Enhancing the Deterrent Effect of Anti-Fraud Measures in Thai Securities Law and Compliance Procedures

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STATEMENT

This thesis is entirely my own work and all sources used or referred to have been appropriately acknowledged.

This thesis does not contain any material which has been previously submitted or accepted for the award of any other degree or diploma from any university or educational institution and, to the best of my knowledge and belief, it does not contain any material written or published by another person, except where due acknowledgement is made in this thesis.

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Abstract

Securities markets have become increasingly important financial institutions in creating economic growth. Investment from different types of investor - local, foreign, retail, and institutional - injects much-needed capital to listed companies to expand their businesses. To persuade investors to invest in those markets, one of the key conditions is the presence of an effective investor protection regime. In Thailand, lack of investor protection is a particularly important regulatory issue, especially in cases involving protection of retail investors. This lack of investor protection can be attributed mainly to Thai retail investors generally lacking adequate knowledge and sophistication to protect themselves from complex fraud. It is most striking that retail investors are more often than not taken advantage of by their own brokers, who ideally should be the ones who protect their interests.

This research attempts to enhance the current Thai anti-brokerage-fraud regime through the use of Donald R. Cressey's Fraud Triangle Theory to identify contributing factors - pressure, opportunity, rationalization - leading to the commission of fraud and regulatory violations by Thai securities brokers, taking into account Thai cultural and business contexts, and then to develop recommendations in response to those factors. An empirical approach with qualitative data analysis is employed. The researcher realises that the best way to investigate all relevant dynamics is to interview securities brokers, regulators, and representatives of investors to obtain information about their respective roles in the securities market, as well as their views and perceptions of brokerage fraud, and their opinions of the current anti-fraud regime.

This thesis focuses on deterrence of four related low-level frauds and regulatory violations, which – ranging from less severe to most severe – are:

1) The offence of failing to properly record trading orders;
2) The offence of making trading decisions on behalf of clients;
3) The offence of using a client’s account for the broker’s own benefit; and
4) The offences of deception and misappropriation.
Proposals to enhance deterrence of the regime, that is, to reduce pressure, to remove opportunities, and to limit rationalisations, are developed under Ian Ayres and John Braithwaite’s responsive-regulation approach, where effective regulatory strategies respond to the conduct of the regulatees and to the industry context. The recommendations start from education-based and persuasion-based strategies implemented externally by government agencies, and then escalate to deterrence-based measures of administrative and criminal sanctions when a lack of positive response from brokers and securities companies is evident. The use of corporate-based strategies of fraud prevention and detection through internal control mechanisms is also discussed in the latter part of the thesis.
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Chapter 1

Introduction

I Background

Securities markets have become increasingly important financial institutions in creating economic growth. Investment from different types of investor - local, foreign, retail, and institutional - injects much-needed capital to listed companies to expand their businesses. In order to persuade investors to invest in the markets, one of the key conditions is the presence of an effective investor protection regime, where assets of investors are protected from being expropriated by major shareholders and management of the listed companies. In addition, the investors’ assets that are managed by mutual funds, or under the safekeeping of securities brokerage companies, must be secured from being misappropriated or abused by the fund managers and/or the securities brokers who look after the trading accounts. At the extreme end, there is a gross malpractice by fund managers commonly known as ‘Ponzi scheme’ where investors are promised perpetual high rates of return with little risk. The fund managers then pay returns to its earlier investors from new capital invested by new investors, rather than from profit earned through legitimate sources. As long as there are new investors and new investments, the scheme continues. Once the investment slow down, the scheme collapses and the fund managers vanish with all remaining investment money, leaving the investors with huge losses. Although not all securities misconduct is as outrageous as the Ponzi scheme, there are other serious wrongdoings that fund managers and securities brokers often commit against their clients, such as deception, misappropriation, forgery, unauthorised trading, price manipulation, misrepresentation and

3 Ken Fisher and Lara W Hoffmans, How to smell a rat: the five signs of financial fraud (John Wiley & Sons, 2009).
omissions, front running,\textsuperscript{4} churning,\textsuperscript{5} etc., that regulatory agencies need to address in order to protect the investors’ assets and to retain their confidence.\textsuperscript{6} It is important to note that fraud and misconduct in securities markets do not only affect the victim investors. They have profound and far-reaching consequences for all levels of society. Investors, listed companies, financial institutions, national economies and global financial systems are all affected when the integrity of securities markets are undermined.\textsuperscript{7}

In developing countries, like Thailand, the lack of investor protection is a particularly important regulatory issue, especially in the case of the protection of retail investors.\textsuperscript{8} This can be mainly attributed to the fact that retail investors generally lack adequate knowledge and sophistication to protect themselves from complex fraud, unlike institutional investors.\textsuperscript{9} To the researcher, it is most striking that Thai retail investors are more often than not taken advantage of by their own securities brokers who ideally should be the ones protecting their interests. There have been numerous incidents where Thai securities brokers were found to engage in wrongful conduct taking advantage of their clients and/or the general public and, more seriously, commit outright fraud against their trusted clients. Due to this, the growth of Thai securities markets has been hindered and retail investors are often reluctant to invest in the stock market due to the fear of being deceived by their agents.\textsuperscript{10} In order to promote public

\textsuperscript{4}Front running practice is an illegal trading practice where a security broker has advanced knowledge of a pending large order of his or her own client, and decides to take advantage of such knowledge by buying or selling from his or her own accounts, or advising other clients to trade such securities before the execution of the client’s order.
\textsuperscript{5}Churning is an illegal trading practice where a securities broker advises his or her clients to make excessive numbers of trade to obtain additional trading volume to the detriment of the clients who have to pay excessive trading fees.
\textsuperscript{7}International Organization of Securities Commissions, ‘Credible Deterrence In The Enforcement Of Securities Regulation’ (June 2015).
\textsuperscript{9}Ibid.
\textsuperscript{10}Kamol Supreyasunthorn, \textit{Factors Affecting White-collar Crime Within the Stock Exchange of Thailand} (Mahidol University, 2008).
confidence in the Thai securities market and financial services, a credible anti-brokerage fraud regime incorporating well-targeted regulations and strong regulatory institutions that hold individuals and entities accountable and effectively deter misconduct are of most importance.

In this thesis, the researcher attempts to enhance the current Thai anti-brokerage fraud regime through the use of Donald R. Cressey’s Fraud Triangle Theory\(^\text{11}\) to identify contributing factors - *pressure, opportunity, rationalisation* - leading to the commission of frauds and regulatory violations by Thai securities brokers, taking into account the Thai cultural and business contexts, and to develop recommendations in response to such factors. An empirical approach with qualitative data analysis will be used in this thesis. The researcher realised that the best way to investigate the relevant dynamics was to interview securities brokers, regulators, and representatives of investors to obtain information on their respective roles in the securities market, their views and perceptions of brokerage fraud, and their opinions of the current anti-fraud regime.

Since there are different categories of brokerage fraud and securities misconduct, it is impossible for the researcher to cover all of them within the scope of this thesis. This research focuses on deterrence of four related low-level frauds\(^\text{12}\) and regulatory violations, which from less severe to most severe, are:\(^\text{13}\)

1) The offence of failing to properly record trading orders;
2) The offence of making trading decisions on behalf of clients;

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\(^{11}\) Donald R Cressey, 'Other people's money; a study of the social psychology of embezzlement' (1953).

\(^{12}\) The term 'low-level fraud' commonly refers to various frauds committed by low-level employees in organisations, including stealing of merchandise, removal of cash from registers, paying of false invoices through collusion with suppliers, and forging of signatures. Although the value of each fraud is usually small, low-level fraud can be dangerous as the amount often grows over time, if left unchecked. W Steve Albrecht et al, *Fraud examination* (Cengage Learning, 5th ed, 2015). In the context of securities and brokerage fraud, the term refers to frauds and related regulatory violations committed by securities brokers and other personnel who are low-level employees of securities companies in their course of work. Examples of common low-level brokerage fraud include submitting of false documents, deception to gain shares and funds from clients, misappropriation of clients' cash, and the use of clients' accounts to trade for oneself.

\(^{13}\) See details in Chapter 3.
3) The offence of using a client’s account for the broker’s own benefit; and
4) The offences of deception and misappropriation.

Another key background to the thesis is that this study has been conducted amidst the significant change in the Thai brokerage industry. The liberalisation of securities business took place on 1 January 2012.14 One of the significant changes was the liberalisation of standardised brokerage fees from a sliding scale structure to being fully negotiable (between clients and securities companies). Such change is expected to have a great impact on the business of securities companies and the welfare of securities brokers. Therefore, a secondary objective of this project is to explore whether such liberalisation of brokerage fees has any influence on and/or correlation with the commission and the perception of brokerage fraud and related violations.

The last point that should be made in this section is to clarify the terms ‘broker’ and ‘securities broker’, which are used throughout this thesis, so as not to confuse the Thai readers. The need for the clarification stems from differences in the meaning of such transliterated words in the Thai language, which does not retain the exact meaning of the original words in English. In the Thai securities industry, when ones used the word ‘broker’ (โบรกเกอร์) or ‘securities broker’ (ซิเคียวริตี้โบรกเกอร์), they always refer to a securities company, not to an individual broker. In other words, Thai securities companies are commonly called ‘broker’ (โบรกเกอร์) or ‘broke’ (โบรก) in short. The word that the Thais use to refer to individual securities brokers is instead ‘marketing officers’ (มาร์เก็ตติ้ง ออฟฟิสเซ่อร์) or ‘mar’ (มาร์) in short, which has totally different meaning in English and in the international business context. In this thesis, the researcher uses the terms in their original meaning, in which ‘broker’ and ‘securities broker’ strictly refer to an individual. When the researcher would like to refer to a securities brokerage company, the terms used are ‘securities company’ and ‘securities firm’, respectively.

14 See details in Chapter 2.
The study asks three research questions:

**Q1:** What are key factors leading to the commission of low-level brokerage fraud and related violations by Thai securities brokers?

**Q2:** Are there any local societal factors that influence the commission and/or the awareness of fraud among Thai securities brokers?

**Q3:** What legal and preventive measures can and should be employed to enhance deterrence within the current Thai anti-brokerage fraud regime?

The study poses eight hypotheses which are as follows:

**H1:** High work pressure and unstable income are the two main factors leading to the commission of fraud and regulatory violations.

**H2:** The liberalisation of the commission fee structure that the SEC introduced in January 2012 has an impact on the securities brokers’ working behaviour.

**H3:** Working conditions, remuneration structures, and work pressure are different among different types of securities companies (local, foreign, and commercial-bank related), and are the key factors determining whether fraud and other violations will be committed.

**H4:** It is easier for a broker to rationalise his or her wrongdoing when the offence is committed against the market or the public than against his or her own clients.

**H5:** Securities brokers have inadequate knowledge and understanding of law and regulations due to the lack of adequate ethics training and their indifferent attitude.
**H6:** Securities companies do not seriously enforce a code of conduct and fail to maintain effective internal control, giving brokers opportunities to commit fraud and violate securities regulations.

**H7:** Sanctions imposed upon offending brokers are not adequately severe and are not well targeted to deter wrongdoing.

**H8:** The current legal procedures (criminal, civil, and administrative) are overly complicated and there are too many agencies involved in the procedures.

### III Contribution to the Literature

The anticipated contributions of this study are fourfold. Firstly, in academic terms, the research aims to broadens the understanding of causes and antecedent factors leading to the commission of fraud, in particular the brokerage fraud committed by securities brokers against their clients and/or the general public. Secondly, the research further explores the influence of local societal factors to the commission and the awareness of fraud in the non-Western and non-Anglo-Saxon setting, as most study on fraud focuses on problems and solutions in Western countries.\(^{15}\) Thirdly, in practical terms, the first part of the thesis aims to provide a unifying framework of the current Thai-anti brokerage fraud regime in the area of low-level frauds, which comprises administrative, criminal, and civil proceedings under the jurisdiction of multiple government agencies. Lastly, the conclusion and recommendations made in response to this research, if developed further, could be implemented by relevant government agencies to enhance the current anti-brokerage fraud regime. Such a possibility is noted by the Office of the Securities and Exchange Commission (the SEC Office), which has expressed an interest in this project from the outset, and has kindly facilitated the attainment of relevant documents and assisted by providing appointments with its officers during the empirical research fieldwork stage.

\(^{15}\) See details in Chapter 4.
In terms of the expected originality of the research, based on the researcher's thorough investigation, Cressey's Fraud Triangle has not previously been employed to examine brokerage fraud as committed by retail securities brokers. The theory is most often employed to study phenomena of executive fraud, accountant fraud, and occupational frauds. Secondly, to date, there is not a single piece of research focusing on the commission of low-level frauds and regulatory contraventions in the Thai securities market. All research previously conducted focused on high-level frauds, which are insider trading and market manipulation, thus leaving a large gap in the research area. Finally, the researcher's approach of interviewing Thai securities brokers on their views of the current regulations and their work pressure can be considered to be groundbreaking. Little is currently known about these issues in Thailand.

IV Proposed Methodology

The proposed research methodology to be used in this study comprises two parts, documentary archival research and empirical research. The documentary research is conducted to gain insight into the current Thai anti-brokerage fraud

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19 The term ‘high-level fraud’ commonly refers to frauds committed by executives and high-level employees in organisations. Notable characteristics of high-level fraud, in contrast to low-level fraud, are the power of the fraudsters to override the control system, the complexity of the fraud, and the extent of concealment. Examples of high-level frauds are financial statement fraud, fictitious expense reimbursement, and money laundering: Albrecht et al, above n 12. In the context of securities and brokerage fraud, the term often refers to frauds and related violations committed by management of public companies and management of securities companies, as well as securities brokers who collude with them, in relation to investment activities and securities trading. Examples of common high-level securities fraud are Ponzi schemes, insider trading, and market manipulation: Straney, above n 6.
regime and to gather all statutory provisions and regulations relating to brokerage fraud committed by securities brokers. Relevant documents include: legal codes, statutes, regulations, guidelines, letters, cases, and statistics. It should be noted that several limitations on the use of documents were encountered in the course of this research. Firstly, under the current Thai legal and enforcement culture, few statistics and guidelines are formally issued by Thai government agencies, and when available are usually classified. Notable absences are statistics of reported cases of fraud under the Economic Crime Investigation Division (ECID) of the Royal Thai Police, which are not available, and the interpretation and enforcement guidelines of the SEC Office, which are for internal use only, thus cannot be included in this study. Secondly, in the Thai legal system, judgments of the Courts of First Instance and the Appeal Courts are considered private, only the parties to the cases can request a copy of the judgment. Only summary verdicts of the Supreme Court of Justice are publicly available. At the time of this research, no case concerning the focus brokerage offences had reached the Supreme Court. As a result, the documentary analysis mainly focused on administrative cases and relevant statistics provided by the SEC Office.

The second part of this thesis is a qualitative empirical programme consisting of three phases: interviews of eighteen Thai securities brokers (Phase One), interviews of six officers of the SEC Office (Phase Two), and interviews of three representatives from the Thai Investors Association (Phase Three). The semi-structured interviews were conducted using predetermined open-end questions with probing questions to explore the participants’ perception of causes, opportunities, and rationalisation in the commission of brokerage fraud as well as their views of the current anti-brokerage fraud regime. The interviews were conducted in Thai, from October 2013 to August 2014, and the interview transcripts were translated into English. The researcher then used the NVivo qualitative research software to conduct thematic analysis to identify and record patterns across data sets. Findings from the empirical programme were then

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21 Civil Procedure Code S 54.
reported in details in Chapter 5 and recommendations based on such findings were presented in Chapter 6 of the thesis.

Four constraints encountered during the interview were of note. The first limitation was the time constraint on the parts of the participants. Without the time limitation, the length of the conversation could be longer, thus increasing depth, and strengthening validity and reliability of the study. Secondly, the interviews in the first phase (November to December 2013) and the second phases (January 2014) were conducted in the middle of the Thai political crisis, which greatly affected the interview settings and the dynamic of the conversations. Thirdly, as the liberalisation of the Thai brokerage industry took effect in January 2012, changes in the brokerage industry were still taking shape at the time of the interviews and it was later concluded that it was premature to test the effect of such changes on the occurrence of brokerage fraud and relating violations. The final limitation was that since most participants were not fluent in English, the interviews had to be strictly conducted in Thai. Such limitation results in the lengthy translations of the interview transcripts under the researcher’s and the translating assistant’s best attempt to retain the tone and the meaning of the conversations.

V Thesis Structure

This thesis comprises six chapters. In this chapter, the background of the research, the issue of low-level brokerage fraud in the Thai securities market, is first and foremost introduced, following by research questions and hypotheses. The next section is a discussion on the contribution of this study to the literature and the originality of the research. The chapter concludes with a brief examination of the methodological proposition of the study.

Chapter 2 provides the introduction to the Thai legal and judicial system. The first part of the chapter discusses important principles of the Thai criminal law, the civil law, and the administrative law in relation to the imposition of sanctions
upon offending individuals and business organisation. The emphasis is given to notable features of the Thai legal system such as the available forms of sanctions and remuneration, the ability of the victims to present criminal charges to the courts on their own, and the principles of compoundable offences and non-compoundable offences. The structure of the Thai judicial institutions is briefly reviewed in the next subsection. The second part of this introductory chapter is a revision of the Thai securities markets and the securities brokerage industry. The first subsection explored different securities markets in Thailand and their regulatory agencies. The emphasis is on the roles and the powers of the SEC and the SEC Office in regulating the conduct of securities brokers and securities companies. The next subsection covers organisational structures of securities companies and important regulations they have to strictly follow to protect their clients. The last subsection then discusses employment and career of Thai securities brokers in details.

Chapter 3 of this thesis, a detailed revision on the current Thai anti-brokerage fraud system, consisting of four parts. The chapter starts with analyses of governing laws together with available forms of sanction. All key brokerage offences and regulatory violations then classified into two categories, which are offences committed against clients and/or employing companies, and offences against securities market and/or general public. The second part is an overview on different governing bodies and their regulatory roles in the current regime. The third part continues by discussing enforcement activities and legal proceedings administered by the regulatory agencies. The fourth and the last part of this chapter then introduces the four focus brokerage offences of this study, which are: (1) the offence of failing to properly record trading orders, (2) the offence of making trading decisions on behalf of clients, (3) the offence of using a client’s account for the broker’s benefit, and (4) the offences of deception and misappropriation. The manners of which each offence are committed and the rules governing them are presented along with example cases.
Chapter 4 is a literature review of Ronald D. Cressey’s Fraud Triangle Theory\textsuperscript{22} which the main theoretical background of this study. The chapter begins with the Differential Association Theory of crime and its early influence on the development of the Fraud Triangle. The components of the original Fraud Triangle,\textit{pressure, opportunity, and rationalisation}, are then discussed in details, following by revised and extended models proposed by subsequent studies. The researcher then incorporates core features of the two extended models, the predatory fraudster\textsuperscript{23} and the societal-level factors,\textsuperscript{24} into Cressey’s original Fraud Triangle to form a revised model to explore and identify factors leading to the commission of brokerage fraud and regulatory violations by securities brokers in the context of Thai securities markets. The model is employed as a guideline and an analytical tool in the empirical part of the study reported in the next chapter.

Chapter 5 covers the empirical part of this study. The chapter is broken down into two sections. The first section is an examination of the research methodology employed in this study, which is a semi-structured interview of eighteen Thai securities brokers, six officers of the SEC Office, and three representatives from the Thai Investor association. The research design and the researcher’s experience during the fieldwork periods are explained in details. The second section of the chapter is a report on findings from the interview. The section starts with data analysis techniques employed then continues with the findings from the brokers’ interviews, the regulators’ interviews, and the investors’ interviews, respectively. The chapter ends with the summaries of findings, where the findings from the three interview phases are compared and discussed in details.

Chapter 6, which is the concluding chapter of this thesis, sets out proposals to enhance deterrence of the Thai anti-brokerage fraud regime, based on the

\textsuperscript{22}Cressey, above n 11.
\textsuperscript{24}Joshua K Gieslewicz, 'The fraud model in international contexts: A call to include societal-level influences in the model' (2012) 4(1) \textit{Journal of Forensic and Investigative Accounting} 214.
findings discussed in the previous chapter. The chapter starts with an examination of eight hypotheses formulated at the outset of the research. The researcher then provides a combination of strategies that the SEC Office and securities companies may implement to reduce pressure, to remove opportunities, and to limit rationalisations that induce the brokers to commit brokerage fraud and relating violations. The strategies, proposed under the responsive regulation approach,\(^{25}\) include information and education initiatives, a revision of current regulations, a reformation of the enforcement structure, and an enhancement of the regulatory agency's legitimacy. The conclusion of the thesis is then provided in the last section of this final chapter.

The thesis also contains five appendices, in order to provide an easy means of reference and checking to the reader. The first contains relevant statutory provisions in relation to brokerage offences focused in this study. The second is a translated version of the SEC Office Notification No. KorLorTor.Khor.Wor 12/2011, which is the main piece of regulation prescribing unlawful brokerage conduct and accompanies administrative sanctions. The third is a list of interviews questions and the purpose of each question. The fourth is an information sheet given to the participants at the start of the interview sessions. The five and last appendix is an oral consent request statement.

Chapter 2

The Thai Legal System and the Thai Securities Markets

I The Thai Legal and Judicial Systems

A The Thai Legal System

Thailand, formally known as Siam, has a rich legal history that dates back to the Sukhothai period (1238–1350). The ancient Thai legal system continued until 1897 when the country modernised its legal system by incorporating Western legal concepts and procedures into its existing system. The modernisation started when King Rama V sent his son, Prince Rabi of Rajburi to study law at Oxford University in England. When he graduated and went back to Thailand, King Rama V appointed him as the Minister of Justice, having important duties to carry out in judicial reform and to set up the country's first law school under the Ministry of Justice.\textsuperscript{26} In his capacity as the head of this first law school, Prince Rabi taught then-contemporary modernised Thai law as well as the law he had learned in England to the young members of the court. Since Price Rabi and the early judges studied the English legal system, they employed the common law in trials they presided over and a number of common law principles were introduced into the Thai legal system. Despite this early common law influence on Thai law, in 1908 King Rama V, after consulting with foreign advisors, decided that the Kingdom should instead employ the civil law system because it would be more efficient as well as taking less time for the reform commission to draft the codes of law rather than waiting for the rule of law to be developed through case law.\textsuperscript{27} As a result of the lasting influence of the early judges and legal scholars, notwithstanding Thailand currently employing the civil law system based on the four main codes\textsuperscript{28}, certain notable features of the common law system are evident, such as the adversarial court system, the concept of \textit{mens rea} and \textit{actus

\textsuperscript{26} Sansern Kraichitti, 'Legal System in Thailand, The' (1967) 7 Washburn LJ 239.
\textsuperscript{27} Ibid.
\textsuperscript{28} Penal Code, Civil and Commercial Code, Criminal Procedure Code, and Civil Procedure Code.
reus in the criminal law, and a form of doctrine of precedent where the earlier Supreme Court’s decisions are referred to in the court verdicts.29

1 The Thai Criminal Law

As mentioned above, Thailand employs a civil law code system, meaning that the Thai criminal law can be found in the form of rules and provisions in various codes and statutes. Two main sources of such provisions are: (i) the Penal Code, which has 398 sections prescribing general principles and various criminal offences, and (ii) Acts containing provisions that impose criminal liability upon offenders.

The principal provision of Thai criminal law is section 59 of the Penal Code. It sets out core principles of criminal responsibility that to be criminally liable for an offence under Thai law, a person must commit the prohibited act or omit from committing certain acts where he or she has a duty to act (actus reus) with an intention to commit the wrongful act (mens rea). There are only a few particular offences where a person is liable for an offence he or she commits without an intention but by negligence30 or where the law imposes absolute liability.31 Thai law also imposes vicarious criminally liability in specific circumstances such as where a child (a person under eighteen years of age) commits a wrongful act, the parents may also be criminally liable.32

When a person is found guilty of a criminal offence, he or she shall be liable to a form or forms of punishments prescribed in Section 18 of the Penal Code; no other criminal punishment shall be imposed upon an offender. The available forms of punishment are:

(1) Death penalty (by lethal injection);33
(2) Imprisonment;

30 Penal Code s 291.
31 Various offences under the Scale and Measurement Act B.E. 2542 (1999).
33 Penal Code s 19.
(3) Confinement;
(4) Fine; and
(5) Forfeiture of Property.34

Fine and imprisonment are the main forms of sanctions within Thai criminal law while the death penalty is reserved for few very serious offences, including premeditated murder35 and arson.36 Confinement is a substitutive sanction for imprisonment that courts may impose upon offenders whose prison terms are less than three months37 and such persons shall be held in a determined place of confinement that is not a prison or a police station.38 Confinement can also be imposed as a substitutive sanction upon the offenders who fail to pay a fine39 and the rate for such confinement in lieu of fine is deemed at two hundred baht per day.40 Last, in forfeiture of property cases, courts may forfeit (i) the property used in the commission of an offence, (ii) the property acquired through a commission of an offence, and (iii) other property prescribed by specific provisions.41

Apart from the general principles above, there are certain features of Thai criminal law that should be explored in detail for the purpose of this thesis:

(a) Standards of Proof

The first feature of the Thai Criminal Law to be explored is the standard of proof in criminal offences. According to sections 174 and 227 of the Criminal Procedure Code, the law employs a presumption of innocence which means that an accused is innocent until proven guilty beyond a reasonable doubt.42 The prosecutor has

34 Ibid s 18.
36 Ibid s 218.
37 Ibid s 23.
38 Ibid s 24.
39 Ibid s 29.
40 Ibid s 30; 200 baht is approximately equal to seven AUD.
41 Ibid s 33.
42 In Thai criminal procedure law, there is no apparent test for what constitute the beyond reasonable doubt standard of proof. Judges employ the precedence set by previous cases together with their experience to determine the weight of evidence presented to them.
a burden to prove that the accused has committed the crime *(actus reus)* and
with an intention to committed the crime *(mens rea).* If an element of an
offence cannot be clearly proved or there is a doubt, the accused shall be
acquitted.

