Thailand, the SET, including its Market for Alternative Investment (MAI) small cap submarket, and the TFEX, a wholly owned subsidiary of the SET. Both exchanges are authorized under Thai Law (the SET predated the enactment of the SEA) and are directly supervised by the SEC. The SET maintains minimum listing standards including requirements that companies have B 300 million paid-up capital, a minimum of 1000 shareholders, a minimum free float of 30 percent with no more than 15 percent owned by control persons/entities, and 3 years of audited financial statements indicating a profit in two

	of the years. These minimum listing standards do not apply to companies traded on the MAI subgroup of the SET. However there are only 36 companies on the MAI. As explained previously, the SET is an automated direct order interaction system, with no intermediation by specialists or market-makers. Order routing and execution occurs on a strict price/time priority algorithm. Firms are not permitted to internalize and cross customer orders. The SET also provides an electronic trading platform for listed corporate debt issues, however virtually no trading occurs on a daily basis. Corporate and government debt is almost exclusively traded OTC among securities firms and banks (primarily banks) in a dealer market. At one time the TBMA attempted to develop and operate a debt market, but the effort was discontinued.
Assessment	**Fully Implemented**
Comments	No comments
Principle 26.	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	The SEC staff has the authority to conduct onsite inspections of the exchanges and state that it does so regularly. In 2005 it inspected SETTRADE, the internet trading platform operated by the SET and in 2004 it completed a full inspection of the SET. In 2007, another inspection is scheduled. The SEC states that these inspections review all aspects of the exchange operations, including listing, trading and audit trail maintenance and surveillance. While the SET operates a dispute resolution system for member to member disputes, it does not offer dispute resolution services for customer-member disputes.
Assessment	**Partly Implemented**
Comments	The Partly Implemented assessment is largely based upon the inability of the SEC to review SET rules pertaining to trading and operations. While on the surface, this may seem to be a narrow exemption, it is in fact substantial. The SET has relied upon this exemption to create firm minimum trading spreads, to permit and regulate customer net trading and to the adoption of circuit breakers. The SEC is recommending amendment of the law to provide it with discretionary authority to review and direct changes in any trading rules adopted by the SET. This amendment should be strongly supported.
Principle 27.	Regulation should promote transparency of trading.
Description	Equity trading of listed companies must occur on the SET. The SET is a direct interaction system in which customer orders are electronically posted and displayed after transmission by the investor's securities firm. The SET does not utilize specialists or market makers. The SET system posts all trades and the three best bids and offers and the size of each. The SET maintains mandatory trading increments for bids and offers that can vary by stock and the current market price (ranging from B 0.10–6.00 and typically B 0.5). Investors may have real-time access to this

	information at low monthly rates, and anecdotally most securities firms accept the cost of disclosure and provide customers with free access. There is no disclosure of a central limit order book (CLOB), providing information on the size and depth of limit orders outside the best bid and offer. Large block trades may be negotiated outside of the BBO. To avoid market disruption, the SET encourages large block trades outside the BBO to be crossed and disclosed at the end of the trading session. The SET maintains an automated quotation service for listed debt issues. However trading through this system is not mandatory and daily activity is extremely limited. The bulk of daily trading occurs OTC via direct phone calls between institutions and dealers or inter-dealer. Approximately ¾ of daily trading is dealer to investor and ¼ is dealer to dealer. In 2006 the SEC adopted a regulation to improve the transparency of the debt market. SEC Reg 56/2548 requires all dealers in debt to report all debt trades to the TBMA within ½ hour (either electronically or by fax). The TBMA publishes government trades upon receipt and corporate trades twice daily. There is also a daily last sale reporting list. The list also contains fair value pricing of debt issues that were not traded, to enable mutual funds to make NAV calculations. Daily liquidity in the TBMA (corporate and government) is limited. Excluding bank repo transactions, the number of transactions is typically less than 300, with as few as 1 crossed through the SET electronic system. The total estimated value of the corporate debt market is approximately B 4 trillion and the value of the daily trading is less than 1 percent of the total. On the Futures Exchange only one product is currently available, a SET50 future. Only registered derivatives firms and institutional investors may trade this product and the daily volume of trading is small. In mid-2006, an average of 200 contracts were traded daily. Recently this trading has grown to 2000 contracts, and occasionally as high as 4000 contracts. There is full transparency in the bid/offer spread and in transaction reporting. Only registered dealers may interact directly. In addition to this listed market there is an OTC market for various derivative products and institutional investors and derivatives firms may trade OTC.
Assessment	**Broadly Implemented**
Comments	Equity trading transparency appears sound. Given the limited liquidity in many listed securities on the SET, consideration may be given to increased “depth of book” disclosure or the creation and dissemination of a central limit order book. While there have been significant improvements in bond market transparency, further improvements are required, primarily in the area of ready access to pre-trade bid and offer quotations. The TBMA website provides bid-offer quotes on benchmark government securities and dealers may obtain selected quote information on commercial sites such as Bloomberg and Reuters. However, this limited disclosure is particularly relevant because dealer-non-dealer trading accounts for ¾ of daily activity and spreads tend to be relatively wide. Consideration should be given to requiring dealers to disclose bids/offers and size on an electronic system and efforts

