

(Bor.Jor./Ror.01-11)

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**Procedures for dealing with listed companies
not meeting the free-float requirement**

Listed firms must meet requirements relating to their distribution of minority shareholdings or “free float”. The Stock Exchange of Thailand (SET)’s Board of Governors (BoG)’s notification re: *Maintaining the status of listed companies on the Exchange (4th amendment), 2007*, requires that companies maintain free-float at a certain level after being listed. This document gives SET’s procedures for dealing with companies not meeting this requirement.

1. Principles and rationale

Liquidity is important in maintaining a security’s attractiveness and helping listed firms raise funds easily and successfully. SET has periodically modified its measures dealing with listed companies not meeting the free-float requirement. Companies not satisfying the requirement for two consecutive years will be charged additional fees until the situation is rectified. Additional fees are calculated based on the length of time in breach and the size of the shortfall in free-float.

Because the current market situation may not be favorable and the minimum payment of additional fees is much greater than regular fees to which listed companies are subjected, the Exchange has modified its procedures for dealing with this requirement. This will provide more time for firms who intend to rectify the situation.

2. Definition of “minority shareholders”

“Minority shareholders” refers to ordinary shareholders of a company who are not classified as “strategic shareholders”, where ‘strategic shareholders’ means persons with controlling influence in a firm, including shareholders defined in Attachment 1.

3. Criteria for meeting the free-float requirement

A listed firm is viewed as not meeting the free-float qualification when it has less than 150 minority shareholders, OR when such shareholders hold less than 15% of a company’s paid-up capital, as shown on the shareholder list used for a company’s annual general meeting of shareholders (AGM).

Nonetheless, listed firms who were granted relaxed minority shareholding requirements in accordance with SET’s regulation re: Listing of Ordinary Shares or Preferred Shares as Listed Securities¹ or the regulation re: Listing of Securities on the Market for Alternative Investment (mai)², have to maintain the free-float qualification as specifically prescribed by the BoG.

¹ Regulation of The SET re: Listing of Ordinary Shares or Preferred Shares as Listed Securities (11th Amendment), 2008

² Regulation of The SET re: Listing of Securities on the Market for Alternative Investment (6^h Amendment), 2008

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4. Procedures

1. Every listed company has to prepare and submit a report on the distribution of strategic shareholders (“Report”), as shown on the shareholder list used for a firm’s AGM. The Report is prepared on the SET Community Portal (SCP) and a printed Report as shown in Attachment 2 must be submitted within 14 days of the last day of the AGM, which must be held within four months of the end of the accounting period (“Submission Date”). To illustrate, companies whose accounting period ends on December 31 must hold an AGM by April 30 and submit the Report by May 14 of the following year. If a firm whose accounting period ends on December 31, announces an AGM to be held later than April 30, the company must submit the Report within 14 days of the date of the AGM.

2. The Exchange will notify companies not meeting the free-float requirement of their position within 15 days of the Submission Date. Firms may submit an appeal to SET within 15 days of the notification should they have satisfied the requirement.

If a company does not meet the free-float requirement, the Exchange will allow them a one-year grace period to rectify the situation.

3. If companies do not meet the free-float requirement for two consecutive years or more, SET will publicly release their names and initiate action to collect additional fees for the upcoming period (July 1 – June 30). Additional fees are calculated based on the size of the shortfall in the free-float and the number of years such situation has existed past the one-year grace period.

Schedule of additional fees (unit: multiple of annual fees)

Free float shortfall (%)	No. of years shortfall beyond the grace period				
	1	2	3	4	N
0 < free-float ≤ 5	1	1.5	2	2.5	...
5 < free-float ≤ 10	1.5	2	2.5	3	...
10 < free-float ≤ 15	2	2.5	3	3.5	...

Remarks: - If a company has less than 150 minority shareholders, it must pay additional fees at the rate applying to those whose free-float deficit falls between 0 and 5 per cent.