In contrast, the standard of proof in civil cases is considerably lower to the level
of *preponderance of evidence* or on the *balance of probabilities.* The plaintiff
only has to present evidence that is more convincing or more likely to be true
than the evidence of the defendant for the courts to award damages or civil
injunctions. In relation to the standard of proof in administrative proceedings,
the standard varies greatly between agencies having the responsibility to
regulate different industries under different statutes. Within the scope of this
research, the standard of proof employed by the Office of the Securities and
Exchange Commission (SEC Office) in its administrative proceedings is said to be
at the same level as in criminal proceedings by the Court of Justice, i.e. beyond
reasonable doubt. The underlying reason behind this high standard of proof is
that section 44 of the *Administrative Procedure Act B.E. 2539* (1996) together
with the *Securities and Exchange Commission’s Rule of Practice on Filing,
Consideration, and Adjudication of Appeal on the Administrative Order of the Office
of the Securities and Exchange Commission B.E. 2542* (1999) both enable the
accused to file an appeal against the office’s administrative order to the Board of
Securities and Exchange Commission and the Administrative Court, respectively.
It is therefore necessary for the SEC Office to employ the highest standard of
proof to avoid orders being overturned at appeal and legal officers being sued for
wrongful execution of duty under section 157 of the *Penal Code.*

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43 There is an exception where the law imposes absolute liability in certain offences. In such
cases, the prosecutor only has to prove that the accused has committed the crime *(actus reus).*
44 *Criminal Procedure Code* s 227.
45 *Civil Procedure Code* s 104; In addition, in cases involving corruption of politicians and high
rank government officers, the National Anti-Corruption Commission may, by itself, present
criminal charges to the courts under conditions set out in *Organic Act on Counter Corruption B.E.
46 Interview with Sumeth Vichienchai, Senior Officer of The Office of The Securities and Exchange
Commission (Bangkok, 31 January 2014).
(b) Who Can Institute a Criminal Case

Unlike many jurisdictions where only a public prosecutor can institute criminal proceedings, the Thai Criminal Law system allows both the public prosecutor and the victim to present criminal charges to the courts.\textsuperscript{47} In the former case, the process usually begins when the victim files the complaint to the relevant law enforcement agencies - the Thai Police Force and other agencies in certain statutory offences - who will conduct an investigation and present information about the case and the accused to the public prosecutor. It should be noted that in the case of non-compoundable offences,\textsuperscript{48} the agencies have power to initiate the criminal case without a victim's complaint.\textsuperscript{49} The public prosecutor via the Office of the Attorney General (OAG) may prefer the charge before the criminal courts. They may make an order for non-prosecution or instruct the enforcement agencies to conduct further investigation if the prosecutor deems that the facts or the evidence are not clear or adequate. Based on the evidence gathered, the judge would either accept the case for trial or dismiss the charge.\textsuperscript{50}

In contrast, the victim may directly present the case to the courts by employing criminal lawyers to gather evidence and prosecute criminal charges against the person alleged to cause an injury or financial harm. The reasons for proceeding via private prosecution by the victim are usually lack of cooperation by enforcement agencies or an order of non-prosecution by the public prosecutor. It is interesting to note that under the Thai Criminal Law, such an order of non-prosecution does not prejudice the victim's right to institute a prosecution by himself/herself.\textsuperscript{51}

\textsuperscript{47} Criminal Procedure Code s 28.  
\textsuperscript{48} See the explanation of the term below.  
\textsuperscript{49} See details in Chapter 3.  
\textsuperscript{50} Criminal Procedure Code s 167.  
\textsuperscript{51} Ibid s 34.
(c) Compoundable Offences and Non-compoundable Offences

The third notable feature of the Thai Criminal Law to clarify is the meaning of and the distinction between compoundable offences and non-compoundable offences. All criminal offences, whether stipulated in the Penal Code or in other statutes, are classified as one or other of those two types of offence. In the current system, the majority of offences are non-compoundable, only small numbers are compoundable. Compoundable offences are offences that are deemed to be committed against or to the detriment of the victim personally and not against the state or the public order. The fundamental rule is that the offences would be compoundable only when the law clearly stipulates in the relevant provisions that such offences are compoundable. Notable examples of compoundable offences are ones relating to disclosure of confidential information\(^{52}\), offences of deception\(^{53}\), offences of misappropriation\(^{54}\), and all offences relating to copyright.\(^{55}\)

When the offence is classified as a compoundable offence, there are three main legal consequences distinguishing it from non-compoundable offences. First, a relevant government agency, such as the Thai Police Force, cannot initiate the case by itself, even when the evidence is presented. Only when the victim files a complaint may the agency start proceedings. Second and most important, the current Thai criminal law has employed a limitation period in all criminal offences, thus limiting the time that the victim and/or the competent agency may initiate the proceedings after the offence occurred. The stipulated periods vary from one year to twenty years depending on the magnitude of the punishment in particular offences, the higher the magnitude the longer the period is.\(^{56}\) However, in the cases of compoundable offences, the law further requires that the victim must file his or her case to the authority within three months after he or she discovers that the wrongdoing has occurred and is able to identify the

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\(^{52}\) Penal Code ss 322-324.

\(^{53}\) Ibid s 341.

\(^{54}\) Ibid ss 352-355.

\(^{55}\) Copyright Act, B.E. 2537 (1994) s 66.

\(^{56}\) Penal Code s 95.
If the victim does not file the report within the three months, the limitation period is terminated. Last, at any time after the change has been initiated, victims may decide to end the proceedings by withdrawing the complaint or by reaching a compromise with defendants.

In contrast, non-compoundable offences are offences deemed to be committed against both the victim and public order. When an offence is said to be non-compoundable, the relevant authority has the right to initiate proceedings by themselves; and once the inquiry officer has started the investigation, victims have no power to withdraw the case or reach settlement with the defendant. In addition, for non-compoundable offences, victims are not required by the law to file the complaint within three months after the wrongdoing is discovered. The victim and/or the public prosecutor may instigate the case to the courts at any time within the period of prescription.

For the purpose of this research, most criminal offences relating to brokerage practice are non-compoundable. The only relevant compoundable offences are certain offences relating to fraud and misappropriation of assets stipulated in the Penal Code.

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57 Ibid s 96.
58 Criminal Procedure Code s 28.
59 Penal Code ss 341, 352-354.
Table 1: Differences between Compoundable Offences and Non-compoundable Offences

<table>
<thead>
<tr>
<th>Features</th>
<th>Compoundable Offences</th>
<th>Non-Compoundable Offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>The offences are deemed to be committed against</td>
<td>Victims only</td>
<td>Both victims and the public order</td>
</tr>
<tr>
<td>The relevant government agencies’ power to initiate criminal cases</td>
<td>Only when victims have filed complaints</td>
<td>The agencies may initiate cases by themselves at any time</td>
</tr>
<tr>
<td>Limitation period</td>
<td>Stipulated period of each offence plus a requirement that a report must be filed within three months after the offence have been discovered</td>
<td>Only stipulated period of each offence applied</td>
</tr>
<tr>
<td>The victim’s right to end the criminal proceedings</td>
<td>The victim may withdraw the case or reach settlement with the defendant at any time.</td>
<td>Once the investigation has started, victims have no power to withdraw the case or reach settlement with defendants</td>
</tr>
</tbody>
</table>

(d) Corporate Criminal Liabilities

In Thailand, both natural and legal persons - such as limited partnerships and limited companies - can be the subjects of criminal offences. Under the current law, once a company is incorporated, it has a separate legal entity from shareholders and the will of such legal entities is declared through its representatives, who are often directors and managers. Regarding the criminal liability of a legal person, the Supreme Court has ruled that a legal person can be the subject of certain criminal offences and can be criminally sanctioned as well as civilly liable for compensation for any damage done by its representatives.62

61 Civil and Commercial Code s 70 para 2.
62 Ibid s 425. See also, Sudti-utasilp, above n 60.
Under the current Thai criminal law system, criminal offences that can be applied to a corporation are legislated in three different categories:

(i) Statutory provisions that impose criminal liability on a legal person

A number of statutory provisions have prescribed criminal offences that directly apply to a legal person. Such provisions clearly state that a legal person is the subject of the prescribed offences and can be criminally charged independently from its managerial officers. Examples of this type of provision are section 41 of the Commercial Banking Act B.E. 2505 (1962)\textsuperscript{63}, section 61 of the Anti-Money Laundering Act B.E. 2542 (1999)\textsuperscript{64}, and section 273 of the Securities and Exchange Act B.E. 2535 (1992).\textsuperscript{65}

(ii) Statutory provisions that impose criminal liability on persons of certain status

The second category is where the legislation states that a person of certain status or position is the subject of a criminal offence. In the case where a legal person can hold such legal status or position, the offence will also be directly applied to such legal person. One example is section 54 of the Factory Act B.E. 2535 (1992) which imposes criminal liability on ‘any person who has been granted a licence to operate a factory’.\textsuperscript{66} Such ‘any person who has been granted a licence to operate a factory’ respectively can be either a natural person or a legal person.

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\textsuperscript{63} 
\textit{Commercial Banking Act B.E. 2505} (1962) s 41: Any commercial bank which fails to examine its register of shareholders or to notify its shareholders in violation of the provisions of Section 5 septem or makes a false statement or conceals facts which must be revealed in the confidential statements or explanatory notes submitted in accordance with section 23 shall be liable to a fine not exceeding 100 000 baht.

\textsuperscript{64} 
\textit{Anti-Money Laundering Act B.E. 2542} (1999) s 61: Any legal person who commits offences under section 5, section 7, section 8 or section 9 shall be liable to a fine of 200 000 baht to one million baht.

\textsuperscript{65} 
\textit{Securities and Exchange Act B.E. 2535} (1992) s 273: Any company which contravenes or fails to comply with section 58, section 53, section 191, section 192 or section 193 or contravenes or fails to comply with the rules or procedures issued in accordance with section 50 or section 191 shall be liable to a fine not exceeding 100 000 baht and a further fine not exceeding 3 000 baht for every day during which the contravention continues.

\textsuperscript{66} 
\textit{Factory Act B.E. 2535} (1992) s 54: any person who has been granted a licence to operate a factory who fails to comply with section 34 paragraph one shall be liable to a fine not exceeding 20 000 baht.
(iii) **Statutory provisions specifying the subject of offences using the terms anyone or whoever**

Unlike provisions in the two categories above where the law clearly specifies the subject of the offences, a majority of statutes, as well as the *Penal Code*, use the term *anybody* or *whoever* as the subject. Such terms give rise to the complicated question whether a legal person is included as the subject of such criminal offences. In 1963, *The Supreme Court Decision No. 787-788/2506* laid down an important precedent that the terms include both a natural person and a legal person, but in order for a legal person to be criminally liable, three conditions must be met. First, the representatives of a legal person must act within the scope of his authority. Second, such an act is in accordance with the objectives of the legal person. Third, the legal person directly benefits from the act in question. Therefore, a majority of offences - especially those affecting life and body such as manslaughter, assault, and rape - do not apply to a legal person since the acts are not in accordance with the legal person’s objectives and are outside the scope of the representative authority. Further examples of offences in this category that the courts have ruled can be applied to a legal person are an offence relating to an imitation of a trademark[^67], an offence relating to forgery[^68], an offence relating to fraud[^69], and an offence relating to the misuse of cheques.[^70]

Although a legal entity can be found guilty of criminal offences as stated above, the applicable punishments under the Thai criminal law are limited. Section 18 of the *Penal Code* prescribed that the allowable forms of criminal sanction are death, imprisonment, confinement, fine, and forfeiture of property.[^71] Due to the nature of these punishments, fines and forfeiture of property are the only two applicable forms of corporate criminal sanction. Such limitation combining with a generally low maximum fine amount prescribed by the law, especially by provisions in the *Penal Code*, compared to the monetary benefit that a legal

[^68]: *The Supreme Court Decision No. 1669/2506* (1963).
[^69]: *The Supreme Court Decision No. 97/2518* (1975).
[^70]: *The Supreme Court Decision No. 59/2507* (1964).
[^71]: *Penal Code* s 18.
person may obtain from a certain economic crime, have led to the important question whether it is efficient and appropriate for Thai law to rely on the use of corporate criminal liability as a tool to prevent corporations from committing offences and whether more creative forms of corporate sanction would provide greater deterrence than under the current system.

(e) Punishment Mitigation and Probation

In the current Thai criminal law system, all provisions that impose criminal sanctions upon offenders prescribe first the available forms of sanction, and second the minimum and maximum magnitude of sanctions that can be imposed. For example, in the offence of misappropriation the prescribed sanctions are imprisonment not exceeding three years or a fine not exceeding six thousand baht, or both. Presiding judges may by using their discretion either impose an amount of fine, a length of imprisonment, or both sanctions within the prescribed magnitude. Such sentencing discretion is usually based on age, past criminal record, education, occupation, behaviour, and health of the offenders, as well as severity of the wrongdoing.

After the appropriate sentence is decided, the judges will then take into account mitigating circumstances if any. Under section 78 of the Penal Code, if there is a mitigating circumstance, the court may reduce the punishment up to one half. Such mitigating circumstances include the offender being in serious distress, having previous good conduct, being remorseful and trying to minimise the harmful effect of the offence, voluntary surrender to an official, and giving useful information to the court for the benefit of the trial. The latter is the most important since it includes where an offender pleads guilty to a charge. As a result, most offenders who plead guilty have their punishment reduced by half.

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72 Sudti-autasilp, above n 60.
73 Examples of more creative forms of corporate sanctions found in Australia are a publicity of the offence and the penalties imposed on television and in newspapers, a notification to the shareholders and stakeholders of the corporation, and an establishment of a project for the public benefit. Crimes Act 1900 (ACT) s 49E.
74 Penal Code s 352.
75 Ibid s 78.
The only exception is where there is ample evidence already and the confession is no longer beneficial to the trial. The court may, in its discretion, not grant such a reduction of punishment.76

One other important feature of the Thai criminal law is the prevalent use of probation orders. After the mitigating factors above have been considered, whether or not the reduction is granted, if the court hands down an imprisonment sentence of three years or less, the court may at its discretion suspend the punishment and instead impose a probation order.77 Factors that courts take into consideration are closely similar to the mitigating factors above, i.e. age, past criminal records, education, occupation, behaviour, and health of the offenders. The persons are then released with or without conditions. The conditions that the court may impose are: (1) to periodically report to the officers, (2) to be trained or to carry out an occupation, (3) to refrain from association or from behaviour that may lead to the re-commission of the offences, (4) to undergo a rehabilitation programme aimed at curing physical or mental health, or (5) any other conditions that may assist reform or rehabilitation of the offenders.78 Such a probation period shall not exceed five years from the day the court renders the judgment.

2 The Thai Civil Law

The Civil and Commercial Code together with the Civil Procedure Code are the primary sources of civil law in Thailand. The Civil and Commercial Code set forth general principles and specific rules affecting individuals and well as business entities. The code is divided into six books namely: general principles, obligations, specific contracts, property, family, and succession. In relation to this piece of research on brokerage frauds, the relevant sections of the Civil and Commercial Code are Title II Contract and Title IV Wrongful Acts, respectively.

76 The Supreme Court Decision No. 100/2551 (2008).
77 Penal Code s 56.
78 Ibid ss 56(1)-56(5).
Title II Contract lays down general principles on formation, effect, and rescission of contracts between investors and securities companies. However, most of these provisions are only general guidelines provided by the law. The parties may choose to agree otherwise and such agreements are in effect as long as they are not expressly prohibited by law or contrary to public order or good morals.\(^{79}\) In addition, since these contracts between the investors and the securities companies are regarded as contracts between consumers and businesses, as well as being a standard form contract, they fall within the scope of the *Unfair Contract Term Act B.E. 2540* (1997). The Act stipulates that if terms in a contract render the business or professional operator an unreasonable advantage over the other party, such terms are to be regarded as unfair and only enforceable to the extent that they are fair and reasonable according to the circumstances.\(^{80}\) This piece of law provides judges with great discretion in determining whether the terms are fair or not, and the extent to which they should be enforced.

Title IV Wrongful Acts contains provisions on liabilities of individuals and businesses that, willfully or negligently, causes injuries or damages to body, health, liberty, property, or any right of another individuals or businesses.\(^{81}\) During the course of work, securities brokers may violate securities regulations or act in breach of their duties causing damages to their clients. Clients have the right to sue securities brokers under these wrongful acts for monetary compensation. In addition, the law prescribes that employing securities companies are to be jointly liable with securities brokers if such wrongful acts are committed in the course of their employment.\(^{82}\) It should be noted that there is no punitive damage concept in the Thai civil law. The Courts will only award actual damages to injured plaintiffs, if their cases are successful.

\(^{79}\) *Civil and Commercial Code* s 150.
\(^{81}\) *Civil and Commercial Code* s 420.
\(^{82}\) Ibid s 425.
3 The Thai Administrative Law

In Thailand, the exercise of power of the government and its administrative organs are under review and control by the Administrative Courts. Such exercise of power can be in the form of either a by-law issued by an administrative agency or a state official, an administrative order issued by an administrative agency or a state official, or other acts performed by an administrative agency or a state official. In a case where the courts find such by-law, administrative order, or other acts issued or performed by an administrative agency or state official unlawful, the courts have a power to revoke such by-law or order, or restrain such act as well as to order the payment of money or damages in connection with such wrongful act.

In relation to this piece of research, the Securities and Exchange Commission (SEC), the Office of the Securities and Exchange Commission (SEC Office), and the Stock Exchange of Thailand (SET) are administrative agencies under the scope of the Act, as well as their commissioners and officers which are deemed as state officials. Their by-law and administrative orders are therefore under review of the Administrative Courts.

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83 Definitions of ‘by-law’ under the Thai administrative law are a Royal Decree, Ministerial Regulation, Notification of a Ministry, ordinance of local administration, rule, and other provisions which are of general application and not intended to be addressed to any specific case or person. See, Act on Establishment of Administrative Courts and Administrative Courts Procedure B.E. 2542 (1999) s 3.

84 Definitions of ‘administrative order’ under the Thai administrative law are (1) the exercise of power under the law by an official to establish juristic relations between persons to create, modify, transfer, preserve, extinguish or affect the individual’s status of rights or duties, permanently or temporarily, such as giving an order or permission or approval, deciding an appeal, certifying and registering, but shall not include the issuance of a by-law, and (2) other acts as prescribed in the Ministerial Regulation. See, Administrative Procedure Act B.E. 2530 (1987) s 5.

85 One example of other administrative acts is an administrative real act. For example, a local official issued an administrative order to demolish a building that was illegally constructed. However, the owner of the building has not complied with the order and that the official has to enforce his or her order by proceeding to demolish such building by the local agency's employees. See, Administrative Court of Thailand, 'National Report of Thailand: Review of administrative decisions of government by the Administrative Court of Thailand' (2010), 16.

B  The Thai Judicial System

The current Thai Judicial System comprises of four types of court; namely, The Constitutional Court, The Courts of Justice, The Administrative Courts, and The Military Courts. In the scope of this thesis, the more relevant courts are the Courts of Justice and the Administrative Courts, respectively.

1  The Constitutional Court

The Constitutional Court, established under the 1997 Constitution and later restructured by the 2007 Constitution, has jurisdiction to determine whether provisions of any law, rule, or regulation are contrary to or inconsistent with the Constitution.\(^{87}\) Judgments of the Constitutional Court have a binding effect upon all government agencies and are not subject to appeal by any other court.\(^{88}\) The court comprises nine judges who are appointed by the King on advice from the Senate, and serve one nine-year term.\(^{89}\)

2  The Courts of Justice

Before 1997, the Courts of Justice was the single main judicial institution of Thailand. The courts had broad powers to adjudicate all cases except few that were in the jurisdiction of the Military Courts. The Constitution of the Kingdom of Thailand B.E. 2540 (1997) then established the Constitutional Court and the Administrative Courts, transferring the jurisdiction of the Courts of Justice in particular areas to the two newly established institutions. At present, the Courts of Justice, therefore, have adjudicative power over all cases that are not under the jurisdiction of the Constitutional Court, the Administrative Courts, and the Military Courts.

Due to the influence of the common law tradition in the early stage of the modernisation of judicial institutions, the Courts of Justice employ adversarial

\(^{88}\) Ibid s 27.
\(^{89}\) Ibid s 204.
procedure where victims and defendants present their evidence to the impartial judges who ensure the fair play of due process in the proceedings.\textsuperscript{90} However, the Thai judicial system does not employ juries in trials. The presiding judges have power to both determine the verdict and to set the penalty and/or damages.\textsuperscript{91} It should be noted that judges in the Courts of Justice are career judges who must have a degree in law, pass the examination of the Institute of the Thai Bar Association, and pass the rigorous judicial exams. A qualified person can apply for judge exams at the age of twenty-five and, after being appointed as a judge, he or she remains in the office until the age of seventy.

Under the \textit{Act of Courts of Justice Administration B.E. 2543} (2000), the Courts of Justice comprise three levels: the Courts of First Instance, the Courts of Appeal, and the Supreme Court. The Courts of First Instance are trial courts where victims and state prosecutors instigate their cases. There are three types of Courts of First Instance: general courts, juvenile and family courts, and specialised courts. General courts have jurisdiction over civil and criminal disputes, and are divided into Civil Courts, Criminal Courts, Provincial Courts\textsuperscript{92} and Kwaeng Courts.\textsuperscript{93} Juvenile and family courts adjudicate cases involving minors, consisting of the Central Juvenile and Family Court, the Provincial Juvenile and Family Courts, and the Division of Juvenile and Family Court in the Provincial Courts. Specialised courts consist of the Labour Courts, the Tax Courts, the Intellectual Property and International Trade Courts, and the Bankruptcy Courts.\textsuperscript{94} Except in the case of the Kwaeng Court where a single judge can preside over the trial session and in certain specialised courts where associate judges are employed, at least two judges form a quorum in the Courts of First Instance.

\textsuperscript{90} Borwornsak Uwanno and Surakiart Sathirathai, \textit{Introduction to the Thai Legal System} (Faculty of Law, Chulalongkorn University, 1986).
\textsuperscript{91} Ibid.
\textsuperscript{92} Provincial Courts have jurisdiction over both civil and criminal disputes.
\textsuperscript{93} Kwaeng Courts are roughly equivalent to small claims courts. They have jurisdiction over criminal offences having maximum punishment of three years imprisonment, and a fine not exceeding 6 000 baht, or both, and civil cases where the amount of claims do not exceed 300 000 baht.
\textsuperscript{94} These specialised courts are presided by judges having competent knowledge and training in their respective matters.
The Courts of Appeal consist of the Court of Appeal and nine regional Courts of Appeal. They have jurisdiction to hear and adjudicate appeals from judgment and orders of the Criminal Courts, the Civil Courts, the Provincial Courts, as well as the Juvenile and Family Courts. The Courts of Appeal, under provisions of the *Criminal Procedure Code* and the *Civil Procedure Code*, can hear appeals on both questions of law and fact. At least three judges form a quorum in the Courts of Appeal.

The Supreme Court of Justice is the highest court of justice in Thailand. Its judgment and order are final. The President of the Supreme Court is also the head of the Courts of Justice. The Supreme Court of Justice has jurisdiction to hear and adjudicate appeals from the Courts of Appeal and from the specialised courts of the Courts of First Instance. The Supreme Court, under provisions of the *Criminal Procedure Code* and the *Civil Procedure Code*, can hear appeals on questions of law and, in certain cases, on questions of fact. At least three judges form a quorum in the Supreme Court, but in complicated or important cases, the President of the Supreme Court may call for a plenary session with a quorum consisting of all active Supreme Court judges.

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96 Ibid s 27.
3 The Administrative Courts

The Administrative Courts were established under the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and were inaugurated in 2001. Under the Act on the Establishment of and Procedure for Administrative Courts B.E. 2542 (1999), the Administrative Courts have two levels: the Administrative Courts of First Instance and the Supreme Administrative Court.

The Act on the Establishment of and Procedure for Administrative Courts B.E. 2542 (1999) mandates the gradual establishment of one Central Administrative Court
and sixteen Regional Administrative Courts. However, twelve Regional Administrative Courts are in operation as of May 2016. In each Administrative Court of First instance, there are President, Vice Presidents, Presidents of Chambers, and judges of the Administrative Court of First instance. In the Administrative Court of First Instance, there must be at least three administrative judges in each chamber to constitute a quorum for trial and adjudication.97 The Supreme Administrative Court is the higher administrative court. In the Supreme Administrative Court, there are the President, Vice Presidents, Presidents of Chambers, and judges of the Supreme Administrative Court. There must be at least five administrative judges in each chamber to constitute a quorum for trial and adjudication.98

Similar to judges in the Courts of Justice, administrative judges are career judges. However, the beginning of their career starts much later since the law required that the judge in the Administrative Court of First Instance must not be younger than thirty-five years of age, and forty-five years of age in the Supreme Administrative Courts.99 The law further requires the candidate must be serving or, in the past, served in designated positions within the government for a required period of time, before he or she is eligible for an appointment as an administrative judge.100 It is interesting to note that judges in the administrative courts are not required to have a degree in law. They may graduate with a degree in political science, public administration, economics, social science, or in the administration of State affairs in accordance with the rules prescribed by the Judicial Commission of the Administrative Courts.101

98 Ibid s 54 para 1.
99 The minimum age of judges in the Courts of Justice is twenty-five years of age.
101 Ibid ss 13(3), 18(3).
4 The Military Courts

The Military Courts have jurisdiction to try and adjudicate criminal cases against persons subject to the jurisdiction of the Military Courts; for example, military officers who commit a crime against the military law or other criminal laws. The Military Courts are under the Ministry of Defense and have three levels:

(1) The Military Court of First Instance;
(2) The Central Military Court; and
(3) The Supreme Military Court.

II The Thai Securities Markets and Brokerage Industry

A Securities Markets in Thailand

1 History

The history of the Thai capital market dates from July 1962, when a private group established the country’s first national stock exchange in the form of a partnership and in 1963 registered it as a limited company in the name of Bangkok Stock Exchange Co., Ltd. (BSE). The market was described as rather inactive; reaching its highest annual trading volume in 1968 at 160 million baht then falling sharply to as low as 28 million baht in 1971, which led to its demise shortly afterwards. Those involved with the BSE took the view that the failure was mainly attributable to a lack of government support and investors’ lack of understanding of the equity market at the time.

On the government side, the Second National Economic and Social Development Plan (1967-1971) first proposed that a government-sanctioned securities market, with appropriate facilities and regulations, should be established to

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103 Ibid.
generate required capital to support the country’s industrialisation and economic development.\textsuperscript{104} The process started in 1969 when the Government employed Professor Sidney M. Robbins of Columbia University to study and produce a report titled ‘A Capital Market in Thailand’ that was to be used as a guideline for the development of the capital market.\textsuperscript{105} Then in May 1974, the \textit{Securities Exchange of Thailand Act B.E. 2517} (1974) was passed to establish the stock exchange and put in place regulatory and monitoring frameworks. The stock exchange officially started operation in April 1975. In 1991 the name of the market was formally changed from ‘\textit{The Securities Exchange of Thailand}’ to ‘\textit{The Stock Exchange of Thailand (SET)}’. The 1974 Act was later repealed and superseded by the \textit{Securities and Exchange Act B.E. 2535} (1992). One of the most important features of 1992 Act is an establishment of the \textit{Securities and Exchange Commission (SEC)} as an independent state agency to supervise and support the development of the country’s capital market.\textsuperscript{106}

Thanks to the success of the SET, other trading boards and markets were further established to accommodate the trade in different securities products under the management and supervision of SET, sometimes referred together as the SET Group. The Market for Alternative Investment (MAI), a second trading board of the SET, was established in 1999 primarily to create a trading platform for innovative businesses with high potential growth.\textsuperscript{107} The Bond Electronic Exchange (BEX) was then launched by the SET in 2003 with the goal to develop the Thai Bond Market as well as making a step towards a creation of an Asian Bond Market.\textsuperscript{108} The most recent alternative market is the Thailand Futures Exchange Pcl (TFEX).\textsuperscript{109} The TFEX commenced operation in 2004 under the \textit{Derivative Act B.E. 2546} (2004) with the goal of being an international exchange for trading and hedging of derivative products.