	to promote electronic trading should be encouraged. Similarly, it would be beneficial to transparency if dealers are required to report trading to the TBMA electronically, although fax reporting is not a significant issue at this time with the very small number of daily transactions. The SEC reports that only one entity, a non-dealer submits fax reports.
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	The SEA contains broad prohibitions on insider trading, the use of material misstatements or omissions to influence trading and market manipulation. The law empowers the SEC to enforce violations of these provisions. However the insider trading prohibition applies only to insiders, temporary insiders and tippees who act as nominees of insiders or were induced to trade for the benefit of the insider. Similarly, the market manipulation prohibition requires proof that the conduct was intended to induce trading by others or to cause a change in the market price.
Assessment	**Broadly Implemented**
Comments	The existing evidentiary standards for insider trading and market manipulation make it extremely difficult to prosecute violations, especially in the context of a criminal proceeding requires a very high standard of proof. The SEC is aware of these problems and believes that its ability to persuade criminal prosecutors to initiate proceedings has been substantially inhibited by this difficulty. This is a substantial impediment to the development of an effective capital market regulatory program and to overall capital market development. For legal prohibitions to deter future misconduct there must be a broad expectation that prosecution will be swift and effective, rather than rare and long after the fact. More importantly, in a country such as Thailand where only a small percentage of the public invests in securities, the public will be disinclined to invest if there is a perception that the market is not fair and that misconduct is not punished. An effective enforcement program requires clear and reasonable definitions of misconduct and appropriate evidentiary standards to prove violations. Widespread public investment in a capital market requires a public perception that the enforcement program is an effective deterrent of misconduct.
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	The TSD regularly monitors firm aggregate unsettled trading exposure. It has a rule that firms may not have in a 3 day period unsettled positions with a net settlement value in excess of 8 times net liquid capital and may direct a member firm to increase its capital deposit. The TSD also daily monitors firm open loss risk values against internal market risk measures. While the TSD may take appropriate action to demand payment or close out of positions by a failing firm, this is not mandatory. It is noteworthy that the TSD has

	discretion to decline to act as settlement counterparty and to direct firms to conduct direct bilateral settlement. A clearing system that substitutes bilateral settlement for central settlement when a firm fails raises a significant risk of systemic failure and market disruption. If one firm fails and bilateral settlement occurs, the failure of large open positions could cause the single counterparty also to fail, creating a domino effect of failures. Significantly, this ability to decline to act as a central counterparty may substantially undercuts the ability of the TSD to claim preference as a central counterparty under current Thailand bankruptcy law. The SEC may upon demand obtain the identity of any firm customer, including customers with large open positions or concentrations.
Assessment	**Not Implemented**
Comments	The IOSCO methodology requires a not implemented assessment when a regulatory system does not have clear authority to isolate a failing firm's risk to avoid systemic market disruption. The SEC is aware of this limitation and has indicated that it is seeking legal action to remove this impediment.
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	The TSD operates a central clearance and settlement system for all equity and some debt transactions. It also operates as the registrar for listed companies. Virtually all equity and most debt, government and corporate has been dematerialized and trades on a book entry basis. The TSD settles on a T+3 basis for equity and T+1 for derivatives. Debt is commonly, but not always, settled on a T+2 schedule. The TSD utilizes multi-lateral netting and a real-time gross settlement system (RTGS). While the TSD performs the functions of a central counterparty, it does not have the legal designation of one and the authority to act as one.
Assessment	This principle was assessed separately. See the ROSC: Committee on Payment and Settlement Systems (CPSS)/IOSCO Assessment of Securities Settlement.
Comments	