- The above fees are in addition to a firm’s normal annual fees.

- ‘N’ refers to the multiple of fees which increases at the rate of 50 basis point annually adding up to the rate applied in the previous year.

- Listed firms must pay additional fees within the period as prescribed by the BoG’s notification re: Schedule of Fees for Listing of Ordinary Shares or Preferred Shares as Listed Securities, 2001

- Should a firm rectify the situation prior to the end of the fee period, SET will return the additional fees collected in advance on a pro-rata basis.

- With reference to the Transitory Provision Clause 3 of the BoG’s notification re: Maintaining the status of listed companies on the Exchange (4th amendment), 2007, dated June 13, 2007, the Exchange deems that the year 2008 is the first year to start collecting additional fees from companies in breach.

SET will not collect additional fees in the first year in breach only if listed firms have taken the following actions:

- 1) A company has set out a remedial plan which has specific procedures and time frames for rectifying the situation. Such plan must be submitted to the Exchange within 30 days of the Submission Date or
- 2) A firm has already taken certain actions to rectify the shortfall and is awaiting the results.

However, if a company cannot satisfy the free-float requirement in the following year, SET will charge additional fees at the rate of the second year in breach, subject to the size of the deficit, e.g. 1.5, 2 or 2.5 times, until the requirement is met.

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Remark: Companies not submitting the Report within the prescribed date will be deemed to have not met free-float requirements.

*4.SET may consider waiving the additional fees as per the listed company's request where the company is in the process of voluntary delisting of its shares pursuant to SET's regulations on the delisting of securities and the company has obtained approval from SET to delist its shares, but is unable to proceed with the delisting process due to its engagement in legal disputes and in court proceedings or the company has received order from a government organization which affects the shares delisting process.

In a case where the aforementioned company has paid the additional fees before the waiver has been approved, SET may consider refunding the collected additional fees to the listed company. SET may deduct any related expenses incurred before making the refund to the listed company.

If the listed company is unable to complete the shares delisting process, the company has a duty to pay the additional fees to SET in full of the amount that has been waived including any related expenses incurred on such additional fees.

(*Added October 26, 2011. Procedures for dealing with listed companies not meeting the free-float requirement (2nd amendment) dated October 26, 2011 which comes into effect on October 26, 2011, shall also apply to listed companies qualified to have their additional fees waive prior to October 26, 2011.)

5. Progress report

Firms which have not met free-float requirements for two consecutive years or more must report their progress in rectifying the deficit via the SCP system by November 14 of the second year (for those whose accounting period ends on December 31) or within six months of the Submission Date. Firms must provide six-monthly progress reports until they comply with the requirement.

6. Rectification of free-float requirement

If a company which had been in breach of the free-float requirement for at least two years has recently rectified the situation, they may request that SET reconsider their free-float status by submitting the Report displaying their most recent shareholder list. If the Exchange confirms that the firm has met the requirements, SET will announce this within seven business days of receipt of the Report. Any additional fees collected in advance will be returned on a pro-rata basis.