\textsuperscript{104} Ibid.
\textsuperscript{105} Ibid.
\textsuperscript{106} See details below.
\textsuperscript{107} The Stock Exchange of Thailand, \textit{Organizational Chart} <http://www.set.or.th/mai/en/about/structure.html>.
\textsuperscript{109} Thailand Future Exchange, \textit{At a Glance} <http://www.tfex.co.th/en/about/glance.html>.
2. The Stock Exchange of Thailand (SET)

(a) Structure

The Stock Exchange of Thailand is currently the country’s main secondary market for the trading of listed securities, under the supervision of The Securities and Exchange Commission (SEC). The SET’s primary roles are to serve as a centre for the trading of listed securities and to provide the essential system needed to facilitate securities trading, as well as undertake any business relating to the Securities Exchange, such as a clearing house, securities depository centre, securities registrar, or similar activities.

The SET is governed by the Board of Governors, consisting of eleven members. The Board is responsible for issuing SET policies and rules, as well as supervising the operations of the exchange and its subsidiaries. Under the Board of Governors, there are two main branches of offices: the Exchange Function and the Capital Market Development Function. In addition, there are three legal entities under the SET umbrella that facilitate the operation of the SET: Thailand Securities Depository Co., Ltd. (TSD), Thailand Clearing House Co., Ltd. (TCH), and Settrade.com Co., Ltd. TSD is a one-stop centre for post-trade securities services. TSD offer three types of service (1) securities depository services, (2) securities registration services, and (3) provident fund registration services. TCH is a clearinghouse for all securities and derivatives traded on the SET, the BEX, the TFEX, and all debt instruments traded on the over-the-counter market. Settrade is a company providing Internet trading platforms and leverage investment technology for securities companies in order to accommodate individual investors with increasing trading channels.

(b) Important Statistics

The tables below show six important sets of statistics of the SET from 2012 to 2015: SET Index, total capitalisation, total turnover, number of transactions, number of listed companies, and number of listed securities, respectively.

(i) The SET Index

Table 2: The SET Index from 2012-2015

<table>
<thead>
<tr>
<th>Index</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>SET Index</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Close</td>
<td>1391.93</td>
<td>1298.71</td>
<td>1497.67</td>
<td>1288.02</td>
</tr>
<tr>
<td>- High</td>
<td>1397.19</td>
<td>1643.43</td>
<td>1600.16</td>
<td>1615.89</td>
</tr>
<tr>
<td>- Low</td>
<td>1036.21</td>
<td>1275.76</td>
<td>1224.62</td>
<td>1261.66</td>
</tr>
<tr>
<td>SET50 Index</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Close</td>
<td>945.39</td>
<td>883.40</td>
<td>1001.01</td>
<td>813.55</td>
</tr>
<tr>
<td>- High</td>
<td>951.29</td>
<td>1092.27</td>
<td>1074.80</td>
<td>1074.39</td>
</tr>
<tr>
<td>- Low</td>
<td>724.43</td>
<td>873.62</td>
<td>829.89</td>
<td>801.81</td>
</tr>
<tr>
<td>SET100 Index</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Close</td>
<td>2078.67</td>
<td>1933.11</td>
<td>2212.63</td>
<td>1821.66</td>
</tr>
<tr>
<td>- High</td>
<td>2089.35</td>
<td>2436.81</td>
<td>2375.29</td>
<td>2382.15</td>
</tr>
<tr>
<td>- Low</td>
<td>1557.14</td>
<td>1911.71</td>
<td>1814.62</td>
<td>1789.59</td>
</tr>
</tbody>
</table>

(ii) Total Capitalisation

Table 3: Total Capitalisation of the SET from 2012-2015

<table>
<thead>
<tr>
<th>Total Capitalisation</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Par Value (M.baht)</td>
<td>1 649 649.64</td>
<td>2 296 075.62</td>
<td>2 771 761.65</td>
<td>3 009 960.15</td>
</tr>
<tr>
<td>Market Value (M.baht)</td>
<td>11 831 448.07</td>
<td>11 496 765.17</td>
<td>13 856 283.31</td>
<td>12 282 754.70</td>
</tr>
</tbody>
</table>

114 Ibid.
(iii) **Total Turnover**

Table 4: Total Turnover of the SET from 2012-2015\(^{115}\)

<table>
<thead>
<tr>
<th>Total Turnover</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volume (M.Shares)</td>
<td>1 295,611.00</td>
<td>2 768,476.00</td>
<td>2 771,230.00</td>
<td>2 487,472.00</td>
</tr>
<tr>
<td>Value (M.baht)</td>
<td>7 615,637.96</td>
<td>11 777,210.10</td>
<td>10 193,179.07</td>
<td>9 997,371.75</td>
</tr>
</tbody>
</table>

(iv) **Number of Transactions**

Table 5: Number of Transactions in the SET from 2012-2015\(^{116}\)

<table>
<thead>
<tr>
<th>Transaction</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of</td>
<td>51 439,385</td>
<td>79 449,188</td>
<td>78 794,503</td>
<td>87 879,233</td>
</tr>
<tr>
<td>Transactions (Deals)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily Average</td>
<td>209 956</td>
<td>324 282</td>
<td>321 610</td>
<td>361 642</td>
</tr>
<tr>
<td>Transaction (Deals)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(v) **Numbers of Listed Companies**

Table 6: Numbers of Listed Companies in the SET from 2012-2015\(^{117}\)

<table>
<thead>
<tr>
<th>Listed Companies</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newly Listed</td>
<td>8</td>
<td>13</td>
<td>17</td>
<td>23</td>
</tr>
<tr>
<td>Delisted</td>
<td>4</td>
<td>1</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>476</td>
<td>489</td>
<td>502</td>
<td>517</td>
</tr>
</tbody>
</table>

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\(^{115}\) Ibid.
\(^{116}\) Ibid.
\(^{117}\) Ibid.
(vi) Numbers of Listed Securities

Table 7: Numbers of Listed Securities in the SET from 2012-2015\textsuperscript{118}

<table>
<thead>
<tr>
<th>Listed Securities</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stocks</td>
<td>518</td>
<td>538</td>
<td>560</td>
<td>582</td>
</tr>
<tr>
<td>Preferred Stocks</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Warrants</td>
<td>61</td>
<td>75</td>
<td>74</td>
<td>104</td>
</tr>
<tr>
<td>Derivative Warrant</td>
<td>345</td>
<td>459</td>
<td>926</td>
<td>928</td>
</tr>
<tr>
<td>ETFs</td>
<td>11</td>
<td>16</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Unit Trusts</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Transferable Subscription Right</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

(c) Investor Profiles

There are four main groups of investors in the SET: individual investors, local institution investors, foreign investors, and proprietary trading.\textsuperscript{119} According to the most recent research data, percentages of market turnover for each group of investor are approximately 52%, 10%, 26%, and 12%, respectively.\textsuperscript{120} Compared to the more prominent role that institutional investors play in more developed markets,\textsuperscript{121} the Thai institution investors play only a minor role in the SET, although their trading volume has gradually increased from 4% in 2002 to 10% in 2016.\textsuperscript{122} In contrast, the trading volume of proprietary trading has increased rapidly in recent years, from 1% in 2002 to 12% in 2016. Proprietary trading has become more active due to a liberalisation of the brokerage fee policy that

\textsuperscript{118} Ibid.

\textsuperscript{119} Proprietary trading is where securities companies trade securities with their own money to make a profit for themselves, as opposed to the trades that are made on behalf of their customers.

\textsuperscript{120} As of 1 January 2016: The Stock Exchange of Thailand, Investor Types <http://marketdata.set.or.th/mkt/investortype.do>.

\textsuperscript{121} The proportion of public equities managed by institutional investors was at 67% of market capitalisation as of 2010. See, Marshall E Blume and Donald B Keim, 'Institutional investors and stock market liquidity: trends and relationships' (2012) Available at SSRN 2147757.

\textsuperscript{122} The Stock Exchange of Thailand, Investor Types <http://marketdata.set.or.th/mkt/investortype.do>.
commenced on 1 January 2012.\textsuperscript{123} The new fee structure makes it no longer possible for securities companies to rely on the brokerage fee as their only source of revenues, thus forcing them to increase their proprietary trading activities in order to maintain profits.\textsuperscript{124} The third group is foreign investors. They are the second largest group of investor in the SET, although the percentage of their market turnover has been in a steady decline, from 34\% in 2006 to 26\% in 2016. The reason for such decline can be attributed mainly to the foreign ownership limit rules under Thai law, which is 49\% of the total share capital in most industrial sectors.\textsuperscript{125} Foreign investors investing in the SET usually focus on stocks of leading companies with a reputation for stable growth and earnings, and as at the beginning of 2010, sixteen stocks in such a class already have foreign ownership at the maximum level under the law.\textsuperscript{126} Last, there are individual investors accounting for over half the market turnover of the SET.\textsuperscript{127} Recent statistics from the SET show that as of December 2015, there are 1 244 907 individual trading accounts with 39 securities companies, of which 286 113 are active accounts (23\%). From the total number of those individual trading accounts, 955 890 are Internet trading accounts, of which 204 063 are active (21\%) in 31 securities companies offering Internet trading facilities. Nevertheless, although 77\% of the total individual accounts are Internet accounts, the value from Internet trading only account for 34.20\% of the total trading volume by individual investors.\textsuperscript{128}

\textsuperscript{123} See details below.
\textsuperscript{124} Nuntawun Polkuamdee, ‘Brokers to disclose daily trade data on their websites’, \textit{Bangkok Post} (online), 11 June 2012 <www.bangkokpost.com/print/297510>.
\textsuperscript{125} \textit{Foreign Business Act B.E. 2542 (1999) ss 4(4), 8}.
\textsuperscript{126} \textit{The Stock Exchange of Thailand, Measures to Increase The Investment of Foreign Investors in the Stock Exchange of Thailand}.
\textsuperscript{127} Ibid.
(d) Trading System and Trading Channels

(i) Trading System

Since 1991, the SET has operated a fully computerised trading system through the *Automated System for the Stock Exchange of Thailand (ASSET)*. In 2012 the SEC introduced the new trading system called “SET Connect” in order to cope with the expansion of Thai securities market. The new system has been designed to increase trading efficiency, ease market access with international standard protocols, and cover new products and other trading innovations. The trading hours of the SET are from 10.00-12.30 and 14.30-13.40 from Monday to Friday.

(ii) Trading Channels

There are currently two trading channels in the SET: a *traditional channel* and an *Internet trading channel*. A traditional channel is where an investor sends a trading order to a broker who is responsible for his or her trading account. The broker would then enter the order into SET Connect. After the order is matched, the broker would inform and send relevant documents to the investor for a record. This traditional channel is always accompanied by a comprehensive investment advisory service from securities companies. The brokers often give advice to the investor as to what shares he or she should buy or sell based on changing market conditions. For this reason, the brokerage fee of the traditional channel is always higher than the fee for the online trading channel. It should be noted that the most common method for investors to send trading orders to brokers is by telephone. However, investors are required to call their brokers only through the designated securities companies’ phone lines, where conversations are recorded.

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The second channel is an Internet trading channel, which commenced in 2000. Under this method, investors place their trading orders into the computerised system by themselves via personal computers, PDAs, or smartphones. Unlike trading via the traditional channel, Internet trading is limited to the AOM method whereby the specific trading price and volume have to be provided and trading orders are matched automatically. Although online trading is mainly conducted by the investors themselves, securities companies always assign brokers to look after the accounts of these clients. The brokers’ main task, in this case, is to ensure that required documents are properly kept and updated. Clients having Internet trading accounts are also able to seek trading advice from their brokers. However, such a service may not always be readily available compared to the hands-on advisory service that the securities companies provide to clients having traditional accounts.

Another important point that should be noted here is that the three different types of accounts that clients may have with securities companies are: a cash account, a cash balance account, and a credit balance or a margin account.\textsuperscript{132} The first type is a cash account, often referred to in the Thai securities industry as \textit{T+3}. In this type of account, securities companies provide a certain amount of trading credit to clients. The clients are first required to deposit 15\% of the amount of the credit limit with the securities companies before he or she can place trading orders. When the client purchases shares into his or her cash account, he or she has to settle the purchase price with the company within three working days after making the trade. Similarly, when the client sells shares, he or she has to wait three working days for the money to be credited into his or her account. This type of account is suitable for investors who have regular income.\textsuperscript{133} The second type of account is a cash balance account. In this type of account, the securities companies do not give any credit to the clients. The clients have to deposit 100\% of the amount of the trading limit with the companies. After the client purchases or sells shares, the amount will be immediately

\textsuperscript{132} Ibid.
\textsuperscript{133} Ibid.
debited from or credited to his or her account. This type of account is suitable for new investors or investors who have poor financial records.\textsuperscript{134}

The third and last type of account is a credit balance or a margin account. In this type of account, the securities companies allow clients to borrow money to buy shares. The clients initially put down the first 50\% of the value of share purchase and borrow the other 50\% from the companies. The loan is then collateralised by the securities and cash in the account. The companies appraise the value of collateral daily. If the value of collateral is too low, the companies may require the clients to put down additional collateral to maintain the value of the accounts. If the clients are unable to do so, the companies are entitled to force the sale of securities in the clients account in order to bring the account value back to the required level. One important practice adopted for credit balance accounts is that the securities companies would allow clients to purchase or sell only the shares that they have approved in order to reduce risks that the companies have to face. Another practice is that the companies will also charge interest on the amount of loan given to the clients. Since the margin is leverage and both gains and losses are amplified, this type of account creates extra risk to investors and is only suitable for experienced investors.\textsuperscript{135}

\textit{(e) A Change from Fixed Brokerage Fees to Negotiable Brokerage Fees}

The main income of Thai securities companies has been a brokerage fee charged to clients for purchase and sale of shares as well as giving advice on transactions. Before 2001, the SET imposed a system of fixed brokerage fee where clients had to pay 0.50\% charge per value of share purchased or sold to securities companies that conduct transactions on their behalf.\textsuperscript{136} In October 2001, the SET drastically changed the fee structure by liberalising the minimum rate that securities companies could charge their clients. Under the new liberalised structure, securities companies engaged in fierce competition to lower their

\textsuperscript{134} Ibid.
\textsuperscript{135} Ibid.
brokerage fee in order to attract new clients and retain existing clients. Some securities companies went as far as launching a 0% brokerage fee campaign and the average fee in the market dropped to as low as 0.14%, resulting in heavy losses to a large number of securities firms. Due to such unhealthy competition, in January 2002, the SET decided to revert back to a fixed brokerage fee and the minimum brokerage fee was set at 0.25%.

In November 2006, the SEC announced a roadmap for the liberalisation of securities business. In regard to the brokerage fee, it was announced that from 1 January 2012 onwards, the securities brokerage fee would be fully negotiable. The SEC gave the reasons for the liberalisation of the brokerage fee as follows: (1) an abolition of monopoly and a promotion of competition in securities businesses would lead to sustainable development, reduction of costs borne by investors, and better products and services would be offered; (2) a 0.25% minimum brokerage fee employed before the implementation of a sliding scale fee was higher than the average brokerage fee employed in other stock markets all over the world at 0.1653%; and (3) ASEAN, to which Thailand is a founding Member State, would become the ASEAN Economic Community (AEC) in 2015, where capital markets of all Member States would be linked closely together, and brokerage fees in Thai stock markets should be in line with regional standards.

Taking lessons from the failed attempt in 2001, the SEC gave an implementation period of five years to securities companies to expand their business capabilities and lessen their reliability on the brokerage fee. During such implementation period, the SEC set out that during the first three years, from 14 January 2007 to 13 January 2010, the existing minimum brokerage fee (0.25%) continued to apply. Then during the following two years, from 14 January 2010 to 31 December 2011, a sliding scale brokerage fee was to be implemented. Another

139 'The War Between the SEC and the Ministry of Finance: the Liberalization of the Brokerage Industry', Thairath (online), 9 April 2012 <http://www.thairath.co.th/content/251918>.
important change was that from 14 January 2007 onwards, the brokerage fee for the Internet trading channel was set at 60% of the fees of the traditional trading channel (via brokers). In addition, it was stipulated that a broker who executed trading orders for clients who have the traditional accounts would receive a 27.50% share of the brokerage fee that the clients paid to his or her employing securities company, whereas he or she would receive a 13.75% share for orders made by clients having the Internet trading accounts.\textsuperscript{140} A summary of the sliding scale brokerage fees for stock trading between 2010-2011 is shown in the tables below.

Table 8: Sliding Scale Brokerage Fees and Broker Income via Traditional Channel from 2010 - 2011

<table>
<thead>
<tr>
<th>Trading Value via Traditional Channel (baht per day)</th>
<th>Minimum Commission Rates Paid to Securities Companies</th>
<th>Broker Income (27.50% of Commission Rates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 5 000 000</td>
<td>0.25%</td>
<td>0.069%</td>
</tr>
<tr>
<td>5 000 000 – 10 000 000</td>
<td>0.22%</td>
<td>0.061%</td>
</tr>
<tr>
<td>10 000 000 – 20 000 000</td>
<td>0.18%</td>
<td>0.050%</td>
</tr>
<tr>
<td>More than 20 000 000</td>
<td>Fully Negotiable</td>
<td>Depending on the Negotiated Fees</td>
</tr>
</tbody>
</table>

Table 9: Sliding Scale Brokerage Fees and Broker Income via Internet Channel from 2010 – 2011

<table>
<thead>
<tr>
<th>Trading Value via Internet Channel (baht per day)</th>
<th>Minimum Commission Rates Paid to Securities Companies</th>
<th>Broker Income (13.75% of Commission Rates)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cash Account</td>
<td>Cash Account/ Credit Balance Account</td>
</tr>
<tr>
<td>0 – 5 000 000</td>
<td>0.20%</td>
<td>0.15%</td>
</tr>
<tr>
<td>5 000 000 – 10 000 000</td>
<td>0.18%</td>
<td>0.13%</td>
</tr>
<tr>
<td>10 000 000 – 20 000 000</td>
<td>0.15%</td>
<td>0.11%</td>
</tr>
<tr>
<td>More than 20 000 000</td>
<td>Fully Negotiable</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{140} Kultida Somjaiwong, Atinuth Chalermpong and Kitti Suttiattasilp, 'Bottlenecks in Thai Securities Market' (CMRI, December 2012).
From the tables above, it can be seen that as the value of trade increased above certain thresholds, the brokerage fees were reduced. Likewise, the percentage of share earned by brokers giving advice and executing trading orders were also reduced. In addition, if the client made a purchase via the Internet channel, the brokerage fees that he or she would have to pay would be lower depending on the type of trading account he or she had with the securities companies.

During the five-year implementation period (2006-2011), securities companies took different approaches in preparation for the new system. The first approach taken was to reduce companies’ reliability on the brokerage fee as the main income by increasing their proprietary trading volume as well as giving more emphasis on investment consultancy and merger and acquisition services.\(^\text{141}\) The second approach taken by smaller securities companies was to merge with other local securities companies in order to enlarge their retail investor portfolios and market share. There was a strong speculation that only securities companies having more than a 2% market share would survive after the liberalisation of the brokerage fee.\(^\text{142}\) One example is a merger between Syrus Securities PCL, Finansa Securities Limited, and ACL Securities Co., Ltd to create Finansia Syrus Securities PC in June 2009.\(^\text{143}\) Third, numerous securities companies entered into arrangements with or became subsidiaries of large foreign securities companies. For example, Malayan Banking Bhd (Malaysia) acquired Kim Eng Securities (Thailand) Plc and changed the name to Maybank Kim Eng Securities (Thailand) Public Company Limited in November 2011. Fourthly, a number of securities companies, especially those focusing on retail investors, have invested in Information Technology (IT) to allow their clients to access the companies’ websites and conveniently conduct trade via Internet trading channel. They believed that online trading could help cutting operating costs as well as expanding their client base to include younger investors who prefer online trading.

trading to the traditional channel.\textsuperscript{144} Last, since Thai investors usually have a closer relationship with brokers looking after their accounts than with securities companies\textsuperscript{145}, there has recently been a growing trend for large securities companies to adversely acquire the contracts of brokers working for smaller companies. As brokers move to rival companies, they often take clients with them, thus increasing the acquiring companies’ client base and trading volume. Recent examples include the adverse acquisition of the leading team of Far East Securities Company Limited by Phillip Securities (Thailand) Plc and the acquisition of more than thirty brokers of Glollex Securities Company Limited by KGI Securities (Thailand) Plc.\textsuperscript{146}

On 1 January 2012, the brokerage fee became fully negotiable under the new liberalised system. After four years of implementation (as of January 2016), the competition level is said to be moderate.\textsuperscript{147} Most, if not all, securities companies still employ the sliding scale fee structure. However, the average brokerage fee in the market has come down to 0.16\% in the traditional trading channel and 0.12\% in Internet trading channel.\textsuperscript{148} The other notable change is a significant growth in online trading. From 130 226 newly open trading accounts in 2016, 122 680 accounts are Internet trading accounts.\textsuperscript{149} It should be noted that although the new liberalised fee structure has now been fully implemented, there have been strong requests from securities companies, via the Association of Thai Securities Companies (ASCO), to the SEC and the Thai government to review the liberalisation policy and revert back to the sliding scale fee structure employed in 2010-2011.\textsuperscript{150}


\textsuperscript{147} Association of Thai Securities Companies, Information Centre <http://www.asco.or.th/datacenter2-inner.php?id=381>.

\textsuperscript{148}Tisco Hopes Securities Companies Cease the Price War’, Neawna (online), 18 February 2016 <http://www.neawna.com/business/202915>.


(1) the Thai capital market and the Thai economy have been in recession due to recent financial crisis in the United States and Europe; (2) the volume of trade and the size of investor base in the SET are too small for the competition among securities companies to be beneficial to the investors\(^1\); (3) it is likely that securities companies would engage in a fierce competition similar to the situation in 2001 which drove many companies out of business\(^2\); and (4) since securities companies have to cut costs to maintain profits, the quality of securities research and analysis would suffer and the investors would be worse off.\(^3\) The SEC and the SET, however, have taken a firm stance and strongly refused to consider a reversion to the old system.

In term of broker's income and welfare, the single fixed brokerage fee and the fixed sliding scale fee employed during 2010-2011 was said to give a degree of certainty to securities brokers about their earnings and job prospects. The system made it clear to them how much they would earn from a certain volume of trade. In contrast, the new liberalised system, where securities companies have to compete with others on the rate of brokerage fee, makes the brokers' job security more volatile since the competition for clients is increasing and the fee paid to securities companies and the brokers is decreasing.

The potential impacts of the fully negotiable fee upon brokers could be as follows: (1) the number of brokers in the incentive scheme would decrease as many would move back to earn fixed salaries from employing companies; (2) brokers who look after accounts of a few major clients would be more affected by the change than brokers who look after multiple smaller clients, since fees that companies charge major clients would likely be lower than retail investors'; (3) due to the growth of online trading, brokers would likely need to take on larger numbers of clients but the relationship between them would be more

\(^3\) Ibid.
detached; (4) brokers would then need to rely more on research and analysis from securities analysts in order to advise larger numbers of clients; (5) brokers would likely to give more margin to clients and encourage them to take more risks in order to increase trading volume. Thus risk management capabilities of securities companies would be more important after the change; and (6) only brokers who could adjust to the industry's new environment and regulations would survive. Under the scope of this research, it is interesting to observe the extent that the impact of the new system would have on numbers and types of brokerage offences.

3 The Securities and Exchange Commission (SEC)

The Securities and Exchange Commission together with its sub-committees and offices are the main regulatory bodies of the Thai capital market. The Commission was established by the Securities and Exchange Act B.E. 2535 (1992) to supervise and develop the country's capital market. The SEC's main roles are to formulate policies and rules regarding the supervision, promotion, and development of securities markets, securities businesses, as well as other activities relating to securities businesses, as stipulated in the Securities and Exchange Act B.E. 2535 (1992) and the Derivatives Act B.E. 2546 (2003).

As stipulated in the Act, the SEC comprises the Chairman appointed by the Cabinet, the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Commerce, the Governor of the Bank of Thailand and at least four, but not exceeding six, experts appointed as commissioners. The term of office is four years and members may be re-appointed but shall not be appointed for more than two consecutive terms. The SEC largely operates independently from the intervention of the government. However, in practice,

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154 Margin trading is a purchase of securities with cash borrowed from a securities company by using other securities as collateral.
157 Ibid s 10.
since the cabinet directly appoints the Chairman and there are representatives from the Ministry of Commerce, the Ministry of Finance, and the Bank of Thailand, the SEC often closely follows the Thai Government’s policies.\textsuperscript{158}

The SEC is a self-regulatory organisation as well as a quasi-judicial organisation since it has both the power to formulate rules and regulations and the power to judge whether any activities of people and entities in securities businesses have contravened their rules.\textsuperscript{159} In terms of regulatory functions, the Commission has seven main areas:

1. Regulation of issuances and business takeovers;
2. Regulation of securities businesses;\textsuperscript{160}
3. Regulation of investment management businesses;
4. Regulation of the exchange;
5. Regulation of unfair securities trading practices;
6. Regulation of derivatives business; and
7. Regulation of trust business.

Licensing of securities firms and personnel, as well as the regulation of brokerage conduct, are in the areas of the regulation of securities businesses as well as the regulation of unfair securities trading practice. Nevertheless, in practice the commission does not directly administer these particular functions by itself, but has delegated duties and power to three subordinate bodies: the Capital Market Supervisory Board (CMSB), the Office of the Securities and Exchange Commission (SEC Office), and the Capital Market Personnel Disciplinary Committee (CMPDC).

\textsuperscript{158} Nontawat Nawatrakulpisut et al, ‘Research for Studying Forms of Policy Corruption’ (NACC Research Center, 2008).
\textsuperscript{159} Prapart Suwanjitar, \textit{Civil Liabilities in Public Offering of Securities} (Master of Laws Thesis, Chulalongkorn University, 2003), 13.
\textsuperscript{160} Which includes securities brokerage, securities dealing, investment advisory service, securities underwriting, securities borrowing and lending, and inter-dealer broker.
(a) The Capital Market Supervisory Board (CMSB)

The Capital Market Supervisory Board is a regulatory body created under the fourth amendment of the Securities and Exchange Act in 2008. The CMSB supplements the function of the SEC on the issuance of rules and regulations governing securities business, securities issuance and offerings, the securities exchange, the securities depository centre, the clearing house, the securities registrar, any associations related to securities business, and securities acquisition for business takeovers. The Board is periodically required to report its activities to the SEC and may further be assigned to carry out other activities relating to the supervision of the capital market.