Table 2. Summary Implementation of the IOSCO Principles

Principle	Grading	Findings
Principle 1. The responsibilities of the regulator should be clearly and objectively stated	**BI**	Transferring final licensing authority from the MOF to the SEC would enable the SEC to better regulate this key component of the capital markets and would likely contribute to overall capital market development. There does not appear to be a formal coordination mechanism, through which the SEC can be informed of policy decisions while they are still under consideration that might materially affect the Thailand capital markets and can communicate its views on the likely impact of such decisions.
Principle 2. The regulator should be operationally independent and accountable in the exercise of its functions and powers	**PI**	While the SEC Board does not involve itself in day to day operations, the law suggests that a Board could do so and it empowers the Minister of Finance to be directly involved in the SEC's daily operational activities and with the potential that it can overrule any working decisions of the SEC SG. Although this has not been the practice, it is possible and would jeopardize the independence of the SEC.
Principle 3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers	**PI**	The assignment of formal licensing responsibilities for securities firms and mutual fund operator to the Minister of Finance, after review and recommendation by the SEC, is a less than ideal process because the final decision on licensing may reflect governmental or commercial interests not related to the official licensing standards**.**
Principle 4. The regulator should adopt clear and consistent regulatory processes	**FI**	The public release of inspection report summaries and grades is a positive innovation that should benefit investors and promote confidence in the integrity of the SEC inspection program. The SEC should be commended for its efforts leading to the creation of the Investors Association and the Independent Director's Association.
Principle 5. The staff of the regulator should observe the highest professional standards	**BI**	The SEC should consider expanding its restrictions on employee investments in individual companies to the spouse and minor children of its employees and to any investment accounts over which an SEC employee has decisional authority

Principle	Grading	Findings
Principle 6 The regulatory regime should make appropriate use of self-regulatory organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets		The SET and the TFEX (wholly owned by the SET) perform responsibilities of a SRO. In addition various other entities, such as the FAP and the TBMA and the TSD perform some self-regulatory functions.
Principle 7. SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities	**PI**	The SEC should have the discretionary authority to review all SET rules and direct amendment of any rules that it determines are inconsistent with the policies of the Thailand Securities Law, SEA B.E. 2535 and the promotion of fair markets. Also, the SEC does not have the authority to review disciplinary actions taken by the SET.
Principle 8. The regulator should have comprehensive inspection, investigation and surveillance powers	**FI**	The SEC has full powers to conduct surveillance, inspections and investigations. It may demand all relevant information from regulated entities without the need for formal process (Sections 264 of SEA and 103 of DA). However it has limited authority to compel testimony or production of documents if a person refuses to comply.
Principle 9. The regulator should have comprehensive enforcement powers	**PI**	The SEC does not have civil enforcement authority. It cannot suspend trading in an individual stock and it does not have the authority to use its administrative power to bar persons from serving as a Director of a listed company if they have been found to have violated the securities laws. There is no legal ability to order violators to compensate defrauded persons and there is no private legal actions other than for breach of contract.
Principle 10.The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program	**PI**	The SEC has made a significant commitment of resources to its enforcement program and the responsible staff appears capable, committed and provided with adequate training. However, the overall effectiveness of the SEC enforcement program has been hampered by several important externalities, involving the clarity and scope of legal standards defining critical market misconduct, procedural inefficiencies in the criminal referral process and lack of vital remedies available to the SEC to pursue and impose noncriminal sanctions, when appropriate.