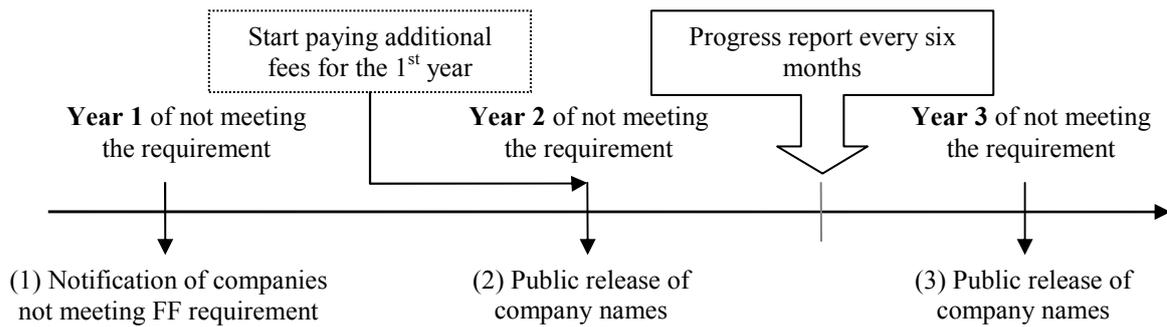
7. Waiving free-float requirement

The free-float qualification is waived for companies which are undergoing rehabilitation under the Central Bankruptcy Court and are not required to hold an AGM. This applies only to listed firms facing the possibility of delisting and their securities are suspended from trading. Firms undergoing rehabilitation under the Central Bankruptcy Court whose securities are allowed to trade are not subjected to this waiver. This is to enable investors to obtain information for their investment decisions.

8. Implementation

The above procedures and guidelines on actions will be in effect from the date of AGMs of companies with accounting periods ending December 31, 2007. However, firms who have complied with the June 2007 guidelines can comply with these guidelines by using data from the date of their AGMs for the accounting periods ending December 31, 2006.

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9. Temporary free-float measures for 2009-2010

SET has relaxed its free-float measures for two years (2009-2010) to respond to the current market situation caused, in large part, by the world financial crisis. This relaxation is also to reduce costs for listed firms and give them more time to rectify their free-float situation.

The Temporary measures are as follows:

- 1) SET will waive the additional fees mentioned in subheading 3 of clause 4
- 2) Listed companies now must report progress in rectifying the free-float deficits (mentioned in clause 5) only once a year, instead of twice per year as currently required. This progress report must be submitted together with the report on distribution of shares held by strategic shareholders, due within 14 days of the last day of the AGM

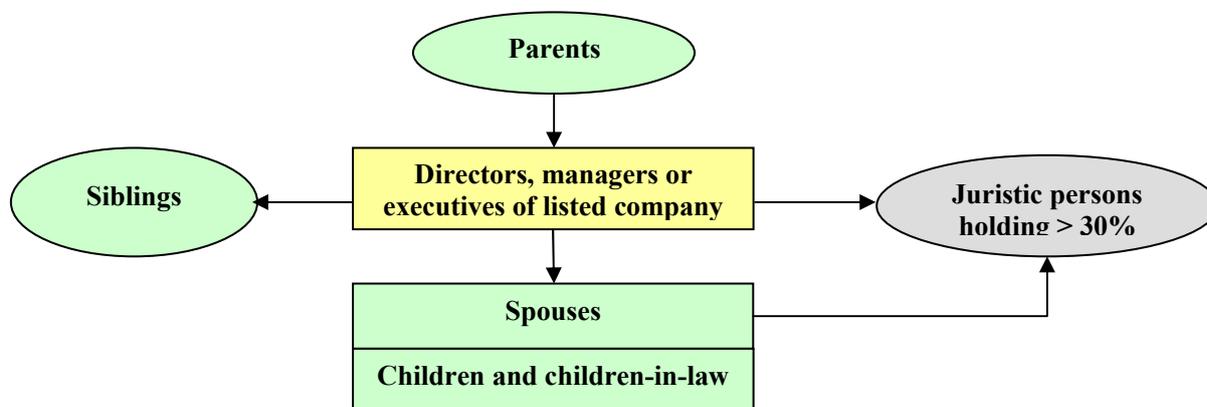
After the end of this two-year grace period, companies which are still in breach of free-float requirements will be charged additional fees. The amount of such fees will depend upon whether or not there were any payments due in 2008.