The underlying reason for the creation of the CMSB is that since Thailand’s capital market has been rapidly expanded to enable the trade in markets other than the equity market (such as the bond market, the derivative market, and the foreign exchange market), as well as to grow the different branches of securities businesses (such as securities dealing, securities underwriting, securities borrowing and lending, derivative agency, asset management, and investment advising). The SEC is burdened with onerous duties to effectively regulate different markets and business practices. The CMSB was therefore created to lessen the regulatory drafting duty of the commission. It should be noted that the rulemaking function of the SEC and the CMSB differ in the way that SEC now only focuses on the policy framework of regulation while leaving the formulation of detailed rules and guidelines to the CMSB.

(b) The Office of the Securities and Exchange Commission (SEC Office)

The Office of the Securities and Exchange Commission is an agency that is responsible for the development of the capital market and the management of

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162 Ibid s 16/6(1).
163 Ibid s 16/6 (2).
164 Ibid s 16/6 (3).
165 Securities and Exchange Commission, Key Summaries of The 4th Amendment Bill.
rules and regulations at the operational level as well as ensuring compliance with any policy objectives laid down by the SEC.\textsuperscript{166} The Office has four main missions:

(1) to develop the capital market in order to make it an important capital source for investors and businesses;
(2) to strengthen the investor protection mechanisms in order to provide better protection to investors;
(3) to maintain confidence of all those involved in the operation of all government agencies and business in the capital market; and
(4) to operate as an honest, transparent, business-oriented, and timely organisation as well as a strict and fair regulator.\textsuperscript{167}

The Office is headed by a Secretary-General who is appointed by the Cabinet with the recommendation of the SEC. The Secretary-General shall hold the office for a term of four years and may be reappointed but for no more than two consecutive terms.\textsuperscript{168} Under the mandate of the SEC, the Office has the power and duty to formulate rules as well as issue guidelines in the form of notifications and circulars to governmental units and securities firms. Unlike regulations proclaimed by the SEC, which lay down basic principles or primarily focus on the policy and structural level, regulations formulated by the Office are often very detailed and provide steps that securities firms are required to comply with. The main areas of regulation and tools that the Office employs to supervise securities firms and employees are: screening of qualifications and issuance of licence,\textsuperscript{169} internal compliance mechanisms, regulations on business practices,\textsuperscript{170} and risk assessments.\textsuperscript{171}

\textsuperscript{166} Ibid.
\textsuperscript{167} The Stock Exchange of Thailand, \textit{Summaries of Securities and Derivative Law.}
\textsuperscript{168} \textit{Securities and Exchange Act B.E. 2535 (1992) s 16/3.}
\textsuperscript{169} See details in Chapter 3
\textsuperscript{170} See details in Chapter 3
\textsuperscript{171} Consisting of prudential risk, operational risk, and customer risk assessment.
(c) The Capital Market Personnel Disciplinary Committee (CMPDC)

The Capital Market Personal Disciplinary Committee is newly established under the SEC Office.\textsuperscript{172} The Committee has power and responsibility to consider facts and evidence of any offence relating to capital market regulations and to provide recommendations to the Office on the proper forms and magnitude of administrative sanctions\textsuperscript{173} that should be imposed upon such offenders, as well as setting up the general punishment guideline that the Office shall employ in subsequent cases.\textsuperscript{174} The Committee comprises not more than five members, appointed by the Office with the approval of the CMSB. Among those five members, at least one shall be a representative of investors, one shall have an extensive experience in stock trading, and two shall be qualified persons proposed by associations relating to securities business.\textsuperscript{175}

B Securities Companies

1 Definition and Licences

Section 4 of the Securities and Exchange Commission Act B.E. 2535 (1992) provides a definition of a security company as: 'any company, or financial institution licenced to undertake securities business under this Act as follows:

(1) Securities brokerage;
(2) Securities dealings;
(3) Investment advisory services;
(4) Securities underwriting;
(5) Mutual fund management;
(6) Private fund management; and

\textsuperscript{172} The CMPDC was established in September 2010 by the Capital Market Supervisory Board Notification No. TorThor/Nor/Kor. 37/2010.
\textsuperscript{173} The available forms of sanction are a reprimand, probation, a suspension of licence, and a revocation of licence.
\textsuperscript{174} The CMSB Notification No. TorThor. 37/2010 cl 13.
\textsuperscript{175} Ibid cl 13 para 2.
(7) Other businesses relating to securities as specified by the Minister of Finance upon recommendation of the SEC.

Under section 90 of the Act, a securities company in Thailand can either be a limited company, a public company, a commercial bank, or other financial institution that obtains a relevant licence or licences from the Minister of Finance upon recommendation of the SEC.\textsuperscript{176} It should be noted that before 2012, the SEC limited the number of securities brokerage companies in the market, and so the licences were transferred at an extraordinarily high price.\textsuperscript{177} However, due to the liberalisation of securities business and brokerage fee starting from 1 January 2012, there is currently no limit on the number of new licences providing that the applicants meet the ‘fit and proper’ requirements for each category of licences being applied for.\textsuperscript{178} The SEC also replaced the preceding multiple licensing schemes with a single licensing scheme covering a range of securities services. A summary of licences and requirements is shown in the table below.

\begin{table}[h]
\centering
\begin{tabular}{|l|p{12cm}|c|c|}
\hline
Licence & Allowing Business Operations & Minimum Registered Capital & Licence Fee \\
\hline
Full Services & Operation of all types of securities businesses, i.e., securities broker/dealer/underwriter, derivatives broker/dealer, mutual fund management, private fund management, derivative fund management, venture capital fund management, investment advisor and derivative advisor, and securities borrowing and lending. & 500 million baht & 20 million baht \\
\hline
\end{tabular}
\end{table}

\textsuperscript{178} The SEC News Release, No. 86/2006, 10 November 2006.
\textsuperscript{179} Ibid.
This thesis focuses on the securities brokerage function of companies requiring full service licences. As of October 2013 at the time the empirical part of this study was conducted, there were 38 securities companies operating in Thailand that hold such licences. Nevertheless, only 21 companies operated their brokerage function. For the purpose of this research, these securities companies were further classified into three groups based on their shareholding and management structures: local securities companies (14), securities companies associating with commercial banks (8), and foreign securities companies (16). Securities companies associating with commercial banks are ones having half or more of their capital shares held by commercial banks and are included in the commercial bank business structures as subsidiaries. These companies are often considered to be more financially secured due to larger capital and support from parent commercial banks. Their potential client bases are also larger since securities products are generally offered to all the banks’ clients. Foreign securities companies are those registered in Thailand but having half or more of their capital shares held by foreign individuals or foreign companies. They are usually subsidiaries of large international securities companies or foreign commercial banks that expand their businesses into the Thai financial and
securities markets. It should be noted that due to the recent liberalisation of the securities business and the brokerage fee, many local securities companies merged together or were sold to foreign investors and became foreign securities companies in order to survive the growing competition in the market, resulting in the growing number of foreign securities companies in the SET. Details of the securities companies and the status of their brokerage function are shown in the table below.

Table 11: Types of Securities Companies in Thailand and Their Brokerage Function Status as of November 2013

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Securities Company</th>
<th>Type</th>
<th>Brokerage Function Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ASIA PLUS Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>2</td>
<td>Country Group Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>3</td>
<td>Phatra Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>4</td>
<td>Trinity Securities Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>5</td>
<td>Capital Nomura Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>6</td>
<td>Finansia Syrus Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>7</td>
<td>I V Global Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>8</td>
<td>AIRA Securities Public Company Limited</td>
<td>Local</td>
<td>Active</td>
</tr>
<tr>
<td>9</td>
<td>Merchant Partners Securities Public Company Limited</td>
<td>Local</td>
<td>Inactive</td>
</tr>
<tr>
<td>10</td>
<td>United Securities Public Company Limited</td>
<td>Local</td>
<td>Inactive</td>
</tr>
<tr>
<td>11</td>
<td>ACL Securities Company Limited</td>
<td>Local</td>
<td>Inactive</td>
</tr>
<tr>
<td>12</td>
<td>Globlex Securities Company Limited</td>
<td>Local</td>
<td>Inactive</td>
</tr>
<tr>
<td>13</td>
<td>Seamico Securities Public Company Limited</td>
<td>Local</td>
<td>Inactive</td>
</tr>
<tr>
<td>14</td>
<td>TSFC Securities Public Company Limited</td>
<td>Local</td>
<td>Inactive</td>
</tr>
<tr>
<td>15</td>
<td>Kasikorn Securities Public Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>16</td>
<td>Krungski Securities Public Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>17</td>
<td>KT ZMICO Securities Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>18</td>
<td>SCB Securities Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>19</td>
<td>Thanachart Securities Public Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>20</td>
<td>Bualuang Securities Public Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>21</td>
<td>Kiatnakin Securities Company Limited</td>
<td>Bank</td>
<td>Active</td>
</tr>
<tr>
<td>22</td>
<td>TISCO Securities Company Limited</td>
<td>Bank</td>
<td>Inactive</td>
</tr>
<tr>
<td>23</td>
<td>Credit Suisse Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Active</td>
</tr>
<tr>
<td>24</td>
<td>Maybank Kim Eng Securities (Thailand) Public Company</td>
<td>Foreign</td>
<td>Active</td>
</tr>
</tbody>
</table>


54
<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Securities Company</th>
<th>Type</th>
<th>Brokerage Function Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>KTB Securities (Thailand) Company Limited</td>
<td>Foreign</td>
<td>Active</td>
</tr>
<tr>
<td>26</td>
<td>KGI Securities (Thailand) Public Company Limited</td>
<td>Foreign</td>
<td>Active</td>
</tr>
<tr>
<td>27</td>
<td>CIMB Securities (Thailand) Company Limited</td>
<td>Foreign</td>
<td>Active</td>
</tr>
<tr>
<td>28</td>
<td>OSK Securities (Thailand) Public Company Limited</td>
<td>Foreign</td>
<td>Active</td>
</tr>
<tr>
<td>29</td>
<td>DBS Vickers Securities (Thailand) Company Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>30</td>
<td>CLSA Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>31</td>
<td>Phillip Securities (Thailand) Public Company Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>32</td>
<td>Citicorp Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>33</td>
<td>Merrill Lynch Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>34</td>
<td>Macquarie Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>35</td>
<td>UBS Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>36</td>
<td>UOB Kay Hian Securities (Thailand) Public Co., Ltd.</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>37</td>
<td>CIMB Securities International (Thailand) Public Company Limited (CIMBI)</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
<tr>
<td>38</td>
<td>JPMorgan Securities (Thailand) Limited</td>
<td>Foreign</td>
<td>Inactive</td>
</tr>
</tbody>
</table>

2. Law and Regulations of Securities Brokerage Operation

In order for securities companies to engage in a securities brokerage, they have to comply with various law and regulations. The main regulation is section 113 of the Securities and Exchange Act B.E. 2535 (1992) prescribing that a securities company shall comply with the rules, conditions and procedures as specified in the notification of the CMSB. The notification that is currently in effect is No.TorThor 63/2009 on Requirements, Conditions, and Procedures in Conducting Securities Brokerage and Securities Dealing Business. Apart from such CMSB notifications, the securities companies also have to comply with notifications of the SEC and the SET. The regulations can be summarised as follows:

(a) Net Liquid Capital Rules (The SEC Notification No. GorThor. 18/2006 and No. SorThor. 23/2006)

To ensure that a securities company can promptly satisfy the claims of customers and other liabilities, the company is required on a daily basis to maintain its minimum net capital of 15 million baht or 25 million baht if it also
holds a derivatives agent licence, together with the minimum net capital ratio (NCR) of 7% of the general indebtedness specified by the SEC. NCR is calculated as follows:

\[
NCR = \text{Liquid Assets (haircut adjusted)} - \text{Total Liabilities} \quad \text{General Indebtedness (as specified by SEC)}
\]

(b) **Client Protection and Segregation Rules (The CMSB Notification No. TorThor. 43/2009 and No. TorThor. 63/2009)**

In order to protect clients, securities companies are required to segregate clients’ funds and assets from the companies’ funds and assets, and access to clients’ assets is forbidden unless there is written authorisation from clients. The companies are also required to maintain accurate and current records of customers’ assets accounts and monthly statements must be sent to all clients.

(c) **Loans to Customers and Credit Balance Rules (The CMSB Notification No. TorThor. 25/2009 and the SEC Notification No. SorThor. 42/197)**

In the case of credit balance or margin trading accounts, securities companies are required to call for additional funds or marginable securities from clients to ensure that the market value of collateral assets is not less than 50% of total debit balances in clients’ trading accounts. Collateral securities shall be marked to market to reflect trading limits and a broker is required to monitor such balances to ensure that clients’ trades do not exceed trading limits.

(d) **Books & Records Requirements Rules (The CMSB Notification No. TorThor. 63/2009)**

Securities companies are required to keep evidence of advice they give to clients and tape recordings of clients’ orders for a minimum period of three months, or longer until any complaints related to such matters are resolved. Companies are also required to maintain and keep current books and records of clients’ trades,
assets, and complaints for a minimum period of five years. This information must be kept in an easily accessible manner for the first two years of that five-year period.

(e) Report Making and Submission Rules

Securities companies are required to prepare and submit various reports to the SEC Office. There are mandatory weekly, monthly, quarterly, semi-annual, and annual reports, and other reports in specific circumstances.

(f) Compliance and Risk Assessment Requirement Rules (The CMSB Notification No. TorThor. 63/2009)

Securities companies are required to establish effective internal compliance control and risk management programmes. Internal compliance programmes should be comprehensive and enable compliance units and internal audits to independently perform their functions. Risk management programmes should address all aspects of risk associated with undertaking securities business.

(g) Internal Structure Rules (The CMSB Notification No. TorThor. 63/2009 and the SEC Notification No. SorThor. 11/2008)

Securities companies are required to separate business functions that may have conflicts of interest into different departments, i.e., a brokerage department, a proprietary department, and an investment advisor department. In addition, companies are required to separate securities business departments (front office) from support departments (back office), and put in place internal control mechanisms where business operations and personnel conduct are constantly monitored and measured. An informational firewall between departments and personnel must also be established in order to prevent insider trading and abuse of sensitive information.
Securities companies are required to ensure that personnel who make contact with retail clients regarding securities trading and advisory services have obtained relevant licences from the Office of SEC (Analyst Licences or Consultant Licences). The companies are also required to ensure that such personnel comply with regulations of the SEC and the SET including: (1) not giving false or misleading advice or statements of a material fact, and not engaging in any activity intended to defraud investors; (2) not giving advice in order to induce clients to increase their trades, thus increasing their remuneration (churning); (3) executing orders in accordance with the specifications received from clients, as well as their authorised persons; (4) treating client information as confidential; (5) dealing fairly with clients by disclosing all material information and possible conflicts of interests, including when taking the opposite sides of clients’ orders (duty of fair dealing); and (6) seeking to obtain the most favourable terms available at the time orders are placed for the best interest of clients (duty of best execution).

Securities companies are required to conduct client due diligence review to: (1) verify that clients are the same persons presented in the documents provided at account opening; (2) verify the beneficial owner of such client’s trades; (3) verify the client’s financial capability before providing recommendations and executing securities transactions; and (4) verify clients’ investment objectives and assess their understanding of and experience in securities investment. Companies are further required to keep up-to-date client records and to frequently review clients’ financial capability.
Securities companies are required to put in place systems to efficiently handle customer complaints.

3 Securities Company Organisational Structure

Contrasted with ordinary companies, the organisational structure of securities companies can be described as relatively flat with few layers between the management and personnel. Personnel in business units (financial advisors and brokers) are usually empowered to make decisions to serve clients’ needs under codes of conduct prescribed by regulatory agencies and the companies themselves.

At the top of the structure, similar to most companies, there is a board of directors overseeing a company’s broad policies and objectives, as well as appointing executives and reviewing the performance of management. The CMSB requires that one-quarter of board members in the securities brokerage companies must be external directors. It is becoming more common for securities companies in Thailand to follow corporate governance best practice principles set out by the SEC. Many have set up committees overseeing audits, compensation, and risk management, and a committee to improve corporate governance practices.

At the operational level, a securities company can be divided into two groups: business units (front office) and support units (back office). Business units are usually divided into departments according to function, although the division may vary in structure and name. The usual departments are retail sales, local institutional sales, foreign institutional sales, security dealings, investment

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182 The CMSB Notification No. TorThor. 63/2009 s 7.
183 The Securities and Exchange Commission, Directors’ Handbook (Thai Institute of Directors).
banking, derivatives, and business development. This research focuses on retail sales departments of securities companies.

It should be noted that the current CMSB regulations require certain departments to be separated and have an informational firewall put in place in order to avoid potential conflicts of interest.\textsuperscript{184} For example, all securities trading and dealing departments should be separated from business development departments, and retail sales should be separated from security dealings. In each department, teams of personnel having specific knowledge in that particular area work closely together. The size and number of teams in each department depend on the importance of their function to the company. For example, a large securities company focusing its business on retail investors may have multiple office branches all over the country. From such structure, there would be a head of retail sales department, several branch managers, several supervisors or team leaders, and a large number of entry-level brokers giving advice and executing trading orders for clients to whom they are assigned.

Although there seems to be a hierarchical chain of command in such departments, in practice managers and supervisors do not have much control over how brokers executes their tasks to meet trading goals set by the company. The brokers, as licenced professionals, have considerable discretion and freedom in their work. Managers and supervisors in this case act mainly as experienced persons giving advice and ensuring that team members have complied with the law and the company’s internal regulations, as well as co-signing documents that require multiple verifications, such as forms for withdrawing money from clients’ accounts.

Certain support units of securities companies are considered equally important to the business units, namely, a compliance department, a research department, and a risk assessment department. First and foremost is the compliance department. The CMSB and the SEC regulations require all securities companies to set up a compliance department and establish effective compliance guidelines.

\textsuperscript{184} The CMSB Notification No. TorThor. 63/2009 s 9.
for companies’ staff to adhere to. The CMSB regulation further specifies that the head of the compliance department of each securities company must have a specific educational background and work experience,\textsuperscript{185} and his or her appointment or resignation must be reported to the SEC Office.\textsuperscript{186} The compliance department plays central roles in regulating employee’s conduct, as well as disseminating news and notifications from the authority. They are also responsible for providing legal advice to employees when questions on how to comply with the law arise. In addition, the department often acts as an intermediary between accused brokers and SEC officers during an investigation, proceedings, and any imposition of sanctions. In relation to this research, compliance officers have an important duty to make sure that all telephone conversations between clients and brokers as well as online trading orders are fully recorded. Such records are employed as primary evidence where there are disputes between clients and companies and where there are regulatory infringements on the brokers’ part.

The second important support unit is the research department. The research department, where securities analysts work, provides securities analyses and research to the business units. Brokers in retail sales department rely on such analyses to give trading advice to clients. The better and more accurate the analyses are, the more likely that clients gain profits from trades. The third important department is the risk assessment department. Risk management programmes of securities companies are required to address all aspects of risks associated with undertaking securities business: market risk, credit risk, and operational risk. Apart from the three departments mentioned, the other common support units are human resources, accounting, treasury, information and technology (IT), and legal departments.

\textsuperscript{185} The CMSB Notification No. TorThor. 39/2012 s 6.
\textsuperscript{186} Ibid s 7.
C Securities Brokers

In Thailand, securities brokering is a profession under the regulations of the CMSB, the SEC and the SET. The current principal regulations are the CMSB Notification No. TorThor. 37/2010 on the Prohibitive Characteristics of Personnel.
For a person to work legally as a broker in a securities company, he or she is required to (1) obtain relevant brokerage licence(s) issued by the SEC Office in order to solicit and give advice to clients and (2) register with the SET as an ‘authorised person in the trading system’ in order to place the clients’ trading orders in the SET trading system. The following sections cover important issues relating to legal requirements and careers of Thai securities brokers: (1) structures and types of brokerage licence, (2) qualifications and examinations, (3) trading system registration, and (4) employment and career, respectively.

1 Structure and Types of Brokerage Licence

Regulation of brokerage licences in the Thai capital market has recently gone through a major change. Before 1 April 2012, there were two main types of brokerage licence: a Type A Investor Contact Licence and a Type B Investor Contact Licence. A Type A Licence allows licence holders to perform securities analyses as well as buying and selling shares for clients. On the other hand, a Type B Licence only allows licence holders to buy and sell shares for clients. In advising clients, Type B Licence holders have to rely on analyses made by Type A Licence holders working for the same company.

On 1 April 2012, classifications of brokerage licence along with qualifications required were restructured. There are currently ten brokerage licences covering different investment services and products. First, the Type A Investment Contact Licence was renamed ‘Investment Analyst Licence’ with three sub-
categories: (1) Securities Investment Analyst, (2) Derivative Investment Analyst, and (3) Capital Market Investment Analyst. The first two licences allow the holders to perform analysis and conduct trade on each respective product, while the third is a super licence allowing holders to perform analysis and conduct trade on both products. Second, the Type B Investor Contact Licence was renamed ‘Investment Consultant Licence’ with a further seven sub-categories: (1) Equity Investment Consultant, (2) Debt Instrument Investment Consultant, (3) Fund Investment Consultant, (4) Precious Metal Investment Consultant, (5) Derivative Investment Consultant, (6) Securities Investment Consultant, and (7) Capital Market Investment Consultant. The first five licences allow holders to exclusively conduct trade and give advice to investors on each respective investment product, while the sixth allows holders to conduct trade and give advice on all securities-related products: equity, debt, and investment funds. The seventh is a super consultant licence allowing holders to conduct trade and give advice on all investment products except precious metal investment.

![Diagram of Investment Analysis Licences]

Figure 3: Structure of Investment Analysis Licences
Since this research focuses on securities brokerage offences committed by brokers in the SET, the relevant type of licences and the numbers of the holders of the respective licences as of May 2016 are Securities Investment Analyst Licence (939), Capital Market Investment Analyst Licence (158), Equity Investment Consultant Licence (100), Securities Investment Consultant Licence (49 425), and Capital Market Investment Consultant Licence (6 911), respectively. \(^{191}\) It should be further noted that brokers holding consultant licences are more likely to commit brokerage offences against retail investors than their colleagues holding analyst licences. This is because brokers who hold analyst licences usually work in research departments and/or securities dealing...

departments, or hold executive positions in securities companies rather than working closely with retail investors in retail sales departments.

2 Qualifications and Examinations

Current regulation stipulates that for a person to apply and successfully obtain a securities analyst or consultant licence, he or she must: (1) not possess any prohibited characteristics, (2) have the required educational background and work experience, and (3) pass different licensing examinations according to the types of licence he or she is applying for.

(a) Prohibitive Characteristics

The CMSB Notification No. TorThor. 37/2010 provides extensive rules on prohibited characteristics of personnel in the securities market. In essence, the prohibited characteristics can be classified into three categories. The first category is a person who has been declared by the Court of Justice to be insolvent or to be an incompetent person, to have been subjected to any legal sanctions under the law governing the capital market, to have been named in any criminal complaint initiated by the SEC Office, or possesses untrustworthy characteristics according to the SEC Notification No. KorChor 8/2010 on the Determination of Untrustworthy Characteristics of Company Directors and Executives. The second category is a person who has been found guilty of deceitful, fraudulent, or dishonest management of assets, and is still within three years of the date of completion of their criminal punishment. The third category is a person who, on reasonable grounds, is considered to possess or exhibit improper behaviours that could negatively affect clients, securities and listed companies, the financial market, or the capital market. The examples of such improper behaviours are disclosure or dissemination of false or misleading information to investors, a failure to honestly perform duties in providing securities services, and a lack professional accountability. If an applicant for a

192 The CMSB Notification No. TorThor. 37/2010 cl 3 (1), 4.
193 Ibid cl 3 (2), 5.
brokerage licence is found to have prohibited characteristics in any of the three categories, the SEC Office would refuse to approve a licence application on the ground that the person possesses prohibited characteristics.\(^{195}\)

\( (b) \) Licensing Examinations

Apart from not having prohibitive characteristics as mentioned above, for a person to obtain a brokerage licence, he or she must have the requisite educational background and work experience, as well as passing licensing examinations according to the type of licence he or she is applying for. The Thailand Securities Institute (TSI) and its associated institutes regularly hold these licensing examinations and provide training courses for interested members of the public.\(^{196}\)

For those wanting to apply for analyst licences, allowing holders to both perform securities analyses and trade securities for clients, the educational background and work experience required are rigorous. Applicants must have either Chartered Financial Analyst (CFA)\(^{197}\), Certified Investment and Securities Analyst (CISA)\(^{198}\), Certified Financial Planner (CFP)\(^{199}\), or Financial Risk Manager (FRM)\(^{195}\) IId cl 7.

\(^{195}\) The current associated institutes are Association of Thai Securities Companies Training Centre (ATI) and Association of Investment Management Companies (AIMC).

\(^{196}\) The Chartered Financial Analyst (CFA) is an international professional credential offered by the CFA Institute to investment and financial professionals. There are three levels from Level 1 (easiest) to 3 (hardest). The curriculum for the CFA program comprises ethics, quantitative methods, corporate finance, financial reporting and analysis, securities analysis, and portfolio management. The examinations are conducted in English. See, CFA Institute <www.cfainstitute.org>.

\(^{197}\) The Certified Investment and Securities Analyst Program (CISA) is a CFA equivalent credential offered by the Securities Analysts Association (SAA-Thai). The curriculum is modeled after CFA with the additions of Thai regulations and SAA-Thai’s Code of Ethics and Professional Standards. There are three levels from Level 1 (easiest) to 3 (hardest). The examinations are conducted in Thai. See, Investment Analyst Association, Differences between CISA and CFA <www.saa-thai.org/eng/cisa_cfa.html>.

\(^{198}\) The Certified Financial Planner (CFP) is a professional credential for financial planners offered by the Certified Financial Planner Board of Standards (CFP Board) in the United States and 23 other organisations affiliated with Financial Planning Standards Board (FPSB). The curriculum includes general principles of finance and financial planning, insurance planning, employee benefits planning, investment and securities planning, state and federal income tax planning, estate tax, gift tax, and transfer tax planning, asset protection planning, retirement planning, estate planning, financial planning and consulting. See, CFP Board <www.cfp.net>.
qualifications with at least one-year work experience in fields relating to investment analysis, such as investment consultancy or risk management. Applicants then have to - except in certain cases - take a further examination in Thai securities analysis regulations and ethics before applying for a licence.

For consultant licences, which apply to a majority of Thai securities brokers, educational and work experience requirements are less rigorous. The new licensing structure, which took effect on 1 April 2012, introduced new examination arrangements. The examinations are now divided into four modules: Basic Knowledge, Regulations and Ethics, Knowledge of Specific Investment Instruments (Equity, Debt, Fund, or Derivative), and Regulations of Specific Investment Instruments, in which applicants must achieve a minimum score of 70%. Applicants must take the first two modules; then they may choose to either take all or certain parts of the third and fourth modules, which determine the type of licence they will receive. Details of educational background, work experience, and examinations required for consultant licences can be found in the tables below.

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200 The Financial Risk Manager (FRM) is a professional certification offered by the Global Association of Risk Professionals. The curriculum includes market, credit, operational, liquidity, and integrated risk management, quantitative methods, capital markets, investment management and hedge fund risk, and relevant regulatory and legal issues essential to risk professionals. See, Global Association of Risk Professionals, Become an FRM <http://www.garp.org/#!/frm>.