Principle	Grading	Findings
Principle 11. The regulator should have the authority to share both public and non-public information with domestic and foreign counterparts	**FI**	The SEC has clear authority to broadly share information that it possesses.
Principle 12. Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts	**BI**	There is an inconsistency between the ability of the SEC and BOT to share information that should be resolved through amendment of the Bank's legal authority.
Principle 13. The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers	**NI**	Under the IOSCO Assessment Methodology, a not implemented assessment is required if the regulator is unable to seek and provide information unless it has its own interest in the matter.
Principle 14. There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions	**FI**	The SEC disclosure system is comprehensive and its procedures for review, entailing onsite visits by SEC staff and a review of auditor work papers, are notable. The process also appears efficient. Anecdotal comments indicate that the industry believes that the process is sound and timely.
Principle 15. Holders of securities in a company should be treated in a fair and equitable manner	**BI**	The SEC has implemented several of the 2005 corporate governance Report of the ROSC recommendations and is seeking legal authority to implement many of the other recommendations.
Principle 16. Accounting and auditing standards should be of a high and internationally acceptable quality	**BI**	The Broadly Implemented assessment reflects the fact that the FAP is in a transitional period. It is completing the transition from the current Thailand Accounting standards to International Accounting Standards (IAS), scheduled for completion at the end of 2007. It is also adjusting to a new standard setting body, the FAP, created in 2004. The FAP will likely require additional resources to fulfill its obligations as a regulator and interpreter of International Financial Reporting Standards (IFRS) in Thailand.
Principle 17. The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme (CIS)	**FI**	There exists a comprehensive system for licensing and continuing oversight of fund operators and of funds, including regular reporting and onsite inspection.

Principle	Grading	Findings
Principle 18. The regulatory system should provide for rules governing the legal form and structure of CIS and the segregation and protection of client assets	**FI**	The licensed mutual fund operator must file a prospectus for each mutual fund before sale. Mutual fund assets must be deposited with an unaffiliated fund supervisor (also approved by the SEC). typically an unaffiliated bank. Fund supervisors are also responsible for monitoring a fund's net asset valuation process. Funds must be independently audited annually. The audit must examine the appropriateness of fund expenses and adequacy of asset valuation.
Principle 19. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the scheme	**FI**	The SEC has a comprehensive regulatory scheme for mutual fund disclosure including a required annual audit.
Principle 20. Regulation should ensure that there is a proper and disclosed basis for assets valuation and the pricing and the redemption of units in a CIS	**FI**	All mutual funds must do a daily NAV calculation in accordance with AIMC guidelines, approved by the SEC.
Principle 21. Regulation should provide for minimum entry standards for market intermediaries	**PI**	The methodology for assessment requires that licensing decisions be made in a fair and equitable manner. It is difficult, if not impossible, to conclude that a system is fair and equitable when new entrants must purchase an existing company that has a license.
Principle 22. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake	**FI**	SEC rules require adequate levels of operating capital and provide for ongoing reporting. Firms that approach the minimum levels may be required to provide daily capital reports and may be ordered to restrict new or ongoing business activities.
Principle 23. Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters	**FI**	Intermediaries must have internal compliance and internal independent audit units, as well as internal control and risk management systems approved by the broker's board of directors. Firms must also have internal control procedures over access to nonpublic confidential information.

Principle	Grading	Findings
Principle 24. There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk	**PI**	The SEC lacks authority to take action when a firm fails to safeguard investor funds and assets. The TSD and SET fund is available only for the settlement of outstanding trades. Also a coordination plan should be developed with other government regulators to provide early warning of a failure that might migrate from one financial intermediary to another.
Principle 25. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight	**FI**	Both the SET and TFEX are authorized under Thai Law (the SET predated the enactment of the SEA) and are directly supervised by the SEC.
Principle 26. There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants	**PI**	The SEC has limited authority to review SET rules pertaining to trading and operations.
Principle 27. Regulation should promote transparency of trading	**BI**	Equity trading transparency appears sound. While there have been significant improvements in bond market transparency, further improvements are required, primarily in the area of ready access to pre-trade bid and offer quotations.
Principle 28. Regulation should be designed to detect and deter manipulation and other unfair trading practices	**BI**	The existing evidentiary standards for insider trading and market manipulation make it extremely difficult to prosecute violations, especially in the context of a criminal proceeding requires a very high standard of proof.
Principle 29. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption	**NI**	The IOSCO methodology requires a not implemented assessment when a regulatory system does not have clear authority to isolate a failing firm's risk to avoid systemic market disruption. The SEC is aware of this limitation and has indicated that it is seeking legal action to remove this impediment.
Principle 30. Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk	**NA**	Assessed separately. See the Report of the Observance of Standards and Codes: CPSS/IOSCO Assessment of Securities Settlement System.
Aggregate: Fully implemented (FI) – #, broadly implemented (BI) – #, partly implemented (PI) – #, not implemented (NI) – #, not applicable (N/A) – #.		