Listing and Disclosure Department
April 2009

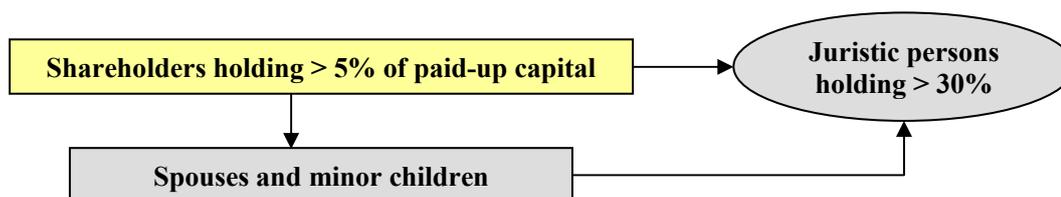
Strategic Shareholders: Persons involved in management

1. Directors, managers, and the top four executives subordinate to the managers, including any individuals in positions equivalent to the fourth-ranking executive, together with *related persons* - parents, spouses, siblings, children and children-in-law - and any juristic persons defined as related under Section 258 of the Securities and Exchange Act.

This diagram below shows related persons of directors, managers and executives:



2. Shareholders holding more than 5% of paid-up capital, together with *related persons*. This provision excludes securities companies, life insurance companies, insurance companies, mutual funds, provident funds, pension funds, retirement funds or investment projects approved in accordance with the relevant law, unless there is a representative involved in management.



3. Controlling persons and related persons.

Controlling persons refers to shareholders or any individuals who, by their behavior, influence a company's policy processes, management or operation significantly. Regardless of whether such an influence is acquired by shareholding or authorized by contract or any other means, the term includes individuals with one of the following characteristics:

The individual:

- (1) Has either a direct or indirect vote of greater than 25% of all eligible voting rights
- (2) By behavior, is able to control the appointment or discharge of a firm's director
- (3) By behavior, is able to control a person in charge of business policy processes, management or operation of a company to act in the individual's interest
- (4) By behavior, is involved in a firm's operation or exercises responsibility for its operation in a similar manner to an executive or any other senior company officer.

Related Persons refers to individuals or partnerships under Section 258, paragraphs (1) to (7) of the Securities and Exchange Act, i.e.:

- (1) Spouse
- (2) Minor children
- (3) Ordinary partnerships in which persons and individuals in (1) or (2) are partners
- (4) Limited partnerships in which persons, together with individuals in (1) or (2) have a stake either by having unlimited responsibility or by holding an aggregate of more than 30% of stock
- (5) Limited company or Public Company Limited in which persons, together with individuals in (1) or (2), or partners in (3) or (4) hold an aggregate of more than 30% of stock
- (6) Limited company or Public Company Limited in which persons, together with individuals in (1) or (2), partners in (3) or (4), or companies in (5) hold an aggregate of more than 30% of stock
- (7) Juristic persons where persons under Section 246 and Section 247 of the Securities and Exchange Act are acting as representatives

Report on the Distribution of Shareholding

..... **Public Company Limited**

As of

Paid-up capital (common shares only) baht

Comprises of common stocks shares at the par value of baht per share

	<u>No. of Shareholders</u>	<u>No. of Shares</u>	<u>Percentage of Paid-up Capital</u>
1 Strategic shareholders			
1.1 Directors, managers, and executives, together with related persons			
1.2 Shareholders holding > 5% of paid-up capital and related persons			
1.3 Controlling persons and related persons			
2 Treasury shares			
3 Shareholders holding < 1 trading unit			
4 Non-Strategic shareholders			
Total number of shareholders			100

The company hereby certifies that the information above is correct and complete.

Signature
(.....)
Position

Attachment: List of strategic shareholders

List of Strategic Shareholders

Name	<u>No. of Shareholders</u>	<u>No. of Shares</u>	<u>Percentage of Paid-up Capital</u>
1 Directors, managers, and executives, together with related persons			
1			
2			
3			
4			
Total			
Shareholders holding > 5% of paid-up capital			
2 and related persons			
1			
2			
3			
4			
Total			
3 Controlling Persons			
1			
2			
3			
4			
Total			
Grand Total			