201 Attached Tables of the CMSB Notification No. TorLorThor. 3/2012.
Table 12: Educational Background, Work Experience, and Examinations Required for Capital Market Investment Consultant Licence (Securities and Derivative Investment)²⁰²

<table>
<thead>
<tr>
<th>Educational Background</th>
<th>Work Experience</th>
<th>Examination Modules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Basic Knowledge</td>
</tr>
<tr>
<td>Lower than bachelor degree</td>
<td>More than four year in related fields, and within seven years preceding the date of application</td>
<td>Yes</td>
</tr>
<tr>
<td>Bachelor degree and higher</td>
<td>Not required</td>
<td>Yes</td>
</tr>
<tr>
<td>CISA Level 1 or higher</td>
<td>Not required</td>
<td>Not required</td>
</tr>
<tr>
<td>CFA Level 1 or higher</td>
<td>Not required</td>
<td>Not required</td>
</tr>
</tbody>
</table>

Table 13: Educational Background, Work Experience, and Examinations Required for Securities Investment Consultant Licence (Equity, Debt Instrument, and Fund Investment)²⁰³

<table>
<thead>
<tr>
<th>Educational Background</th>
<th>Work Experience</th>
<th>Examination Modules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Basic Knowledge</td>
</tr>
<tr>
<td>Lower than bachelor degree</td>
<td>More than four year in related fields, and within seven years preceding the date of application</td>
<td>Yes</td>
</tr>
</tbody>
</table>

²⁰² Ibid.
²⁰³ Ibid.
<table>
<thead>
<tr>
<th>Educational Background</th>
<th>Work Experience</th>
<th>Examination Modules</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Basic Knowledge</td>
</tr>
<tr>
<td>Bachelor degree and higher</td>
<td>Not required</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Educational Background</th>
<th>Work Experience</th>
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<td></td>
<td></td>
<td>Basic Knowledge</td>
</tr>
<tr>
<td>Lower than bachelor degree</td>
<td>More than four years in related fields, and within the seven years preceding the date of application</td>
<td>Yes</td>
</tr>
<tr>
<td>Bachelor degree and higher</td>
<td>Not required</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Table 14: Educational Backgrounds, Work Experience, and Examinations Required for Equity Investment Consultant Licence (Securities Investment)<sup>204</sup>

It is interesting to note that the examinations in regulations and ethics, although from two separate modules, Regulations and Ethics and Regulations of Specific Investment Instruments, only constitute a small part of the whole test. In addition, the form of the current examinations is multiple-choice (from four answer choices), making it difficult to truly examine the extent of the applicants’ knowledge and understanding of current regulations and ethics.

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<sup>204</sup> Ibid.
(c) Licence Registration and Renewal Procedures

Applicants who do not have prohibited characteristics and pass the examinations required may apply for analyst or consultant licences by lodging their request with the SEC Office via the agency’s website. The SEC Office may request that applicants provide further evidence within the prescribed period, and the SEC Office must post the results on its website within thirty days of receiving all required documents. In a case where the SEC Office refuses to grant a licence, it will inform the applicant in writing giving reasons for refusal. Both the analyst and the consultant licences are valid for two calendar years and licence holders may apply for a renewal by attending a knowledge refresher course and submit their application for renewal with the SEC Office. This refresher course is a fifteen-hour-minimum training course covering various issues, including business knowledge, accounting standards, corporate governance, compliance, and an update on regulations and ethics. The regulation and ethics part must constitute at least three hours of the total training time.

3 Registration with the SET

The main tasks performed by Thai securities brokers can be divided into two parts. By obtaining brokerage licences, securities brokers will legally be able to perform the first part of their task, which is to solicit and give trading advice to investors. For the second part, which is to place trading orders in the SET trading system for clients, brokers are further required to register with the SET as authorised persons in the trading system and obtain personal trader IDs for the purpose.

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205 The CMSB Notification No. TorLorThor. 3/2012 cl 15, 16.
206 Ibid cl 19.
208 There is another type of securities personnel in the Thai brokerage industry that are sometimes confused with securities brokers. These low-level employees of securities companies are registered with the SET but do not possess a broker licence. Their sole function is to key clients’ trading orders into the computerised trading system. If it is found that these personnel solicits or gives advice to clients, they would be subject to a probation, a fine from 10 000 to 100 000 bath, or a suspension of registration not exceeding one year: Clause 4 of the Punishment Annex of the SET Notification on the Relevant Person in the Trading System, 2012.
The SET Notification No. BorSor/Saw 01-28/2012 on the Relevant Persons in the Trading System is the main regulation stipulating procedures and qualifications required for a person to register as an authorised person in the trading system. In essence, the regulation requires that an applicant: (1) must be over twenty years old, (2) have not been subject to a revocation of registration within five years at the time of an application, (3) must be a full-time employee of a membered securities company, (4) must be able to manifest that he or she has left his/her former employing securities company without any wrongdoing or damage, where that applicant had been registered previously as an authorised person under another securities company, (5) possesses required educational background such as a bachelor degree from an accredited institution, and (6) does not possess prohibited characteristics of personnel in the securities market.

As an authorised person in the trading system, a securities broker has further duties to comply with various SET regulations in relation to the trading system, in addition to his or her duties under the CMSB and the SEC Office regulations. Notable duties under the SET regulations include: (1) not disclosing his or her own trading ID to other persons, (2) not entering trading orders in an improper manner, and (3) not using clients’ information for his or her own benefit or for any third party’s benefit.

4 Employment and Careers

In Thailand, as of May 2016, there are over 62 000 holders of analyst and consultant licences working in the financial and securities industries. Securities companies and commercial banks are the most common employers of this licenced personnel. The holders of consultant licences are usually assigned

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210 Ibid cl 21.
211 Ibid cl 23(5).
212 Ibid cl 23(6).
213 Information in this section is derived from Regulations of the SEC, Regulations of the SET, data from the pilot interviews, and the researcher’s own experiences.
to work in retail sales departments of securities companies and commercial banks. Their main tasks are to buy and sell shares as instructed by clients as well as giving investment advice based on analyses done by the organisation's research department. Holders of analyst licences can work in various positions and capacities within the organisation, from securities dealers in proprietary trading departments, securities analysts in research departments, fund managers in fund management departments, to executives of securities companies. It is uncommon for holders of analyst licences to provide retail brokerage services, with the exception of providing those services to key clients.

Careers of securities brokers in Thailand usually begin after graduation with a bachelor's degree from a university. Although current regulation does not require any specific degree, most prospective securities brokers graduate in related fields such as accounting, finance, or economics since such background knowledge provides them with fundamental skills required to work as securities brokers. The prospects then prepare themselves for the licensing examinations by studying textbooks and manuals prescribed by the TSI and/or by enrolling in preparation courses offered by various institutions. After they have successfully obtained consultant licences from the SEC office, they submit job applications to securities companies and commercial banks. The application process usually comprises interviews and background checks. If offered a job, most would be assigned to retail sales departments as trainee brokers. Duration of the probation period is normally three to six months and during such periods most companies provide induction training to new employees on the organisation’s code of conduct and practices, on how to effectively advise clients, and on how to submit trading orders to the trading system, for example. After training and probation, they are fully employed as securities brokers with their principal job description including giving advice and conducting securities trading to retail clients. These novice brokers normally work in a team of five or six under a team leader who is an experienced broker. The team leader has duties to monitor team members’ work and manages team expenses in addition to conducting

215 The other department that the consultant licence holders are sometime assigned to is the investment fund department with a job description of selling mutual fund units to clients. This is more common if the employers are the commercial banks with large mutual funds.
trades for his or her own clients. The departmental hierarchy above supervisors normally includes several branch managers and the head of the retail sales department. It is interesting that promotion from team member to team leader to branch manager and to head of the retail sales department is mainly based on the trading volume held by the broker. Work experience and team management skills are often taken into consideration but are not deemed as important as trading volume in most cases.

In Thailand, the income of brokers working in retail sales departments mainly depends on their share of the brokerage fee (27.5% for trade via the traditional channel and 13.75% for trade via the Internet channel).\(^\text{216}\) The greater the volume of trade conducted for their clients, the more financial contribution they make to their team and the company, which in turn determines their own income through a complicated remuneration system. Although the compensation system of each securities company may vary in detail, there are two general compensation schemes: ‘the salary-based scheme’ and ‘the incentive scheme’. The salary-based scheme, which is always applied to trainee and novice brokers, is a system whereby the company gives a retainer or fixed amount of salary to the brokers regardless of the volume of trade generated by them in that calendar month.\(^\text{217}\) The incentive scheme, in comparison, is a system where securities companies give minimum fixed retainers as salary to brokers on the scheme.\(^\text{218}\) The broker's income instead relies on their shares of brokerage fees they can generate each month. In other words, the higher the volume of trade they conduct for their clients, the higher the income the brokers will earn. However, they also run the risk of having very low income if they cannot convince clients to engage in trade. In addition, if these brokers cannot generate adequate volume to cover their salaries, it is common for the companies to start putting pressure on them to find ways to generate more volume, either to find news clients or to

\(^{216}\) Association of Thai Securities Company's guideline on the Compensation of Investment Consultants, Team Leaders, and Managers of Securities Companies No.3.

\(^{217}\) Under the current Association of Thai Securities Company’s guideline, the highest salary that securities companies can give to the salary-based scheme brokers is 25 000 baht per month (approximately 800 AUD). See ibid.

\(^{218}\) Under the current Association of Thai Securities Company’s guideline, the highest salary that securities companies can give to the intensive scheme brokers is 15 000 baht per month (approximately 500 AUD). See ibid.
convince existing clients to trade more. If the situation occurs regularly, the company is likely to ask a broker to leave, imposing enormous pressure on brokers to perform. This scheme is popular among experienced brokers who are more or less certain that they always have a large and steady trading volume to generate adequate income.

Apart from the broker’s income from commissions or from salaries as fixed retainers as described above, a number of securities companies give a team bonus, which potentially has a significant influence on the team members’ incentive and work environment. The team bonus scheme is a bonus system where a securities company sets a trading target that a team of brokers has to collectively achieve each month. If the team is able to meet or surpass the target after the operating costs are deducted, the company will give team leaders certain amounts of bonus to manage. The team leader has the power to allocate the bonus as he or she sees fit.

Since brokers’ income is totally based on the trading volume of their clients (especially in incentive schemes), finding new clients and retaining existing clients remain key to their career success. Networking and servicing skills are therefore important. Researchers in the field of business and management have noted a special relationship between Thai brokers and their clients in this regard. They have found that Thai people rate communication and personal interactions highly.\textsuperscript{219} Thai investors are highly dependent on securities brokers and prefer to have close relationships with brokers who look after their trading accounts.\textsuperscript{220} For these reasons, Thai securities brokers often form a close relationship with clients in order to retain their business and to encourage them to buy or sell shares. However, such close relationships may lead to difficult


situations, such as a conflict of interest, a lack of professionalism, or an abuse of trust, which may result in an infringement of law and regulations. ²²¹

²²¹ See details in Chapter 3.
Chapter 3

The Thai Anti-brokerage Fraud Regime

I Governing Laws

This chapter first outlines key issues relating to the current Thai anti-brokerage fraud regime and offences on which this research focuses: (1) sources of law and regulation that regulate conduct of securities brokers, (2) forms of sanction that can be imposed upon offending brokers, (3) an overall picture of offences committed by securities brokers during the course of their work as well as specific regulations that regulate such offences, and (4) four particular low-level offences analysed for this piece of research.

A Sources of Law and Regulation

Four main sources of law and regulations exist in the current anti-brokerage-fraud regime: (1) regulations issued by the Capital Market Advisory Board (CMSB) and the Office of the Securities and Exchange Commission (the SEC Office) under the Securities and Exchange Act B.E. 2535 (1992), (2) regulations issued by the Stock Exchange of Thailand (SET), (3) criminal law provisions in the Penal Code and the Securities and Exchange Act B.E. 2535 (1992), and (4) provisions of the Civil and Commercial Code providing civil liabilities relating to the commission of wrongful acts as well as breach of contract between securities companies and their clients. These four sources provide administrative, criminal, and civil deterrence with corresponding proceedings in different offences and circumstances.

222 Information in this section is derived from the Penal Code, the Securities and Exchange Act B.E. 2535 (1992), Regulations of the SEC, Regulations of the SET, data from the pilot interviews, and the researcher's own experiences.
1 Regulations of the CMSB and The SEC Office

The Securities and Exchange Act B.E. 2535 (1992) is the main statute covering all aspects of the Thai securities market and relating securities business. Chapter 4 of the Act specifically lays down rules regulating different types of securities business including securities brokerage, securities dealings, investment advisory services, securities underwriting, mutual fund management, and private fund management, respectively. This research focuses on the securities brokerage business in which section 113 of the Act stipulates that:

In operating the business of securities brokerage, a securities company shall comply with the rules, conditions, and procedures as specified in the notification of the Capital Market Supervisory Board.

The CMSB Notifications are therefore the main source of regulation providing a framework for how securities brokerage companies may conduct their business and how their employing brokers may legally buy and sell investment products for their clients. There are further regulations and guidelines at the operational level issued by the SEC Office, who is tasked with a duty to enforce CMSB Notifications accordingly.

At the framework level, there are currently three main CMSB Notifications relating to the securities brokerage business. The first is the CMSB Notification No. TorThor. 63/2009 on Requirements, Conditions, and Procedures in Conducting Securities Brokerage and Securities Dealing Business. This lays down procedures that a securities company must follow in conducting securities brokerage business as well and internal measures that the company has to implement to protect clients’ and the public interest, such as separating business units from supporting units, establishing credible internal control and risk management mechanisms, establishing an information firewall between different business units, establishing an independent compliance unit, and ensuring that all trading orders and are fully recorded and having them permanently available for inspection. The notification also provides broad guidelines on the duty of
securities companies in the supervision of their employees’ conduct, especially in relation to solicitation of clients. Under this notification, if the SEC Office finds that any securities company fails to comply with any required procedure or fails to establish effective internal measures, the SEC Office has discretion to require the company to correct or improve its procedures or internal measures within a given period\textsuperscript{223} as well as to impose a fine upon the company.\textsuperscript{224}

The second relevant notification is the \textit{CMSB Notification No. TorThor/Nor/Khor. 37/2010 on the Prohibitive Characteristics of Personnel in Securities Business}. The notification prescribes, in details, prohibited characteristics of personnel in the Thai capital market industry. Personnel regulated by this notification are management, fund managers, property fund managers, securities brokers, derivatives investment managers, and derivatives brokers.\textsuperscript{225} In essence, such personnel must not have the following characteristics: (1) having deficiency in legal competence, is being subject to any legal proceeding under the law governing the capital market, or having untrustworthy characteristics as specified, (2) having any record of deceitful, fraudulent, or dishonest management of assets, or (3) having any improper behaviour which has materially affected clients, investors, employing company, shareholders, or the capital market as a whole.\textsuperscript{226}

The third notification is the \textit{CMSB Notification No. TorLorThor. 3/2012 on the Approval of Investment Analysts and Investment Consultants}. This comprises two parts. The first part lays down procedures on how a person may apply for relevant licences in order to work as securities brokers and how to renew their licences.\textsuperscript{227} The second part then provides broad frameworks of standard practices that brokers should adhere to in the course of their work, which are (1) \textit{bona fide} performance of duties and services, (2) performing duties professionally, attentively, and prudently as well as treating every investor

\textsuperscript{223} \textit{The CMSB Notification No. TorThor/Nor/Khor. 37/2010} cl 1.
\textsuperscript{225} \textit{The CMSB Notification No. TorThor/Nor/Khor. 37/2010} cl 2(4).
\textsuperscript{226} \textit{Ibid} cl 3.
\textsuperscript{227} See details in Chapter 2.
uniformly, (3) complying with all capital market regulations, (4) complying with professional ethics and standards set by recognised professional associations, and (5) refraining from committing any unfair trade practices or taking advantage of investors, or supporting any third party in doing so.\footnote{228 The CMSB Notification No. TorLorThor. 3/2012 cl 20.} If any securities broker fails to adhere to these standards, he or she is deemed to have improper behaviour materially affecting clients, investors, securities companies, or the capital market as a whole, constituting prohibited characteristics according to the CMSB Notification No. TorThor/Not/Khor. 37/2010 above. The SEC office may then suspend or revoke his or her licence as deemed appropriate.

At the operational level, the SEC Office has issued a number of notifications and recommendations to clarify and implement the frameworks laid out in the three CMSB Notifications above. The most important is the SEC Notification No. KorLorTor.Khor.Wor 12/2011. This notification clarifies and categorises wrongful brokerage practices into six categories and designates the minimum level of administrative punishment in each category.\footnote{229 The first and most serious category (Group 1.1 of the Notification) is the commission of embezzlement or fraud and the concealment of information or submission of false information in the licence application process. The second category (Group 1.2) is breach of fiduciary duty by taking advantage of investors or seeking improper benefits, such as front running, churning, or unauthorised use of clients’ accounts. The third category (Group 2.1-2.2) is the commission of unfair trading practices under the Securities and Exchange Act B.E. 2535 (1992) and other laws, such as insider trading, market manipulation, and money laundering. The fourth category (Group 2.3-2.4) is the contravention of the SET regulations on improper trading orders and the contravention of the SEC Office regulations and professional ethics, such as a failure to properly record trading orders or providing incomplete or improper advice to clients. The fifth category (Group 3.1) is a failure to meet professional standards, such as trading without client instructions or making trading decisions on behalf of clients, asking for trading fees that clients are not required to pay, acting in support or cooperating with clients in conducting financial transactions that are not suitable to the clients’ financial conditions, and helping clients to secure off-market loans for the purpose of securities trading. The sixth and last category (Group 3.2) is acting without adequate care, such as disclosing personal and/or trading information of clients to third parties, taking trading instructions from third parties, acting beyond duties assigned by employing securities companies, giving assurance to clients on future profits from trading, and interfering with clients’ assets.} This SEC Office Notification, which entered into force in 2011, has significantly increased the level of minimum administrative punishment in an attempt to reduce brokerage frauds and regulatory contraventions in the Thai capital market. Before 2011, the applicable notification was No. Thor.Wor. 27/2002, which imposed less serious...
penalties upon offending brokers. Details of changes in the minimum magnitude of sanction are shown in the table below.

Table 15: A Comparison of Magnitude of Sanctions between the SEC Notifications No. KorLorTor.Khor.Wor 12/2011 and No. Thor.Wor. 27/2002

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Commission of Embezzlement or Fraud</td>
<td>- Revocation of licence and a prohibition on re-application for five years at minimum</td>
<td></td>
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<tr>
<td></td>
<td>- Publication of an offender’s name and his or her employing securities company’s name</td>
<td>- Revocation of licence</td>
</tr>
<tr>
<td>Breach of Fiduciary Duty</td>
<td>- Suspension of licence for six months at minimum</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Publication of an offender’s name and his or her employing securities company’s name</td>
<td>- Probation</td>
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<tr>
<td></td>
<td></td>
<td>- Suspension of licence for two years at maximum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Revocation of licence</td>
</tr>
<tr>
<td>Commission of Unfair Trading Practices</td>
<td>- Revocation of licence and a prohibition on re-application for two years at minimum</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Publication of an offender’s name and his or her employing securities company’s name</td>
<td>- Revocation of licence</td>
</tr>
<tr>
<td>Contravention of the SET Regulations on Improper Trading Orders or the SEC Office Regulations and Professional Ethics</td>
<td>- Suspension of licence for one month at minimum</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Publication of an offender’s name and his or her employing securities company’s name</td>
<td>- Reprimand</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Suspension of licence for one year at maximum</td>
</tr>
<tr>
<td>Failure to Meet Professional Standards</td>
<td>- Suspension of licence for three months at minimum</td>
<td></td>
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<tr>
<td></td>
<td>- Publication of an offender’s name and his or her employing securities company’s name</td>
<td>- Reprimand</td>
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<td></td>
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<td>- Probation</td>
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<tr>
<td></td>
<td></td>
<td>- Suspension of licence for one year at maximum</td>
</tr>
<tr>
<td>Acting without Adequate Care</td>
<td>- Suspension of licence for one month at minimum</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Publication of an offender’s name and his or her employing securities company’s name</td>
<td>- Reprimand</td>
</tr>
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<td></td>
<td></td>
<td>- Probation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Suspension of licence for one year at maximum</td>
</tr>
</tbody>
</table>
It should be noted that the SEC Office has recently issued a new notification, which is No. KorLorTor.BorThor.(Wor) 44/2013. The notification stipulated that from 1 January 2014 onwards the Office would further increase the magnitude of sanction in its sentencing deliberation of prevalent offences such as a failure to properly record trading orders, unauthorised use of clients’ accounts, trading without client instructions, and making trading decisions on behalf of clients. In this notification, the SEC Office also issued a strong warning to securities companies that they have a duty to ensure that employees fully comply with the regulations. If they fail to do so, the SEC Office will deem that the companies have failed to maintain effective internal mechanisms and they would be subject to a corrective order and/or a corporate fine.

The other important SEC Office Notification is No. KorLorTor.BorThor. 3947/2013. This notification provides a ‘Do and Don’t Checklist’ for securities brokers to use as a guideline in their work. The checklist is divided into four headings; namely, (1) Account Opening, (2) Giving Advice and Executing Trading Orders, (3) Post-trading Procedures, and (4) Employee Best Practice.

2 Regulations of the SET

As mentioned in Chapter 2, Thai securities brokers’ job description comprises two main activities. The first is to solicit and give trading advice to clients, which is regulated by the SEC Office under the CMSB and the SEC Office regulations as covered in the previous section. The second is to enter trading orders into the SET trading system as instructed by the clients. This activity is regulated by the SET under various SET Notifications. The main piece is No. BorSor/Saw 01-28/2012 on the Relevant Persons in the Trading System. This notification prescribes duties that securities brokers, as authorised persons in the trading system have to carry out when they enter trading orders. In essence, they have legal duties not to (1) disclose trader IDs to other persons; (2) use trader IDs

230 The SEC Office has power to issue a corrective order requiring a securities company to review and change procedures that are deemed to contravene the SEC and the CMSB regulations. See, Securities and Exchange Act B.E.2535 (1992) s 19(2).
231 The SET Notification No. BorSor/Saw 01-28/2012 cl 21.
of other persons,\(^{232}\) (3) place improper trading orders that create false markets,\(^{233}\) (4) exploit clients’ information or trading information for their own or any third party benefits,\(^{234}\) and (5) enter trading orders for their own or any third party benefits using their clients’ accounts.\(^{235}\)


The third source of rules in the current Thai anti-brokerage fraud regime is the Penal Code, the Securities and Exchange Act B.E. 2535 (1992), and the Anti-Money Laundering Act B.E. 2542 (1999) that criminalise various acts relating to brokerage practices. These provisions provide criminal sanctions upon offenders in addition to administrative sanctions under the CMSB, the SEC Office, and the SET regulations mentioned in the previous sections, given that the regulatory agencies and/or the victims decide to initiate further criminal proceedings.

In the *Penal Code* there are two groups of general criminal provisions that can be applied to wrongdoing committed by securities brokers during the course of their work. The first group includes provisions relating to a fabrication of documents and/or a forging of signatures in sections 264 to 269. The second makes provisions relating to deception and/or misappropriation of asset in sections 341 to 348 and 352 to 356.

There are many criminal provisions in the *Securities and Exchange Act B.E. 2535* (1992), however most provisions deal with offences committed by public companies that offer for sale or sell securities to the public or executives of such public companies who fail to comply with duties prescribed in the Act. The only criminal provisions that apply to securities brokers are sections 238 to 244 on unfair securities trading practices, which essentially cover three main offences:

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\(^{232}\) Ibid cl 22.

\(^{233}\) Ibid cl 23(5).

\(^{234}\) Ibid cl 23(6).

\(^{235}\) Ibid cl 23(7).
(1) dissemination of false statements and false news,\textsuperscript{236} (2) insider trading,\textsuperscript{237} and (3) market manipulation.\textsuperscript{238}

The third statute imposing criminal liability upon securities brokers is the \textit{Anti-Money Laundering Act B.E. 2542} (1999). During the course of their work, a securities broker may knowingly or unknowingly assist his or her clients in laundering money by facilitating or commissioning the purchase and/or sale of shares with money from unidentified sources. If the broker, with knowledge of the client’s intent to launder money, gives such assistance, he or she would be guilty as an accessory to the crime. Unlike any other criminal provisions in the Thai legal system,\textsuperscript{239} section 7 of the \textit{Anti-Money Laundering Act} provides that an accessory shall be liable to the same penalties as a principal.\textsuperscript{240}

4 \textit{Civil Law Provisions in the Civil and Commercial Code}

The last source of law and regulation relevant to establishing the anti-brokerage fraud regime is the set of civil law provisions in the \textit{Civil and Commercial Code}, which provide civil sanction and civil remedy. In practice, injured clients usually start the civil process by lodging their complaints in order to set up negotiations and settlements with the employing securities companies. The securities companies have a strong incentive to reach settlements with injured clients in order to prevent the clients from raising the cases with the SEC or the SET, which would result in formal investigations, and also to protect their reputation within the industry and in the eyes of the public. If the injured clients cannot reach settlement with the companies, they have options to either submit their cases to the SEC Office for an arbitration procedure to settle their disputes given that prescribed conditions are met,\textsuperscript{241} or they can initiate their cases in the civil

\textsuperscript{237} Ibid ss 241-242.
\textsuperscript{238} Ibid ss 243-244.
\textsuperscript{239} All criminal provisions in the Thai legal system, except those in the \textit{Anti-Money Laundering Act B.E. 2542} (1999), are under the purview of section 86 of the \textit{Penal Code} which provides that an accessory shall be liable to the two-third of the punishment as provided for such offence. See, \textit{Penal Code} s 86.
\textsuperscript{240} \textit{Anti-Money Laundering Act B.E. 2542} (1999) s 60.
\textsuperscript{241} See details below.
courts on three grounds: tort, breach of agency provisions, and breach of contract.

In tort, clients may sue for the damage caused by the brokers, willfully or negligently, to their properties or any right. The law further stipulates that an employer is jointly liable with his or her employee for the consequences of a wrongful act committed by the employee in the course of his or her employment. Therefore, injured clients may sue both the securities companies and their employing securities companies for compensation. Apart from the wrongful act provisions, injured clients may also initiate cases under the agency provisions. Section 812 of the Civil and Commercial Code prescribes that an agent is liable for any injury resulting from negligence, non-execution of the agency, or acts done without or in excess of authority. Furthermore, subagents are directly liable to the principals, according to section 814. In this context, the securities companies and their employees are agents and subagents for clients in share transactions as well as in other activities relating to their businesses. If the clients are injured as a result of negligence or from wrongful execution, they may seek compensation under these provisions in addition to the wrongful act provisions stated above.

B Forms of Sanction

The current Thai anti-brokerage fraud regime employs multiple types of sanction to deter brokerage frauds at different levels of severity. The forms of sanction, which correspond to the proceedings employed, can be classified as administrative sanctions, criminal sanctions, and civil sanctions respectively.