Table 3. Recommended Action Plan to Improve Implementation of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action
Principles Relating to the Regulator (P 1–5)	Create a formal coordination mechanism among governmental agencies with regulatory authority over the capital markets. Amend the SEA to transfer final licensing authority over securities firms to the SEC. Amend SEA to change nomination and appointment process for SEC Board members. Confirm that the authority of the Minister of Finance under section 262 of the SEC does not extend to direct involvement in the daily operational activities of the SEC. The SEC should publish for public consultation the complete text of its draft regulations in addition to its summaries. The SEC should amend its code of conduct and provide that restrictions on securities investments by its staff also applies to spouses, minor children and all other account over which an employee has the authority to make investment decisions.
Principles of Self-Regulation (P 6–7)	The SEC should seek an amendment to the SEA to permit it as a matter of discretion to review and approve or require changes to all SET rules, including trading and operations rules. The SEC should seek authority to act as an appellate reviewer of SRO disciplinary actions. The adequacy of FAP resources to perform its required functions should be carefully examined. If warranted efforts should be taken to increase the funding of the FAP.
Principles for the Enforcement of Securities Regulation (P 8–10)	The SEC should examine the adequacy of surveillance of the OTC debt market. The SEA should be amended to substantially expand the enforcement authority of the SEC. The SEC should have the authority to independently file civil enforcement actions against any person or entity that violates the SEA or the SEC regulations implementing the action. This authority should include money sanctions, restitution to investors, and the ability to order corrective action. SEC administrative authority over registered persons and entities should include authority to impose money fines and to bar persons from serving as Directors of

	listed companies. The SEC should be given the authority to temporarily suspend trading in individual securities, when warranted. The SEC should obtain the authority to refer criminal actions directly to the Public Prosecutor, without a separate review by the Royal Thai Police (RTP) or the DSI. The SEA should be amended to authorize a court to order a person or company to comply with an SEC request to testify or to produce documents in an investigation. A private class action legal case should be permitted. An analog of the TSC should be created to consider SEC civil actions, including those based upon fraudulent misconduct.
Principles for Cooperation in Regulation (P 11–13)	A formal MOU with other regulatory bodies in Thailand should be finalized, providing for a full exchange of information on all regulatory actions taken or contemplated and relevant to other signatories. A coordinating body of senior officials should be created for the exchange of regulatory ideas and discussion of regulatory policies. The SEA should be amended, consistent with the DA, to enable the SEC to seek information on behalf of foreign regulatory bodies, consistent with international standards for cooperation.
Principles for Issuers (P 14–16)	The SEC should seek amendments to the SEA in accordance with the 2005 ROSC on corporate governance. These include authority to issue regulations governing the annual and special shareholder meeting process, including timing of notices, minimum number or percentage of shareholders required to request a meeting or to add items to the agenda, to remove a director, to require cumulative voting in director elections and to extend the legal fiduciary duties of company directors so that they apply to senior management of a company. Because Thailand accounting standards are in transition and the FAP is still in a formative period, accounting and auditing ROSCs would be appropriate in the near future.
Principles for CIS (P 17–20)	No significant recommended actions
Principles for Market Intermediaries (P 21–24)	The restriction on new securities dealers' licenses is inconsistent with an equitable application of licensing policy. The 2012 deadline should not be extended. The one month record retention requirement for tape recorded customer calls should be extended.

	The highest priority should be given to empowering the SEC to take all necessary action, such as the authority to appoint a liquidator or receiver to protect customer accounts and to preserve assets of a securities firm that fails and to transfer or deliver out customer assets in the event that a failed firm misappropriates them. Related issues of bankruptcy law protection for customer assets held in street name, and settlement integrity for unsettled transactions should also be addressed. The SEC must have clear authority to isolate a failing firm's risks to prevent systemic market failures. The recommended MOU with other regulators should also provide for advance warnings of potential firm failures to ensure effective and timely response to possible systemic risks.
Principles for the Secondary Market (P 25–30)	Transparency in the equity market is sound and improving in the debt market. Further efforts may be appropriate, such as creation of better depth of book disclosure for equities and meaningful electronic disclosure of dealer quotes in the debt market. As previously noted, amendment of the SEA to authorize SEC discretionary authority to review all SET rules is warranted. Amendment of the law is required to clarify the definition of prohibited market misconduct, such as insider trading and market manipulation. A full ROSC on the securities clearance and settlement system would be beneficial. The TSD should have the legal authority of a central counterparty and not have discretion to decline to settle trades. Member firm security deposits should be legally under the TSD and not subject to creditor rights in bankruptcy.