1 Administrative Sanction

Administrative sanctions imposed by the SEC Office upon offending securities brokers are the primary and most prevalent sanctions of the current anti-fraud

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242 Civil and Commercial Code ss 797-832.
243 Ibid s 420.
244 Ibid s 425.
regime. At the moment, the available forms of administrative sanction are a suspension and a revocation of brokerage licence. Before 2011, a reprimand and a probationary order were also available as less severe sanctions for first-time offenders and/or less-serious incidents. However, due to the concern that the sanctions were not severe enough to effectively deter wrongdoings, the SEC Office issued the *SEC Notification No. KorLorTor.Khor.Wor 12/2011* to reclassified categories of offences and increase the magnitude of sanctions in each category. A probationary order has been abolished while a reprimand is now considered as an administrative action rather than as a sanction, which means that the SEC Office may issue a reprimand to any securities broker at any time and without having to initiate any formal proceedings. Due to such change, the minimum administrative sanction has been increased to a one-month suspension of licence and the maximum is a revocation of licence together with a prohibition on re-application for 10 years. When a brokerage licence is being suspended, he or she may not engage in brokerage activities. This means the offender cannot solicit clients, give trading advice, or enter trading orders in the system, during the prescribed time period. As a result, he or she would not receive from the company the usual fixed-salary plus a share of commission fees.

In addition to the increment in the magnitude of sanction above, under the *SEC Notification No. KorLorTor.Khor.Wor 12/2011*, the SEC Office also introduced a naming and shaming scheme to impose additional cost upon offenders as well as to raise public awareness of harmful brokerage conduct. In the case of a minor infringement, the SEC Office will only publish the name of the offending broker. For serious offences, the names of his or employing securities company will also be revealed.

It is important to note that the SEC only has power to impose licence-related sanctions that are a suspension and a revocation of licence upon offending brokers. The agency is not empowered to impose an administrative monetary
fine. In contrast, in the specific offences where the SET is the primary regulator, such as offences relating to improper trading orders and offences relating to use of trader IDs, the SET has a power to directly impose both the licence-related and the monetary punishments upon offending brokers and their securities companies.

2 Criminal Sanction

The Thai Penal Code specifies the available forms of criminal sanction in Section 18, that are, from the most to least severe: death sentence, imprisonment, confinement, fine, and forfeiture of property. For brokerage offences, the applicable forms of criminal sanction are limited to imprisonment, fine, and forfeiture of property. Imprisonment and fine are the main sanctions used in the criminal branch of the regime while forfeiture of property is only available in the specific offence of insider trading in which the regulator has the right to call on the offenders to deliver to them the benefit gained from the offence.

There are two further features relating to the use of criminal sanctions for brokerage offences to be noted. First, although the law has stipulated that a sanction of imprisonment is available for many serious offences, in practice, the courts rarely impose a jail term upon offenders due to the consideration that these persons are not criminal in nature and can easily be rehabilitated. Therefore, the Thai courts have a tendency to put these offenders on probation with the requirement of probationary supervision. This extensive use of the

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245 However, they may impose criminal corporate fine upon employing securities companies on the ground that such securities companies fail to establish and maintain effective internal control mechanism to protect clients and regulate their employees’ conduct.

246 Penal Code s 18.


248 Similar to most economic criminals, the brokerage-fraud offenders often have no prior criminal records and have good education and occupation backgrounds that satisfy the requirements of probation granting under Section 56 of the Penal Code.

249 According to the statistics published by the Court of Justice in the year 2014, the Courts of First Instance imposed imprisonment upon 121 082 individuals (17.04%) and granted probation to 299 558 individuals (42.16%) from the total numbers of 710 531 accused who were found guilty. In a slightly similar ratios, in the year 2015, from the total numbered of 724 606 convicted accused, 103 231 (14.25%) were subject to imprisonment, whereas 303 861 (41.93%) were granted probation: Office of Judiciary, 'Annual Judiciary Statistics, Thailand B.E. 2557' (2014), 26.
probationary order has inevitably weakened the deterrent value of the anti-brokerage fraud regime.

Second, there is a limited scope for corporate criminal liability in the current anti-brokerage fraud regime. In essence, there are two groups of provisions that impose criminal liability upon securities companies that employ offending brokers. The first provision, which directly and generally designates corporate sanctions upon brokerage companies, is section 113 of the *Securities and Exchange Act B.E. 2535* (1992) which prescribes that:

> In operating the business of securities brokerage, a securities company shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

Section 282 of the *Securities and Exchange Act B.E. 2535* (1992) further prescribes that any securities company which fail to comply with section 113 is liable to a fine not exceeding 300,000 baht and a further fine not exceeding 10,000 baht for every day during which the violation continues. The usual circumstance where sections 113 and 282 are being enforced to fine securities companies is where officers of the SEC Office carry out routine inspections and find that the companies have failed to establish and/or maintain internal control and risk management mechanisms as required by the CMSB regulations. In other words, the SEC Office cannot merely use the incident of brokerage offences as a ground to impose a fine upon securities companies. Only when such incidents are a direct result of the company’s failure to establish and maintain effective internal control and risk management mechanisms can such fine be imposed under sections 113 and 282.

The second group of provisions that potentially impose corporate criminal liability upon securities brokerage companies regulates unfair securities trading practices. These practices are: dissemination of false news[^250], insider trading[^251],

and market manipulation.\textsuperscript{252} If such offences are committed by directors, executives, or any person responsible for the operation of a securities company and for the benefits of the company, the law deems that the securities companies as a legal person has committed such offences and shall be criminally punished by a corporate fine, which cannot exceed two times the benefit received or which should have been received by such person as a result of such contravention, but shall not be less than 500 000 baht.\textsuperscript{253}

In the scope of this brokerage fraud research, the application of the corporate criminal liability is very limited. It is highly unlikely that retail securities brokers, on which this thesis focuses, would hold directorships or executive positions of securities companies that would risk their wrongful acts to be deemed as an offence committed by the companies themselves in the case of unfair securities trading practices. Therefore, only a corporate fine due to a failure in establishing and/or maintaining internal control mechanisms is relevant to this thesis and applicable in practice. Note also that as for other applicable criminal offences stipulated in the \textit{Penal Code}, such as fabrication of false documents or embezzlement by securities brokers, due to the nature of the wrongdoing, such offences under the Thai law are highly unlikely to constitute corporate criminal liability since the acts fall outside the scope of securities companies’ business objectives as well as do not create any direct benefit to the organisations.\textsuperscript{254}

3 \textit{Civil Sanction}

The last category of sanction in the Thai anti-brokersage fraud regime is a civil sanction in the form of financial remuneration and other applicable injunctions. Nevertheless, the civil sanction is currently regarded only as a supplementary tool to deter brokerage fraud in addition to the more government-based administrative and criminal sanctions. The SEC and the SET have taken the view that a civil remedy is a private matter between injured clients and securities brokers as well as their employers. Thus government agencies would not seek a

\textsuperscript{252} Ibid ss 243-244.
\textsuperscript{253} Ibid s 296.
\textsuperscript{254} The Supreme Court Decision No. 1669/2506 (1963).
civil remedy on behalf of clients and leave clients to make their own decision whether to negotiate for settlement, submit the case of an arbitration procedure, or pursue the civil proceedings in the civil court. Therefore, the role of civil sanction in the deterrence regime is limited.

If an injured client cannot reach a settlement with a securities company, he or she has options to submit the case to the SEC Office for an arbitration procedure or initiate his or her case in the civil courts. During the SEC arbitration process, the arbitrator will always attempt to reconcile the dispute. However, if the reconciliation is unsuccessful and it is found that a securities broker and/or his or her employing company has wrongfully caused damage to the injured client, the arbitrator may order the broker and/or his or her employing company to pay for damages not exceeding one million baht per one client.\footnote{255}

If the injured client, however, decides to initiate his or her case in the courts, he or she may do so on three grounds: tort, breach of agency provisions,\footnote{256} breach of contract. No matter on what ground the case is brought, if the judges agree with the plaintiff, the judges have a wide discretion to determine the amount of compensation and damages to be awarded to the plaintiff but not over the amount stated in the statement of claim.\footnote{258} It should be noted that Thai law has no concept of punitive damages. The court will only award actual damages to the injured plaintiffs.\footnote{259}

C. \textit{Offences Committed by Securities Brokers}

There are numbers of offences that Thai securities brokers may commit, knowingly or unknowingly, during the course of their work. The section attempts to briefly explore them to give a coherent picture of the current Thai

\footnote{255} If the damages or the amount in dispute is exceeding one million baht per one client, the injured client may not submit the case to the SEC Office for an arbitration procedure. He or she has to initiate the case in the civil courts. 
\footnote{256} \textit{Civil and Commercial Code} ss 420, 425. 
\footnote{257} Ibid ss 797-832. 
\footnote{258} Ibid s 438. 
\footnote{259} Ibid.
anti-brokerage fraud regime. In this section, the brokerage offences are classified into two groups: (i) those that are committed against clients and/or employing securities companies, and (ii) those that are committed against the securities market and the public in general. The reasons for the classification are that most offences committed against clients are often considered serious offences, whereas most offences committed in violation of the market regulations are considered minor infringements, except in the case of offences relating to unfair trading practice under the Securities and Exchange Act.\footnote{The offence of dissemination of false news, the offence of insider trading, and the offence of market manipulation.}

1 Offences Committed Against Clients

(a) Offences Relating to Document and Personal Information

One of the more prevalent forms of wrongdoing by securities brokers are offences relating to documentation and signature. In the course of working, the brokers always handle or are in possession of various important public and private documents, especially personal documents of clients such as bank accounts, copies of personal identification cards, addresses, etc., which should not be used for purposes other than for buying and selling shares, and should not be revealed to unauthorised persons. In addition, many of those documents have signatures of clients and/or third parties that are at further risk of being forged. It is therefore very important that the brokers are deterred from using these documents unscrupulously or abusively. The current Thai anti-brokerage fraud regime has recognised the potential damage of such harmful wrongdoing and has sought to achieve deterrence by employing both criminal and administrative punishments as follows.

The first offence relates to fabrication of documents or forging of signatures. If found guilty, offending brokers are sanctioned administratively by a revocation of licence and a prohibition on re-application for five years at minimum as well
as publication of their names and the names of their employing companies.\textsuperscript{261} Apart from the administrative sanction, under section 264 of the Thai \textit{Penal Code}, if the injured client decides to institute criminal proceedings in the criminal courts, offending brokers who fabricate clients’ documents or forge clients’ signatures and use such documents to the detriment of their clients, such as to open new trading accounts or to engage in any transactions unknown to the clients, will be subjected to a punishment of imprisonment not exceeding three years, or a fine not exceeding 6 000 baht, or both. In addition, under section 265,\textsuperscript{262} if such a document or its copy is a document of right\textsuperscript{263} or an official document,\textsuperscript{264} the applicable penalty is increased to six months to five years’ imprisonment and a fine of 1 000 to 10 000 baht. Section 266\textsuperscript{265} further increases the penalty upon the offenders to one to ten years’ imprisonment and a fine of 20 000 to 200 000 baht where the fabricated document is a document of right that is also an official document\textsuperscript{266}, a share certificate, a debenture certificate, a share warrant, or a debenture warrant. Offences of fabricating documents and forging signatures are non-compoundable.\textsuperscript{267}

The second type of offence relating to documents that securities brokers often commit is disclosure of personal or trading information to unauthorised third parties. It is most important that the brokers keep the information or documents in confidence and reveal them only to the persons who have the authority to access such information or documents under the law or under the brokerage contract. The anti-brokerage fraud regime has designated such wrongdoing as an administrative offence with the punishment of a suspension of licence for 1

\begin{itemize}
\item \textsuperscript{261} \textit{The SEC Notification No. SorKor. 49/2009 cl 14; No. KorWor. 12/2011 (Group 1.1 Dishonesty)}.
\item \textsuperscript{262} \textit{Penal Code} s 265.
\item \textsuperscript{263} Documents that clearly manifest the right of person such as loan agreement, sale agreement, and lease agreement.
\item \textsuperscript{264} Documents that are made by government officers or agencies such as personal identification card (\textit{The Supreme Court Decision No. 317/2521} (1978)), passport (\textit{The Supreme Court Decision No. 3942/2529} (1986)), house registration (\textit{The Supreme Court Decision No. 100/2523} (1980)), birth certificate (\textit{The Supreme Court Decision No. 5969/2530} (1987)), and degree certificate (\textit{The Supreme Court Decision No. 2479/2522} (1979)).
\item \textsuperscript{265} \textit{Penal Code} s 265.
\item \textsuperscript{266} Documents of rights that are created by government officers such as land title deeds (\textit{The Supreme Court Decision No. 1970/2530} (1987)).
\item \textsuperscript{267} \textit{The Supreme Court Decision No. 828/2528} (1985).
\end{itemize}
month at minimum, and to publish their names as offenders and the names of their employing companies.\textsuperscript{268}

The last infringement in this section is not perpetrated directly against clients but rather against the employing securities companies. Before any individual investors can purchase or sell shares in the market, they have to open trading accounts held by the securities companies. In order to open those accounts, the investors have to submit various personal and financial documents to the companies who make an assessment of the background and risk profiles of potential clients, and are able to set the proper credit limit. If any brokers help their clients to conceal crucial information from or submit false documents to securities companies, they would be administratively punished by a revocation of licence and a prohibition on re-application for five years at minimum, and by publication of names of offenders and their employing companies.\textsuperscript{269}

\begin{table}[h]
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\begin{tabular}{|c|c|c|c|c|}
\hline
\textbf{Section (s)} & \textbf{Offence} & \textbf{Type of Offence and Proceedings} & \textbf{Penalties/Compensation} & \textbf{Adjudicating Unit (s)} & \textbf{Compound-able} \\
\hline
264 of the Penal Code & Fabrication of false documents or forging signatures & Criminal & Imprisonment not exceeding 3 years or a fine not exceeding 6 000 baht, or both & Criminal Courts & No, the Supreme Court Decision No. 828/2528 (1985) \\
\hline
265 of the Penal Code & Fabrication of documents of right & Criminal & Imprisonment from 6 months to 5 years and a fine of 1 000 to 10 000 baht & Criminal Courts & No, the Supreme Court Decision No. 828/2528 (1985) \\
\hline
\end{tabular}
\caption{Brokerage Offences Relating to Document and Personal Information}
\end{table}

\textsuperscript{268} The SEC Notification No. SorKor. 49/2009 cl 14; No. KorWor. 12/2011 (Group 3.2 Acting Without Adequate Care).
\textsuperscript{269} The SEC Notification No. SorKor. 49/2009 cl 14; No. KorWor. 12/2011 (Group 1.1 Dishonesty).
<table>
<thead>
<tr>
<th>Section(s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/Compensation</th>
<th>Adjudicating Unit(s)</th>
<th>Compoundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>266 of the Penal Code</td>
<td>Fabrication of share certificates, debenture certificates, share warrant certificates, or debenture warrant certificates</td>
<td>Criminal</td>
<td>Imprisonment from 1 to 10 years and fine of 20 000 to 200 000 baht</td>
<td>Criminal Courts</td>
<td>No, the Supreme Court Decision No. 828/2528 (1985)</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 1.1 Dishonesty + No. SorKor. 49/2009, Clause 14</td>
<td>Concealing required information or submitting false documents to securities companies to help clients setting up trading accounts or increasing credit limit</td>
<td>Administrative</td>
<td>Revocation of licence and a prohibition on re-application for 5 years at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. Kor/Wor. 12/2011, Group 3.2 Acting Without Adequate Care + No. SorKor. 49/2009, Clause 14</td>
<td>Disclosing personal and/or trading information of clients to third parties, unless such disclosure is required by law</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

(b) Offences Relating to Deception and Misappropriation

The second category of brokerage offences against clients is offences relating to fraud and misappropriation. Beginning with the administrative side of the regime, there are two administrative provisions currently being enforced by the SEC Office to deter fraud and misappropriation. The first provision derives from the SEC Notification No. SorKor. 49/2009, clause 14 together with No.KorWor. 12/2011 (Group 1.1 Dishonesty). They provide that any securities brokers who commit or act in support of misappropriation or fraud shall be administratively

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270 These offences are the focus offences of this research. See detail below.
punished by a revocation of licence and a prohibition on re-application for five years at minimum as well as publication of their names and their employing companies. The second provision is the SEC Notification No. SorKor. 49/2009, clause 14 together with No. KorWor. 12/2011 (Group 3.1 Failure to Meet Professional Standards) which stipulate that any securities brokers who dishonestly ask for higher trading fees than the rate set by securities companies, or for other fees that clients are not required to pay, shall be administratively punished by a suspension of licence for three months at minimum as well as publication of their names and the name of their employing companies.

On the criminal side, there are multiple provisions under the Thai Penal Code and the Securities and Exchange Act B.E. 2535 (1992) that provide criminal sanctions to deter brokerage fraud and misappropriation. Beginning with section 341 of the Penal Code that is the general provision of the offence of deception. It provides that:

Whoever, dishonestly deceives a person with the assertion of a falsehood or the concealment of facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person to execute, revoke, or destroy a document of right, is said to commit the offence of cheating and fraud, and shall be punished with imprisonment not exceeding three years or fined not exceeding 6,000 baht, or both.

Section 352 of The Thai Penal Code criminalises misappropriation by stipulating that:

Whoever, being in possession of property belonging to the other person, or of which the other person is a co-owner, dishonestly transfers such property to himself or a third person, is said to commit misappropriation, and shall be punished with imprisonment not exceeding three years or fined not exceeding 6,000 baht, or both.

\[271\text{ The term 'dishonesty' as present in sections 352 and 353 is defined in section 1(1) of the Penal Code as: 'Dishonesty' means in order to procure, for himself or the other person, any advantage to which he is not entitled by law.}\]
The main differences between these two provisions are that, first, the scope of section 341 is wider than section 352. Section 341 includes various outcomes of fraud: transferring property, and executing, revoking, or destroying documents of right, whereas section 352 only covers the transfer of ownership of the said property from one person to another. Second, the transfer of property in section 341 is due to deception, whereas in section 352, the transfer of property happened beforehand and the said property is rightfully in the possession of the offenders. The offence is committed only after possessors illegally transfer such property to himself or herself.

Section 353 is a minor variation of section 352. It provides that:

Whoever, being entrusted to manage the other person’s property or property of which the other person being the co-owner, dishonestly committing any act in contrary to one's duty, causing detriment to the property of that other person, shall be punished with imprisonment not exceeding three years or fined not exceeding 6,000 baht, or both.

The difference between section 353 and section 352 is that those who commit offences against section 353 need not actually possess the property and misappropriate it for themselves. To be criminally punished, they only need to be entrusted to manage such property and act against their duties causing damage to that property. Section 354 further increases the magnitude of penalty upon specific offenders who have occupations or businesses that involve public trust and have committed offences in section 352 and 353 to imprisonment not exceeding five years or fined not exceeding 10,000 baht, or both. With regard to securities companies and brokers, the Thai Supreme Court has made a clarification that securities companies and their employees are entrusted to manage the clients’ property (stocks) as well as being persons who have occupation and businesses and persons that hold public trust.272 Therefore if securities brokers commit misappropriation under section 352 or section 353 respectively, they will be punished with more severe sanctions in accordance

272 The Supreme Court Decision No. 2481/2528 (1985).
with section 354. Unlike offences relating to documents in the previous section, offences relating to deception and misappropriation in this section are compoundable.

Notable cases related to the offences of deception and misappropriation in the context of securities and brokerage frauds are as follows:

**The Supreme Court Decision No. 2689/2526 (1983)**

Three directors and two employees of a securities brokerage company jointly sold a plaintiff's shares without an instruction from the plaintiff, and for their own benefit. The court laid down that the plaintiff was a victim under both the provisions of the *Penal Code* (section 341 Deception and sections 352-354 Misappropriation) and the provisions of the *Securities and Exchange Act B.E. 2517* (1974) (section 21 (2) and section 42). As a result, the plaintiff had the right to institute the proceeding in the criminal courts under both laws. Defendant one, a securities company and a member of the Stock Exchange of Thailand, was found to be in breach of section 42 of the *Securities and Exchange Act B.E. 2517* (1974) and was subject to a corporate fine. Defendant two and defendant three, directors of the securities company, were found to have committed acts of deception and misappropriation, as well as a breach of section 42 of the act. Defendant four, a managing director, and defendant six, a senior manager, were found to have committed deception and a breach of section 42.

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273 Under the Thai criminal law system, each offence is accompanied by minimum and maximum penalties that judges can impose upon the convicted. For example, in the offence of misappropriation (section 352 of the Thai Criminal Code), the prescribed penalties are imprisonment not exceeding three years or a fine not exceeding 6,000 baht, or both. The judges can use discretion in determining sentences, from as low a fine of several hundred baht with no jail term to as high as 3 years imprisonment and a fine of 6,000 baht. In practice, however, it is well known that the Court of Justice has an internal guideline recommending appropriate forms and magnitude of the sanctions based on circumstances in each case, including age, criminal record, education, occupation, behaviour, and health of the offenders, as well as the financial value of the fraud. Nevertheless, this internal guideline is not available to the general public and there are no published statistics on the length of imprisonment actually imposed. For these reasons it is hard to determine whether the actual length of imprisonment is high or low by the international standard of punishment. It can only be said that the maximum penalties under the Thai criminal law are comparatively low by other countries' standards, including Australia's.

274 *Penal Code* s 348, 356: Compoundable offences are offences that are deemed to be committed against or to the detriment of the victim personally and not against the state or the public order. See details in Chapter 2.
Defendant five, head of the company’s research section, was found to have committed a breach of section 42 only. Defendants two to five were sentenced with terms of imprisonment of varying lengths.

The implication of this decision to the current anti-brokerage fraud regime is that victims may pursue criminal proceedings against the offending brokers, executives, directors, and/or securities companies under the general provisions of the Penal Code and the specific provisions of the Securities and Exchange Act, not just under the provisions of the Penal Code as alleged by the defendants.

**The Supreme Court Decision No. 2130/2527 (1984)**

A branch manager and two deputy branch managers of a securities brokerage company jointly deceived a plaintiff to buy shares in the Stock Exchange of Thailand at an inflated price. The three employees were found to have committed deception under section 241 of the Penal Code and subject to imprisonment. The securities company, as an employer and a member of the Stock Exchange of Thailand, was fined under section 42 of the Securities and Exchange Act B.E. 2517 (1974). Two directors of the securities companies were acquitted on the ground that they had rightfully delegated their securities trading duty to the branch manager and had no knowledge of the deception.

The implication of this decision to the current anti-brokerage fraud regime is that securities companies are liable to monetary sanctions under the Securities and Exchange Act, if their employees are found to commit deception and/or misappropriation against their clients. Nevertheless, directors of securities companies are not held vicariously liable if they can prove that they have no knowledge of the deception and have rightfully engage their supervision duty.

**The Supreme Court Decision No. 3711-3712/2538 (1995)**

The offence of misappropriation can be jointly committed. Nevertheless, which sections of the Penal Code are to be applied to each defendant depend on his or
her occupation and/or his or her duties to the victim. Defendants one and two jointly fabricated documents to misappropriate funds from a plaintiff’s bank accounts. Defendant one was a commercial bank branch manager, deemed an occupation that holds public trust. Defendant one was therefore a principal under section 354, which carries higher penalties. Defendant two was not an employee of the bank, and did not have an occupation holding public trust. Therefore, defendant two was not an accessory to the offence under section 354 but a principal under section 352, which carries lesser penalties.

The implication of this decision to the current anti-brokerage fraud regime is that employees of the commercial bank, as well as of securities companies, are considered as having occupations that hold public trust. When these individuals commit the offence of misappropriation, they are liable to higher penalties than ordinary individuals.

*The Supreme Court Decision No.5210/2549 (2006)*

The plaintiff opened a margin account with defendant one, a security brokerage company. In this type of account, the securities company allowed the plaintiff to borrow company funds to buy shares by putting down the first 40% of the value of share purchase and borrowing the other 60% from the company. The loan was then collateralised by securities and cash in the account. The SEC issued a rule requiring the company to force the sale of securities in the clients’ accounts on the next trading day, when the ratio of the equity of the account minus the loan divided by the value of the collateral is equal or below fifteen per cent. The purpose of this rule is to protect the benefits of both securities companies and investors in the SET. On 17 October 1996, the collateral ratio of the plaintiff’s account fell to 7.0511 per cent. The company, however, did not force the sale of shares as required by law. Instead it sent a notice to the plaintiff, asking the plaintiff to pay the loan amount or deposit additional collateral into the account. Such action was a breach of the SEC Regulation causing damage to the plaintiff’s asset. Defendants two to six were directors of the securities company entrusted to manage the plaintiff’s asset. As they did not fulfill their duties causing
substantial damage to the plaintiff's asset, they were deemed to have committed the offence of misappropriation under sections 353 and 354 of the *Penal Code*. Nevertheless, since the offence of misappropriation is a compoundable offence, under section 96 of the *Penal Code*, the plaintiff had to file the report to the authority within three months after discovering that the wrongdoing had occurred and was able to identify the suspect. Since the plaintiff did not file the report within such period, the limitation period had expired and the case was dismissed.

The implication of this decision to the current anti-brokerage fraud regime is that directors of securities companies, who do not rightfully fulfill their supervision duty, can be held vicariously liable for the offence of misappropriation committed by the companies and/or their employees. In addition, judges in this case confirmed that the offence of misappropriation is a compoundable offence, meaning that victims of brokerage fraud, whose shares and/or funds have been misappropriated, have to file the report to the authority within three months after they discover the wrongdoing and are able to identify the offenders. If they fail to do so, the limitation period will expire and their cases would be dismissed.

<table>
<thead>
<tr>
<th>Section(s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/ Compensation</th>
<th>Adjudicating Unit(s)</th>
<th>Compoundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>341 of the Thai Penal Code</td>
<td>Deception in order to obtain property, or to execute, revoke, or destroy documents of right</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 3 years or fine not exceeding 6 000 baht, or both</td>
<td>Criminal Courts</td>
<td>Yes, section 348 of the Thai Penal Code</td>
</tr>
<tr>
<td>352 of the Thai Penal Code</td>
<td>Misappropriation</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 3 years or fine not exceeding 6 000 baht, or both</td>
<td>Criminal Courts</td>
<td>Yes, section 356 of the Thai Penal Code</td>
</tr>
<tr>
<td>Section(s)</td>
<td>Offence</td>
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<tr>
<td>353 of the Thai Penal Code</td>
<td>Persons who are entrusted to manage other persons’ property dishonestly act against their duties causing damage to such property</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 3 years or fine not exceeding 6 000 baht, or both</td>
<td>Criminal Courts</td>
<td>Yes, section 356 of the Thai Penal Code</td>
</tr>
<tr>
<td>354 of the Thai Penal Code</td>
<td>If offences in Sections 352 and 353 are committed by a person having occupations or businesses that involve public trust</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 5 years or fine not exceeding 10 000 baht, or both</td>
<td>Criminal Courts</td>
<td>Yes, section 356 of the Thai Penal Code</td>
</tr>
<tr>
<td>The SEC Notification No. Kor/Wor. 12/2011, Group 1.1 Dishonesty + No. SorKor. 49/2009, Clause 14</td>
<td>Committing or acting in support of misappropriation or fraud</td>
<td>Administrative</td>
<td>Revocation of licence and a prohibition on re-application for 5 years at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.1 Failure to Meet Professional Standard + No. SorKor. 49/2009, Clause 14</td>
<td>Asking for trading fees or other fees that clients are not required to pay to securities companies</td>
<td>Administrative</td>
<td>Suspension of licence for 3 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
(c) Offences Relating to Brokerage Practices

The last type of offence often committed by securities brokers against their clients includes various offences relating to brokerage practice.\textsuperscript{275} This type of offence is generally considered less damaging, so the regulatory agencies do not criminalise the offences; only administrative sanctions are imposed upon offending securities brokers.

There are twelve offences that can be classified in this category. The first is an offence of committing front running practices.\textsuperscript{276} Front running practice is an illegal trading practice where a security broker has advanced knowledge of a pending large order of his or her own client, and decides to take advantage of such knowledge by buying or selling from his or her own accounts, securities company’s accounts, or any accounts of third parties before executing the client’s order. The current Thai regime considers this trading practice damaging and imposes the administrative penalty of a suspension of licence for 6 months at minimum, and publication of the name of the offender and the employing company.

The second offence is where a securities broker uses his or her clients’ accounts for their own benefit.\textsuperscript{277} The offence can be committed with and without consent of the clients. In cases where the broker uses clients’ accounts without consent, he or she essentially engages in unauthorised trades for the purpose of increasing his or her monthly trading volume and a share of commission fees respectively. In the case where the broker uses clients’ accounts to engage in trades with the clients’ consent, the offence is mainly conduct to avoid the rules of the Association of Thai Securities Companies (ASCO) that regulate securities trading of employees of securities companies.\textsuperscript{278} Under the current rules,

\textsuperscript{275} The Thai securities law and the criminal laws do not consider offences in this group to be criminal frauds, but merely regulatory violations. As a result, offending brokers are only sanctioned administratively.
\textsuperscript{276} The SEC Notification No. KorLorTor/Kor/Wor. 12/2011, Group 1.2 Lack of Fiduciary Duty.
\textsuperscript{277} Ibid.
\textsuperscript{278} Notification of the Association of Thai Securities Companies Re: Rules on Securities Trading of Employees and Directors of Securities Companies.
securities brokers have to follow rigorous procedures before they can engage in securities trading for themselves. As a result, some securities brokers collude with clients to circumvent such restrictions by using clients’ accounts instead of their own. This offence is punishable by a suspension of licence for six months at minimum, and publication of the name of the offender and the employing company.

The third offence is known as ‘churning’. Churning occurs when a securities broker advises his or her clients to make excessive numbers of trade. For every purchase or sale of shares, the clients have to pay a trading fee to the securities company where they have accounts and the securities broker would receive a portion of the fee from his or her employing companies. As a result, a dishonest broker may unethically encourage his or her clients to engage in frequent trades. This will mean that the broker will earn more commission to the detriment of the clients, who have to pay excessive trading fees. Similar to the above offence, this is punishable by a suspension of licence for six months at minimum, and publication of the name of the offender and the employing company.

The fourth type of wrongdoing in this group occurs when securities brokers give incomplete or improper advice to clients. This minor offence is punishable by a suspension of licence for one month at minimum, and publication of the name of the offender and the employing company.

The fifth involves a securities broker engaging in trade with his or her client’s instruction to make trading decisions on their behalf. The underlying reason behind this wrongdoing is that the securities broker’s responsibilities are limited to giving advice on the prospect of investment and executing the client’s trading decisions. This wrongdoing is punishable by a suspension of licence for three months at minimum, and publication of the name of the offender and the employing company.

279 The SEC Notification No. KorLorTor/Kor/Wor. 12/2011, Group 1.2 Lack of Fiduciary Duty.
280 Ibid, Group 2.4 Contravention of Securities and Exchange Commission Regulations and Professional Ethics.
281 Ibid, Group 3.1 Failure to Meet Professional Standard.
The sixth offence is where a securities broker gives support to, or cooperates with his or her clients to engage in trades that are not suitable to the clients’ financial condition or their loan repayment ability.\textsuperscript{282} This wrongdoing is punishable by a suspension of licence for three months at minimum, and publication of the name of the offender and the employing company.

The seventh wrongdoing is where a securities broker helps his/her clients secure off-market loans for securities trading, which is against the policy of the Stock Exchange of Thailand.\textsuperscript{283} This wrongdoing is punishable by a suspension of licence for 3 months at minimum, and publication of the name of the offender and the employing company.

The eighth offence occurs when securities brokers take trading instructions from third parties other than the account owners or those who have proxy powers to give instructions on behalf of the account owners.\textsuperscript{284} This wrongdoing is punishable by a suspension of licence for one month at minimum, and publication of the name of the offender and the employing company.

The ninth offence happens when securities brokers act beyond the duties assigned by the employing securities company.\textsuperscript{285} In Thailand, securities brokers often form a close relationship with their clients. More often than not the broker may give assistance to clients in other matters outside the securities trading service, such as personal financial services or secretarial services; a growing trend due to the high competition in the brokerage industry. This wrongdoing, if the regulator finds the need to initiate the proceedings, is punishable by a suspension of licence for one month at minimum, and publication of the name of the offender and the employing company.

\textsuperscript{282} Ibid.
\textsuperscript{283} Ibid.
\textsuperscript{284} Ibid, Group 3.2 Acting Without Adequate Care.
\textsuperscript{285} Ibid.
The tenth offence is where a securities broker guarantees future profits from securities trading to their clients. If the broker gives false assurances to his or her clients that their trading will definitely generate profits, it could mislead the clients to engage in trade beyond their financial condition. The wrongdoing is punishable by a suspension of licence for one month at minimum, and publication of the name of the offender and the employing company.

The eleventh offence comes under a general provision prohibiting securities brokers from interfering with clients’ assets. This provision can be applied to various incidents where the brokers have inappropriately involved themselves with funds or shares in the clients’ accounts. The provision can also be applied as a supplement to the more specific provisions described in this section. The wrongdoing is punishable by a suspension of licence for one month at minimum, and publication of the name of the offender and the employing company.

The twelfth and last offence in this category is where a securities broker fails to place clients’ trading orders in their chronological order, unless the clients had given instructions to depart from such chronological order. This minor wrongdoing is punishable by a suspension of licence for one month at minimum, and publication of the name of the offender and the employing company.

Table 18: Brokerage Offences Relating to Brokerage Practices
(Against clients and/or employing companies)

<table>
<thead>
<tr>
<th>Section(s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/Compensation</th>
<th>Adjudicating Unit(s)</th>
<th>Compoundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 1.2 Lack of Fiduciary Duty No. SorKor. 49/2009, Clause 14</td>
<td>Front running practices</td>
<td>Administrative</td>
<td>Suspension of licence for 6 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

286 Ibid.
287 Ibid.
<table>
<thead>
<tr>
<th>Section (s)</th>
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</tr>
</thead>
<tbody>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 1.2 Lack of Fiduciary Duty + No. SorKor. 49/2009, Clause 14</td>
<td>Using clients’ accounts to trade for oneself or for third parties</td>
<td>Administrative</td>
<td>Suspension of licence for 6 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 1.2 Lack of Fiduciary Duty + No. SorKor. 49/2009, Clause 14</td>
<td>Churning</td>
<td>Administrative</td>
<td>Suspension of licence for 6 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 2.4 Contravention of Securities and Exchange Commission Regulations and Professional Ethics + No. SorKor. 49/2009, Clause 14</td>
<td>Giving incomplete or improper advice to clients</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.1 Failure to Meet Professional Standard + No. SorKor. 49/2009, Clause 14</td>
<td>Trading without client instructions, or with the instruction to make trading decisions on behalf of the clients on a regular basis</td>
<td>Administrative</td>
<td>Suspension of licence for 3 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Section (s)</td>
<td>Offence</td>
<td>Type of Offence and Proceedings</td>
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<td>Adjudicating Unit (s)</td>
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<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.1</td>
<td>Acting in support or cooperating with clients in conducting financial transactions that are not suitable to the clients' financial conditions</td>
<td>Administrative</td>
<td>Suspension of licence for 3 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.1</td>
<td>Helping clients to secure off-market loans for the purpose of securities trading</td>
<td>Administrative</td>
<td>Suspension of licence for 3 months at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.2</td>
<td>Taking trading instructions from third parties other than clients or from those who have proxies from the clients</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
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<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.2</td>
<td>Acting beyond duties assigned by securities companies</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Section (s)</td>
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<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.2 Acting Without Adequate Care + No. SorKor. 49/2009, Clause 14</td>
<td>Giving assurance to clients on future profits from trading</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.2 Acting Without Adequate Care + No. SorKor. 49/2009, Clause 14</td>
<td>Interfering with clients’ assets</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 3.2 Acting Without Adequate Care + No. SorKor. 49/2009, Clause 14</td>
<td>Failing to place clients’ trading orders in their chronological orders, unless expressly advised by the customers’ instructions</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

2 Offences Against Securities Market and/or General Public

(a) Offences Relating to Unfair Trading Practices

Unlike the offences in the previous category, brokerage offences in this category are not committed directly against, or with the intention to cause damage to, a particular person or a company but against the public as a whole or as infringements against market regulations. The most severe offences in this category are ones relating to unfair trading practices under the Securities
Exchange Commission Act B.E. 2535 (1992) comprising the offences of misstatement, insider trading, and market manipulation, respectively.

The offence of misstatement can be found in section 240 of the Securities and Exchange Act B.E. 2535 (1992). During the course of their work, securities brokers may commit the offence of misstatement as principal offenders by disseminating false reports for their own benefit, as joint principals if such benefits are shared between them and their clients or their employing companies, or as accessories before the fact if their actions help facilitate the commission of the offence or help conceal evidence. Under section 296 of the Act, principal offenders are punishable by an imprisonment not exceeding two years or a fine not exceeding two times the benefit received but not less than 500,000 baht, or both. Those who are considered accessories before the fact are liable to two thirds of the punishment.288

The second brokerage offence relating to unfair trading practices is that of insider trading, which can be found in section 241 of the Securities and Exchange Act B.E. 2535 (1992). The brokerage offence of insider trading is one of the more severe brokerage offences in the Thai securities market. During the course of their work, securities brokers often have access to information not available to the public, such as business decisions yet to be announced or deals being negotiated. The Thai securities law forbids securities brokers from using such information to gain any benefit, such as purchasing or selling shares at a profit for themselves or their employing companies, or advising clients to do so. If brokers engage in the trade or give trading advice based on insider information, their actions would constitute a criminal offence which is punishable by imprisonment not exceeding two years or a fine not exceeding two times the benefit received but not less than 500,000 baht, or both.289 In addition, section 242 of the Act further enables the SEC Office to request the offenders to deliver the benefit they gained from the trade or from the disclosure of such information to the SEC Office in addition to the imprisonment and/or fine.

288 Penal Code s 86.
The third and last brokerage offence in this sub-category is that of market manipulation in section 243 of the *Securities and Exchange Act B.E. 2535 (1992)*. The provision aims to deter high volume investors from purchasing or selling shares in great volume or in any continuous ways to mislead the public and gain benefit from such unscrupulous trading. To successfully commit the offence of market manipulation, the offenders must have substantive funds to cover the purchase and the sale of particular shares in large volume to the extent that it drives the price of shares in the way intended. Therefore, it is unlikely that a securities broker would commit the offence on his or her own, but rather as a joint principal or as an accessory, depending on his or her level of involvement as determined by the courts. Similar to the two offences in this category above, the offender, if found guilty, is punishable by imprisonment not exceeding two years or a fine not exceeding two times the benefit received but not less than 500,000 baht, or both, while the accessory is liable to two thirds of the said punishment.

In addition to criminal sanctions stated above, the SEC imposes further administrative sanctions upon the offenders, principals and accessories of the offences relating to unfair trading practices. *The SEC Notification No. KorWor. 12/2011* designates the offence of committing or acting in support of unfair trading practices in *Group 2.1 Contravention of the Securities and Exchange Act B.E. 2535 (1992)* that is administratively punishable by a revocation of licence and a prohibition on re-application for two years at minimum as well as publication of their names and names of their employing companies.
<table>
<thead>
<tr>
<th>Section (s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/ Compensation</th>
<th>Adjudicating Unit (s)</th>
<th>Compoundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>240 of the Securities and Exchange Act B.E. 2535 (1992)</td>
<td>Misstatement</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 2 years or a fine not exceeding two times the benefit received but not less than 500,000 baht, or both</td>
<td>Criminal Courts</td>
<td>No, however the offence can be settled by paying a fine as determined by the Settlement Committee</td>
</tr>
<tr>
<td>241 of the Securities and Exchange Act B.E. 2535 (1992)</td>
<td>Insider Trading</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 2 years or a fine not exceeding two times the benefit received but not less than 500,000 baht, or both. Confiscation of benefit gained from the trade or from the disclosure of such information</td>
<td>Criminal Courts</td>
<td>No, however the offence can be settled by paying a fine as determined by the Settlement Committee</td>
</tr>
<tr>
<td>243 of the Securities and Exchange Act B.E. 2535 (1992)</td>
<td>Market Manipulation</td>
<td>Criminal</td>
<td>Imprisonment not exceeding 2 years or a fine not exceeding two times the benefit received but not less than 500,000 baht, or both</td>
<td>Criminal Courts</td>
<td>No, however the offence can be settled by paying a fine as determined by the Settlement Committee</td>
</tr>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 2.1 Contravention of the Securities and Exchange Act B.E. 2535 (1992)</td>
<td>Committing or Acting in Support of Unfair Trading Practices</td>
<td>Administrative</td>
<td>A revocation of licence and a prohibition on re-application for 5 years at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendati on from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
(b) Offences Relating to Money Laundering

The second group of offences that securities brokers may commit against the security market and/or the public contains offences relating to money laundering. In Thailand, the law that governs and criminalises money laundering is the *Anti-Money Laundering Act B.E. 2542 (1999)*.

During the course of their work, a securities broker may knowingly or unknowingly assist his or her clients in laundering money by facilitating or commissioning the purchase and/or the sale of shares with money from unidentified sources. If the broker, knowing of the money-laundering intent, gives such assistance, he or she would be guilty as an accessory to the crime. Unlike any other criminal provisions in the Thai legal system, section 7 of the *Anti-Money Laundering Act* provides that an accessory shall be liable to the same penalties as a principal, which are imprisonment for a term of one to ten years, a fine of 20 000 baht to 200 000 baht, or both. Apart from the criminal sanctions, the SEC further imposes administrative sanctions upon the offending broker in the form of a revocation of licence and a prohibition on re-application for two years at minimum, as well as publication of the offender's name and his or her employing company.

Table 20: Brokerage Offences Relating to Money Laundering

<table>
<thead>
<tr>
<th>Section(s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/Compensation</th>
<th>Adjudicating Unit(s)</th>
<th>Compoundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 of the Anti-Money Laundering Act B.E. 2542 (1999)</td>
<td>Money Laundering</td>
<td>Criminal</td>
<td>Imprisonment of 1 to 10 years and a fine of 20 000 to 200 000 baht, or both</td>
<td>Criminal Courts</td>
<td>No</td>
</tr>
</tbody>
</table>

290 *Anti-Money Laundering Act B.E. 2542 (1999)* s 60.
291 The SEC Notification No. KorWor. 12/2011, Group 2.2 - Committing or acting in support of offences relating to securities trading under other pieces of law (e.g. money laundering).
<table>
<thead>
<tr>
<th>Section (s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/Compensation</th>
<th>Adjudicating Unit (s)</th>
<th>Compound -able</th>
</tr>
</thead>
<tbody>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 2.2 Contravention of Other Law</td>
<td>Committing or acting in support of offences relating to securities trading under other pieces of law, e.g. money laundering</td>
<td>Administrative</td>
<td>Revocation of licence and a prohibition on re-application for 2 years at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

(c) Offences Relating to Brokerage Practices

The last group of brokerage offence contains offences relating to brokerage practices committed against the securities market and/or the general public. Six offences in this group are exclusively administrative and are found in various notifications of the SEC Office and the SET.

The first is the offence of concealment of information or submission of false information in the licence application process. To obtain relevant types of brokerage licence, an applicant has to submit various documents including their educational background, work experience, and test scores for different examination modules to the SEC Office. It is very important that the applicant submits accurate information and reveals information required such as whether they have prohibited characteristics making them unfit to hold the licences. If any securities broker is later found to conceal required information and/or submit false documents during the application process, he or she is subjected to an administrative punishment of a revocation of licence and a prohibition on re-application for five years at minimum, as well as publication of the name of the offender and his or her employing company.

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292 The SEC Notification No. KorWor. 12/2011, Group 1.1 Dishonesty; No. SorKor. 49/2009 cl 14.
293 The CMSB Notification No. TorThor. 37/2553 (2010).
The second offence is that of placing improper trading orders.\textsuperscript{294} When a client wishes to purchase or sell shares, he or she can either make orders via the traditional channel or the Internet channel. If the broker places such orders in certain improper ways as prescribed in the SET’s Notifications No. KorKor/Wor. 3/2010 and No. BorSor/Saw 01-06/2007, either by his or her own intention or as an accomplice to the fraudulent client, he or she would be administratively sanctioned. It is interesting to note that both the SEC and the SET have jurisdiction over the offence of placing improper trading orders although with different punishments. The punishments available to the SEC are a suspension of licence for one month at minimum, and publication of the offender’s name and his or her employing company, whereas the punishments available to the SET are a fine of not more than 500 000 baht, and publication of the offender’s name.

The third offence, and one of the most common contraventions of the Thai securities market regulations, is a failure to properly record trading orders.\textsuperscript{295} In cases where a client engages in trade via the traditional channel, the broker has an important duty to make sure that such voice orders are properly recorded for evidential purposes by asking the client to make a call through the securities company's phone numbers, rather than through the broker's personal mobile numbers. If any broker fails to properly record the order, he or she is subjected to an administrative punishment of a suspension of licence for one month at minimum, and the publication of the offender’s name and the name of his or her employing company.

The fourth offence in this group is an administrative offence of trading securities while an analysis is being prepared or within three working days after the analysis has been disseminated (commonly known as 'blackout period').\textsuperscript{296} The reason for such prohibition is that an analyst who is preparing an analysis of a particular share may have access to material information that is not yet publicly

\textsuperscript{294} \textit{The SEC Notification No. KorWor. 12/2011, Group 2.3 Contravention of the Stock Exchange of Thailand Regulation on Improper Trading Orders.}
\textsuperscript{295} \textit{Ibid, Group 2.4 Failure to properly record trading orders.} This offence is one of the focus offences of this research.
\textsuperscript{296} \textit{Ibid, Group 3.1 Engaging in trade during the blackout period.}
disclosed. If the analyst and his or her colleagues in the same securities company are not prohibited from trading such securities during the blackout period, they can easily use insider information to gain personal profits at the detriment of the general public. Brokers contravening this prohibition are subjected to an administrative punishment of a suspension of licence for three months at minimum, and publication of the offenders’ name and the names of their employing companies.

The fifth and sixth administrative offences are closely linked. They are the offence of disclosing trading IDs to other persons and the offence of using trading IDs of other persons. The exclusive use of one’s personal trading ID is important since the system records all trading activities of the owner of each unique ID and notifies responsible officers if there is any unusual trading practice under that ID. Disclosing trading IDs to other persons and using others’ trading IDs can, therefore, lead to serious offences. Securities brokers who commit these wrongdoings are subjected to administrative punishments administered by the SET ranging from a probation order to a prohibition from working in any securities company not exceeding one year, together with a fine from 10,000 to 100,000 baht.

Table 21: Brokerage Offences Relating to Brokerage Practices
(Against the security market and/or the general public)

<table>
<thead>
<tr>
<th>Section(s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/Compensation</th>
<th>Adjudicating Unit(s)</th>
<th>Compound -able</th>
</tr>
</thead>
<tbody>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 1.1 Dishonesty + No. SorKor. 49/2009, Clause 6 + The CMSB Notification No. TorThor/Nor/Kor. 37/2010, Clause 6 (3)</td>
<td>Concealment of information from or submission of false information to the SEC Office in the licence application process</td>
<td>Administrative</td>
<td>Revocation of licence and a prohibition on re-application for 5 years at minimum, and the publication of the offender’s name and his or her employing company</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

297 The SET Notification No. BorSor/Saw 01-20/2000; The CMSB Notification No. TorThor/Nor/Kor. 37/2010.
<table>
<thead>
<tr>
<th>Section(s)</th>
<th>Offence</th>
<th>Type of Offence and Proceedings</th>
<th>Penalties/Compensation</th>
<th>Adjudicating Unit(s)</th>
<th>Compoundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>The SEC Notification No. KorWor. 12/2011, Group 2.3</td>
<td>Placing improper trading orders</td>
<td>Administrative</td>
<td>Fine of not more than 500 000 baht, and publication of the name of an offender</td>
<td>The Stock Exchange of Thailand</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Contravention of Stock Exchange of Thailand Regulation on Improper Trading Orders + The SET Notification No. KorKor/Wor 3/2010 + No. BorSor/Saw 01-06/2007, Sanction Table</td>
<td></td>
<td></td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company.</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td></td>
</tr>
<tr>
<td>The SEC Notification No. Kor/Wor. 12/2011, Group 2.4</td>
<td>Failing to properly record trading orders</td>
<td>Administrative</td>
<td>Suspension of licence for 1 month at minimum, and the publication of the offender’s name and his or her employing company.</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Contravention of the Securities and Exchange Commission Regulations and Professional Ethics + No. SorKor. 49/2009, Clause 14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The SEC Notification No. Kor/Wor. 12/2011, Group 3.1</td>
<td>Trading securities while an analysis is being prepared, or within three working days after the analysis has been disseminated</td>
<td>Administrative</td>
<td>Suspension of licence for 3 months at minimum, and the publication of the offender’s name and his or her employing company.</td>
<td>The Office of Securities and Exchange Commission (with a recommendation from the CMPDC)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Failure to Meet Professional Standard + No. SorKor. 49/2009, Clause 14</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>The SET Notification No. BorSor/Saw 01-20/2000 and The CMSB Notification No. TorThor/Nor/Kor. 37/2010.</td>
<td>Disclosing trading IDs to other persons</td>
<td>Administrative</td>
<td>Probation order to enforce a prohibition from working in any securities company not exceeding 1 year, and a fine from 10 000-100 000 baht</td>
<td>The Stock Exchange of Thailand</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Section(s)</td>
<td>Offence</td>
<td>Type of Offence and Proceedings</td>
<td>Penalties/Compensation</td>
<td>Adjudicating Unit(s)</td>
<td>Compound -able</td>
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<tr>
<td>The SET Notification No. BorSor/Saw 01-20/2000 and The CMSB Notification No. TorThor/Nor/Kor. 37/2010.</td>
<td>Using trading IDs of other persons</td>
<td>Administrative</td>
<td>Probation order to enforce a prohibition from working in any securities company not exceeding 1 year, and a fine from 10 000-100 000 baht</td>
<td>The Stock Exchange of Thailand</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

II Governing Bodies

The current Thai anti-brokerage fraud regime comprises multiple government agencies and private institutions taking part in different roles and capacities, from policymaking, regulatory formulation, real-time monitoring, investigation of infringement, prosecuting, to imposing sanctions upon the offenders. These agencies and institutions’ roles sometimes overlap creating tension between them, as well as confusion for all stakeholders. This section examines the roles of each agency or institution in the anti-brokerage fraud regime with reference to both administrative and criminal proceedings.

A The Securities and Exchange Commission (SEC)

The Securities and Exchange Commission is the main regulatory body of the Thai securities market. The roles and the structure of the SEC and its office and sub-committees can be found in Chapter 2. In the anti-brokerage fraud regime, the SEC regulatory role begins with its Capital Market Supervisory Board (CMSB) who formulates framework regulations concerning securities businesses and securities trading practices, such as securities business and brokerage licensing regulations and model brokerage conducts. The Office of Securities and Exchange Commission (the SEC Office) then takes responsibility to manage and issue further regulations at the operational level as well as enforcing such regulations upon member securities companies and brokers.
Within the SEC Office’s structure, the division directly responsible for the anti-brokerage fraud regime is the Market Intermediaries Division, and within the division, there are the Licensing Department, the Intermediaries Supervision and Development Department, and the Intermediaries Inspection Department. The Licensing Department is responsible for the approval and the renewal of all securities business licences, including securities company licences and brokerage licences. The department is also responsible for the review of complaints against licenced brokers as well as conducting investigation and gathering information on the misconduct.\(^{298}\) The Intermediaries Supervision and Development Department then has a duty to supervise the operation of securities companies in general,\(^{299}\) while the Intermediaries Inspection Department is specifically tasked with the review of complaints against securities companies and their executives.\(^{300}\) If a brokerage offence has been detected, the aforementioned three departments in each case then work closely with the Litigation Department and the Capital Market Personnel Disciplinary Committee (CMPDC) to impose a proper form and level of administrative sanctions upon the offenders.\(^{301}\) In cases where criminal proceedings are to be pursued instead, the Litigation Department then prepares case files and passes them to the relevant agencies, such as the Economic Crime Investigation Division (ECID), the Royal Thai Police, or the Department of Special Investigation (DSI) for further investigation and criminal prosecution.

B **The Stock Exchange of Thailand (SET)**

The general information and the structure of the SET can be found in Chapter 2. In its capacity as a regulatory agency, the Stock Exchange of Thailand is the second primary regulator in the anti-brokerage fraud regime apart from the SEC. As the operator of the stock exchange, the SET main regulatory function is to monitor all trading orders in the trading system as well as the changes in the price of all listed securities via its computerised systems for market


\(^{299}\) Ibid cl 7.

\(^{300}\) Ibid cl 14.

\(^{301}\) Ibid cl 8.
surveillance.\textsuperscript{302} In cases where the system detects any abnormal movement, the Market Surveillance Department will make a preliminary investigation. If there is a likelihood of infringement, the case files will be sent to the SEC Office for further investigation, administrative punishment, and/or criminal prosecution.\textsuperscript{303}

Nevertheless, in certain offences, which are those of market manipulation, of placing improper trading orders, and others relating to the use of traders’ IDs, the SET is the primary regulator with a judicial power to investigate the incident and impose sanctions by itself. Note that, unlike the SEC that can only impose administrative sanctions upon offending brokers, the SET can further impose a monetary fine on both the offending broker and his or her employing securities company.

\textit{C. Economic Crime Investigation Division, the Royal Thai Police (ECID)}

The Economic Crime Investigation Division is a division in the Central Investigation Bureau, Royal Thai Police. The ECID is responsible for the investigation and enforcement of a wide range of offences, including offences relating to securities and banking. According to the publicised governance structure of the ECID, there is one administrative sub-division and five investigating sub-divisions, in which the 5\textsuperscript{th} sub-division is responsible for the investigation of offences relating to securities and banking.

Under the current anti-brokerage fraud regime, the ECID has two functions. The first function is to conduct further investigation after it has received a criminal complaint from the Litigation Department of the SEC Office, in the case the SEC Office opts to pursue criminal sanctions for serious wrongdoings. After the investigation has been concluded, the ECID will send the case files to the Office of The Attorney General (OAG) for prosecution in the Courts of Justice. The second function of the ECID is where injured investors file claims against securities


\textsuperscript{303} Ibid.
brokers and/or securities companies for criminal offences, including fraud, misappropriation, or fabrication of documents. The ECID, as a specialised unit of the Royal Thai Police Force, conducts an investigation. If there is a valid ground, they will again forward the case files to the OAG for further prosecution.

D Department of Special Investigation, Ministry of Justice (DSI)

The Department of Special Investigation, established relatively recently in 2002, is a law enforcement agency within the Ministry of Justice. The DSI’s missions are to prevent, suppress, and control serious crimes, by taking over the investigatory power of the Royal Thai Police for specific types of serious offences that are listed in the Annex of the Special Case Investigation Act B.E. 2547 (2004). Brokerage and securities offences under the Securities and Exchange Act B.E. 2535 (1992) are also included in the Annex. Nevertheless, only complex cases that require special inquiry, investigation, and collection of evidence, and/or cases that might have a serious effect upon public order and morals, national security, international relations, or the national economy or finances, are under the investigative jurisdiction of the DSI. If the case in question does not possess one of the above characteristics, the Royal Thai Police retain investigative power over the matter.

In practice, the number of securities cases so far investigated by the DSI is very small, due to most infringements being internally and administratively dealt with by the SEC Office, and only a small number of cases are criminally prosecuted. In addition, most cases that go through the criminal proceedings are filed with the ECID rather than with the DSI due to the limited investigative jurisdiction of the DSI as mentioned above. From the records, securities cases that have been investigated by the DSI exclusively concern large scale market manipulation, insider trading, and public fraud, such as the case of Somchai Chaisrichawla who

305 The main reason for the limited jurisdiction of the DSI is that, at the time of the DSI establishment, there was a strong political opposition from the Royal Thai Police. The Royal Thai Police feared that the DSI would take away its importance and power. The government at the time, therefore, reached a compromise by limiting the DSI’s scope of power to very complicated or nationally scandalous cases.
was accused of manipulating the share price of Asia Metal Public Company Limited,\textsuperscript{306} and the case of Shine Bunnag and others who were accused of manipulating prices of 12 securities during 2008-2010.\textsuperscript{307}

E Office of the Attorney-General (OAG)

Office of the Attorney-General is an autonomous legal agency responsible for criminal prosecution, representation of government in court in civil cases, provision of legal advice to government agencies, and cooperation with international institutions in criminal matters.\textsuperscript{308} The OAG has 47 departments responsible for different functions of the OAG as well as different areas of law. The Department of Economic Crime Litigation, in particular, specialises in the areas of financial law and law relating to natural resources.\textsuperscript{309} In the anti-brokerage fraud regime, when the SEC Office decides to pursue criminal sanctions against offenders, it will initiate proceeding by filing the case with either the ECID or the DSI for further investigation. When the investigation is concluded, the case file will be forwarded to the OAG for prosecution, if appropriate. Responsible public prosecutors have discretion to either institute a criminal case in the Courts of Justice, or drop the case if they determine that the evidence is insufficient, or such prosecution is not in the country's best interest.\textsuperscript{310}

F The Courts of Justice

In the anti-brokerage fraud regime, the Courts of Justice have duties to examine evidence and to adjudicate criminal charges preferred by the OAG or by the victims themselves. If the presiding judges find accused individuals or corporations guilty as charged, they will use their discretion to impose the appropriate forms and magnitude of criminal sanctions based on a range of

\textsuperscript{308} Office of The Attorney General <www.ago.go.th>.
\textsuperscript{309} Office of The Attorney General, Department of the Economic Crime Litigation <www.eco.ago.go.th>.
sanctions prescribed in the relevant sections of each offence. The current forms of individual sanction employed in the brokerage offences are forfeiture of property, fine, confinement, and imprisonment, while the corporate sanctions are forfeiture of property and fine, respectively. Apart from the criminal prosecution, the victims may also seek compensation from the offenders who cause damage upon them by infringement of brokerage law and regulations. For such civil claims, the OAG has no power to institute the proceedings on behalf of the victims or include the claims with the criminal motions. Instead, victims must enter civil claims themselves in separate lawsuits.

G The Administrative Courts

Before 1997, Thailand employed a single court system where the Courts of Justice has jurisdiction over every lawsuit. However, the 1997 Constitution established two new courts by taking away jurisdiction over cases concerning the interpretation of the Constitution and cases concerning administrative law and the exercise of power by administrative agencies from the Court of Justice and giving them to the newly established Constitutional Court and Administrative Courts, respectively. In the current anti-brokerage fraud regime, the role of the Administrative Courts is to review the legality of administrative orders of the SEC such as the imposition of administrative sanctions under the Securities and Exchange Act B.E. 2535 (1992).  

311 In the Thai criminal law system, punishments are always stipulated in a range, eg. an imprisonment from 5 to 10 years, or a fine not exceeding 100,000 baht, or both.
312 There is a small exception in cases where the offences are theft, snatching, robbery, piracy, extortion, swindling, misappropriation, or receipt of stolen property. The OAG may include the claim for the restitution of the properties on behalf of the victims in the criminal proceedings. See, Criminal Procedure Code ss 43, 44.
313 Under Section 9 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), the Administrative Courts have jurisdiction over the following matters: (1) a case involving a dispute in relation to an unlawful act by an administrative agency or State official; (2) a case involving a dispute in relation to an administrative agency or State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay; (3) a case involving a dispute in relation to a wrongful act or other liability of an administrative agency or State official arising from the exercise of power under the law or the by-law, from the administrative order or other order, or form the neglect of official duties required by the law to be performed or performed with unreasonable delay; (4) a case involving a dispute in relation to an administrative contract; (5) a case prescribed by law to be submitted to the Administrative Courts by an administrative agency or State official for mandating a person to do a particular act or refraining from doing a particular act; and (6) a case
The Association of Thai Securities Companies was established in 1973 as the ‘Thai Finance and Securities Trading Association’. The name of the association has been changed several times resulting in the current name ‘Association of Thai Securities Companies’ being formally adopted in 2011.\textsuperscript{314}

Members of the ASCO are all securities companies that operate their securities business in the SET. As of May 2016, the ASCO has 41 member companies. The members have a duty to comply with the ASCO regulations and business ethics, such as conducting their business in a fiduciary manner, treating clients fairly and without prejudice, and keeping clients’ information secured and confidential.\textsuperscript{315} One of the most important ASCO regulations relating to brokerage fraud is the Notification of Association of Thai Securities Companies Re: Rules on Securities Trading of Employees and Directors of Securities Companies. This notification lays down requirements and procedures that securities brokers have to strictly follow before they can put engage in securities trading for themselves. If the member securities companies fail to comply with the regulations, they are punishable by a probation order, a corporate fine, and a loss of membership and associated rights, respectively.\textsuperscript{316} One of the other important activities of the ASCO is the establishment of the ASCO Training Institute (ATI) to provide training courses and brokerage licensing examinations for interested members of the public.

\textsuperscript{314} The Association of Thai Securities Companies has the following objectives: (1) to develop and promote the country’s capital and securities market, (2) to protect and safeguard member companies, (3) to improve the standard of business operations, (4) to cooperate with regulatory agencies in drafting rules and regulations in order to develop the infrastructure of the Thai capital market. See, The Association of Thai Securities Companies, Objectives <http://www.asco.or.th/about-objective.php>.

\textsuperscript{315} Association of Thai Securities Companies’ Rules and Regulations cl 15, 26.

\textsuperscript{316} Ibid cl 28.
III Enforcement Activities and Legal Proceedings

To regulate brokerage conduct and deter offences described in the previous section, the Thai anti-brokerage fraud regime comprises different enforcement activities in multiple stages. This section aims to describe the enforcement activities administered by relevant agencies, starting from preventive measures, surveillance and detection, to legal proceedings after wrongdoings have been detected and offenders identified.

A Preventive Measures

The primary tool that the Thai regime employs to deter brokerage offences is preventive measures. These measures are the first type of protection of clients and the general public from harm done by dishonest brokers. There are a number of measures that are currently in force. Some measures establish personnel screening processes. Others aim to increase the level of knowledge and legal perception of the brokers. Still others make it more difficult for unscrupulous brokers to access information and funds that are essential to the wrongdoing. These measures can be classified as those that are directly imposed upon brokers and those imposed upon employing securities companies.

(a) Preventive Measures Imposed upon Securities Brokers

(i) Personnel Screening

The first and foremost preventive measure that relevant agencies apply to regulate brokerage conduct is personnel screening. In order to work as securities brokers in securities companies, one has to obtain a relevant brokerage licence from the SEC Office. During the licence application process, the SEC Office would thoroughly examine the characteristics and qualifications of the applicants. The applicants have to show that they have the required educational background and work experience. Furthermore, they must not have prohibitive

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317 See details in Chapter 2.
characteristics prescribed by the law, for example having criminal records relating to financial offences.

(ii) Knowledge Testing and Training

The second preventive measure is knowledge testing during the licence application process and during the ongoing continuing education required after the brokers have obtained their licences. The SEC Office together with the Thailand Securities Institute (TSI) have developed training courses and testing modules that applicants must pass before applying for licences. There are modules that test the applicants’ financial knowledge and modules that examine the applicants’ knowledge on the current securities law, regulations, and ethics. To pass these latter modules, applicants must achieve a minimum score of 70%, which some extent may indicate that they have an adequate level of knowledge of both the financial and regulatory sides of the brokerage practices.

After brokers have obtained their licences and started working for securities companies, they would normally receive work guidelines detailing standard work procedures and best practices, which include rules that they have to follow in order to attain the good standard of services as well as to avoid infringement of the law or of stock market regulations. In some leading securities companies, brokers may also receive further training administered by companies to enhance their knowledge and familiarise them with financial regulations. Nevertheless, in order to make certain that every broker has adequate and up-to-date financial and regulatory knowledge, the brokerage licences are valid for two years only. To apply for a renewal of licences, every broker is required to attend a fifteen-hour-minimum knowledge refresher course, covering an update on financial regulations and ethics before their licence can be renewed.318

(iii) Strategic Dissemination of Information and News

The third preventive measure is strategic dissemination of information and news relating to regulations and enforcement activities. In order to deter any wrongdoing, it is important that potential offenders are made aware that the law is being enforced and those who commit such offences have been apprehended and punished. In this case, securities brokers must be constantly reminded that the SEC and the SET take brokerage offences seriously and a number of their colleagues have been criminally and administratively punished for infringements. The SEC and the SET have, therefore, actively disseminate news of their enforcement activities and punishments imposed upon offenders through various channels that securities brokers are expected to pay attention to during the course of their work.\footnote{Comparing to other law enforcement and regulatory agencies in Thailand, the SEC and the SET are the only two agencies that currently provide up-to-date statistics and news on enforcement activities in their websites and other documents available to the general public.}

As for the SEC, it regularly reports its enforcement activities and punishments imposed upon offenders in the SEC New Releases, which are prominently published on the first page of the agency’s website,\footnote{The Securities and Exchange Commission, Search SEC News <capital.sec.or.th/webapp/webnews/newSearchNews.php?lg=en&lang=en>}. In addition to the news releases, the SEC also communicates important regulatory updates and practice guidelines in the form of circulars and leaflets as well as providing important enforcement statistics in its quarterly and annual reports. As for the SET, in addition to the SET New Release and various leaflets, the Exchange also has an associated television channel called ‘Money Channel’\footnote{Money Channel <www.moneychannel.co.th>}, as well as a magazine called ‘Money and Wealth’, which sometimes issues reports on pending cases in courts as well as administrative punishments and monetary fines imposed by the SEC. Apart from the information disseminated by the regulatory agencies, most securities companies, if not all, also have internal communication systems, including electronic newsletters and periodic circulars, to notify their employees of new regulations and important movements in the industry.

\footnote{Comparing to other law enforcement and regulatory agencies in Thailand, the SEC and the SET are the only two agencies that currently provide up-to-date statistics and news on enforcement activities in their websites and other documents available to the general public.}

\footnote{Money Channel <www.moneychannel.co.th>}.
(b) Preventive Measures Imposed upon Securities Companies

(i) Client Asset Protection

The first preventive measure against brokerage offences that the SEC imposes upon securities companies is mandating that securities companies have in place mechanisms protecting clients’ assets from being misappropriated or defrauded by brokers and other employees. Current SET rules include asset segregation rules (securities companies’ assets and clients’ must be segregated, and access to clients’ assets is forbidden without written authorisation from clients)\(^{322}\) and books and records rules (securities companies must maintain accurate and current records of clients’ assets and trading activities).\(^ {323}\) Also, securities companies often set out stringent internal protocols on how brokers may gain access to clients’ assets (funds, collateral, and shares). For example, many securities companies require team leaders or branch managers to confirm and co-sign withdrawal forms before the brokers can withdraw cash or shares from the clients’ accounts. Last, trading confirmation notes and tax invoices can only be posted to the clients’ registered addresses in order to prevent unauthorised trading from the clients’ accounts.

(ii) Evidential Record of Trading Orders

The second preventive measure is requiring all trading orders to be properly recorded and ready for inspection by the agencies. When the trade is done via the Internet trading channel, every order is automatically recorded in the trading system and can be traced back to the client via his or her unique IDs. In contrast, where clients give purchase or sell orders to brokers via hand-written order tickets or via verbal orders, there is no automatic system in place. To protect clients from brokerage frauds, securities companies are required to properly record such orders for evidential purposes. In the case of verbal trading orders,

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\(^ {322}\) *The CMSB Notification No. TorThor. 43/2009.*

\(^ {323}\) *The CMSB Notification No. TorThor. 63/2009.*
the SEC requires that such orders can only be made by phone calls through securities companies’ phone numbers, which are recorded at all times.324

(iii) Information Firewall

The third preventive measure is that securities companies must put in place an information firewall between brokerage departments and other departments.325 Securities companies must ensure that their employees working in retail sales and securities dealing departments do not have access to undisclosed decisions and data available to employees in advisory and business development departments. Without a credible firewall procedure, it is likely that material information would leak across departments. If the brokers in the retail sales department engage in trade or pass such information to clients for any benefit, they could be found guilty of a severe offence of insider trading, which is punishable criminally and administratively.

(iv) Internal Control and Compliance Unit

The fourth and last preventive measure that the SEC imposes upon securities companies is the requirement that securities companies establish an effective internal control system as well as compliance units to monitor employee conduct.326 These units play a key role in the anti-brokerage fraud regime since the units have the main responsibility to detect any minor infringement and assist the offending brokers to correct their wrongdoing. For serious violations, such as insider trading or misappropriation, the units are expected to promptly report the incidents to the SEC and cooperate with the agency in the investigation and further prosecution.

324 Ibid.
325 Ibid.
326 The CMSB Notification No. TorThor. 39/2012.
B Surveillance and Detection

Although a number of preventive measures have already been imposed, infringements still occur regularly. It is important that regulatory agencies have effective tools and strategies to detect such wrongdoing. This section first examines surveillance systems employed by the SET and then detection and investigation strategies of the SEC.

(a) The SET Surveillance Systems

One of the SET's main functions as the operator of the stock exchange is to monitor all trading activities with an objective to detect any abnormality that could indicate wrongdoings. The SET's Market Surveillance Department currently employs two sophisticated computerised surveillance and investigation systems called MS-Term (Market Surveillance Terminals) and SMART (Securities Markets Automated Research Trading Surveillance) for this purpose.\(^{327}\) The MS-Term is a real-time data monitoring system. It monitors all trading activities, price movements, traded volume, and purchase and sell orders that are sent to the SET Connect. The SMARTS complements the MS-Term by enhancing the effectiveness and efficiency of investigation procedures.

These surveillance and investigation systems are very useful tools for the detection of unfair trading practices: insider trading, market manipulation, and misstatement. The systems often uncover other smaller infringements by securities brokers such as churning practices or placing improper trading orders. Under the SET's current organisational structure, when the abnormalities are detected, such as sharp price rises that cannot be explained by accessible market information or suspicious trading patterns, the Securities Surveillance Sub-Unit will closely monitor such trading activities and conduct preliminary investigations. If the investigation reveals a high probability of violation of securities law and/or market regulations, the Investigation Sub-Unit will conduct

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in-depth probing and notify the SEC Office for further investigation and initiation of relevant proceedings.\(^{328}\)

\((b)\) The SEC Detection and Investigation Strategies

Regarding the SEC’s enforcement activities, the agency closely monitors securities companies’ and securities brokers’ compliance with the law and regulations. The SEC Office currently employs an inspection programme based on four strategies:\(^{329}\)

(a) A routine periodic inspection;
(b) An inspection based on risk profiles and assessments from infringement records, previous inspections, and other relevant reports;
(c) An inspection upon complaints by clients, brokers, and securities companies; and
(d) An inspection upon notifications from the SET, other government agencies, and media outlets.

During such inspection, the SEC officers are competent under section 264 of the Securities and Exchange Act B.E. 2535 (1992). In essence, SEC officers have wide inspecting powers including:

(a) A power to enter into the place of business or premises of a securities company, a commercial bank, the Securities Exchange, over-the-counter centre, clearing house, securities depository centre, securities registrar, or the place where the data of such institutions is collected or processed by computer, during the hours between sunrise and sunset, or during the business hours of such places;
(b) A power to inspect and seise accounts, documents or evidence related to the commission of offences;
(c) A power to order any person to testify or to deliver copies of present

\(^{328}\) Ibid.
accounts, documents, seals, or other evidence related to the businesses, operations, assets and liabilities of such securities company or institution; and

(d) A power to order any person who purchases or sells securities with or through a securities company to testify or deliver copies of present accounts, documents, and other evidence related to the purchase or sale of securities.

After the inspection is completed, if there is adequate evidence that any brokerage offence or regulatory infringement has occurred and the offender can be identified, the SEC officers will initiate administrative proceedings followed by criminal proceedings, if necessary.\textsuperscript{330}

\textit{C Administrative Proceedings}

\textbf{(a) The SEC Administrative Proceedings}

The administrative proceedings administered by the SEC Office are the main proceedings of the current Thai anti-brokerage fraud regime. When the SEC Office uncovers infringements via its own investigation, or receives notifications from the SET, clients’ complaints, or news media, the SEC Enforcement Division provides preliminary consideration as to whether there is a ground for initiating the case. If there is a valid one, responsible officers open the case and launch an in-depth investigation. In executing their investigatory duties, officers have wide powers as described in the previous section. If the investigation indicates that a violation has occurred, the officers will instigate the administrative proceedings by presenting the case to the Capital Market Personnel Disciplinary Committee (CMPDC). The CMPDC consider facts, evidence, and other relevant factors, before giving recommendations on the proper form and the magnitude of the

\textsuperscript{330} See details below.
administrative sanction to the SEC Office to be imposed upon the offending broker.  

If an offending broker does not agree with the administrative order, he or she may, first, file an appeal to the SEC Office. If the SEC Office agrees with the appeal, it will revoke or amend its order as such. However, if the SEC Office disagrees with the appeal, it will submit the case to the Board of the SEC for further review. After the Board of the SEC has informed the appellant of its consideration, if the appellant still disagrees with the order, he or she may then file a case with the Administrative Courts of First Instance. The judge in charge of the case will then initiate inquisitorial proceedings to review the SEC’s administrative order. In delivering judgment, the courts can either confirm the SEC’s penal order or revoke such order altogether. The courts cannot alter the form and/or the magnitude of the sanction imposed upon offending brokers. If the appellant disagrees with the Administrative Court of First Instance’s decision, he or she can further appeal against the judgment to the Supreme Administrative Court. The judgment of the Supreme Administrative Court is considered final.

Between 2001 and 2013, there were four hundred and six administrative cases relating to brokerage frauds and related violations sanctioned by the Office of the SEC. Four hundred and three cases were committed by brokers who held investment consultant licenses while only three cases were committed by those holding the investment analyst licenses. Among these cases, seventy-one cases involved the focus offence of failing to properly record trading orders, sixty-seven offences of making trading decisions on behalf of clients, seventy-seven offences of using a client’s account for one’s own benefit, and thirty offences of deception and misappropriation. Four further notable points can be observed

331 The available forms of sanction are reprimand, a suspension of licence, and a revocation of licence.
333 Ibid s 72.
334 Ibid s 73.
335 Ibid s 73 cl 4.
336 See details in Appendix 3.
Firstly, administrative offences administered by the SEC were constantly added, removed, and reclassified due to changes in enforcement policies, market conditions, and industrial practices. For example, cases relating to the offence of giving rebates to clients were frequent prior to 2004. After that, not a single case was sanctioned. This could largely be attributed to the change in the broker's remuneration system.\textsuperscript{337} The other example is, prior to 2011, there were few cases relating to the offence of failing to properly record trading orders. Meanwhile from 2011 onwards, due to the reclassification of offences and changes in the SEC's enforcement policy, a large number of brokers were penalised for committing such a violation.\textsuperscript{338}

Secondly, the available forms of sanction during that period (2001 to 2013) were reprimand, probation, a suspension of license, and a license revocation. Currently, probationary order is no longer applicable while reprimand is redefined as an administrative action, as opposed to a sanction. Thirdly, due to the constant reclassification of offences and changes in forms and magnitude of sanctions, it is difficult to determine the average lengths of suspension and revocation of licenses imposed on particular offences for the purpose of making comparisons. Lastly, there were few cases of recidivism. From four hundred and six cases, there were only fourteen cases (3.45 per cent) that the offenders recommitted similar or other administrative offences and were again sanctioned by the SEC Office.

\textit{(b) The SET Administrative Proceedings}

In addition to the administrative proceedings administered by the SEC in the previous section, there are administrative proceedings administered by the SET. However, the scope of the SET proceedings in the area of brokerage offences is limited to the offence of market manipulation, an offence of placing improper trading orders, and offences relating to the use of traders’ IDs.

In relation to the SET administrative proceedings, after the Investigation Sub-Unit has conducted an in-depth investigation and found that there was an

\textsuperscript{337} See details in Chapter 2.
\textsuperscript{338} \textit{The SEC Notification No.KorLorTor.Khor.Wor 12/2011.}
infringement, the Sub-Unit will initiate the proceedings by submitting the allegation and evidence to the Secretary of the Disciplinary Sub-Committee. If the Secretary finds that the case is well-grounded, he or she will give written notice to the accused broker. The accused then has to submit a written answer to the Disciplinary Sub-Committee. The Secretary will then consider this answer and prepare the case file along with his or her recommendation to the Disciplinary Sub-Committee. If the accused is found guilty, available punishments are: a reprimand, a suspension of licence, a revocation of licence, an individual fine, a corporate fine, and publication of the offender's name.

D Criminal Proceedings

After the SEC officers have initiated the administrative proceedings, as mentioned in the previous section, they have discretion to decide whether criminal sanctions should also be pursued. Due to the inherent complication of the proceedings, the lack of control over the outcomes, and the limited financial and human resources, the SEC Office has currently taken a view that criminal proceedings should only be initiated when necessary, such as when wrongdoings are severe and have significant impact upon investors or the accused has refused to cooperate in the administrative proceedings. When the criminal proceedings are to be initiated, the responsible officers will first inquire whether such wrongdoings can be settled under section 317 of the Securities and Exchange Act B.E. 2535 (1992). If the offence can be settled, as with offences relating to unfair trading practices, officers responsible will forward the case to the Settlement Committee to determine the amount of fine to be imposed. If the offender agrees to pay such amount of fine within the specified time period, the case is regarded as settled.

However, if offences cannot be settled under section 317, such as all offences stipulated in the Penal Code and certain offences in the Securities and Exchange

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339 *The SET Notification on Disciplinary Procedures and Punishment, 2000.*
341 The committee comprises three members: representatives of the Royal Thai Police Force, of the Fiscal Policy Office (Ministry of Finance), and of the Bank of Thailand.
Act B.E. 2535 (1992), or if the offender refuses to pay the determined amount of fine, the SEC Office, via its Litigation Department, moves to criminal proceedings by filing criminal complaints with the ECID or the DSI, in certain circumstances, for further investigation. When the ECID or the DSI concludes the investigation, they forward the case files to the OAG for prosecution. At the OAG, the responsible public prosecutors have discretion to either institute a criminal case in the Courts of Justice, or drop the case if they deem that the evidence is insufficient, or such prosecution is not in the country’s best interest. In the latter case, the responsible prosecutors are required to present the matter to the Attorney-General for final ruling.

Apart from the criminal cases initiated by the SEC Office, injured clients or investors may also initiate criminal proceedings by filing cases with the EICD. The ECID then conducts an investigation into the matters. If there is a valid ground, the ECID will forward the case files to the OAG for further prosecution. It should be noted that under the Thai Criminal Procedure Code, if the ECID decides that the case has no valid ground or the OAG decides to drop the case, the injured clients or investors may yet institute criminal proceedings by themselves at the relevant Criminal Courts.

When the case is prosecuted in the Criminal Court of First Instance that has jurisdiction, the accused has the right to present his or her plea as well as introducing evidence and witnesses before the Court. The Courts may decide to dismiss the case, or punish the accused according to his or her offence. If the convicted offender disagrees with the decision, he or she may file an appeal to the Courts of Appeal and the Supreme Court of Justice, respectively, under the conditions stipulated in the Criminal Procedure Code.

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344 Ibid.
345 Criminal Procedure Code s 34.
346 Ibid ss 163, 226.
347 Ibid ss 193-225.
Figure 5: The Administrative and The Criminal Proceedings in Brokerage Offences
E Civil Proceedings and the Arbitration Procedure

Although the SEC has power to administratively punish offending brokers as well as forwarding the case files to prosecuting agencies to initiate criminal proceedings, the SEC currently has no power to impose civil sanctions or pursue civil proceedings to claim compensation on behalf of injured clients. To obtain compensation from the offending brokers and/or their employing companies, the clients have to pursue civil proceedings in the civil courts by themselves by instigating the cases in the civil courts. If the judges agree with the plaintiffs’ complaints, the judges have a wide discretion to determine the amount of compensation and damages to be award, but not over the amount stated in the statement of claim.

Nevertheless, if damage suffered by clients or the dispute in question is a result of securities companies’ breach of contract or non-compliance with securities law, injured clients have another option to apply to the SEC Office for an arbitration procedure to settle disputes provided that the conditions are met.

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348 The SEC has proposed an amendment to the Securities and Exchange Act B.E. 2535 (1992) so that it has a power to impose civil sanctions: fine, confiscation of benefits gained, reimbursement of the SEC legal fee, and a ban from any transaction in the SET not exceeding five years. The draft is currently under consideration of the Ministry of Finance. See, the SEC News Release No. 86/2559 (2016), 16 September 2016.


350 Civil and Commercial Code s 438.

351 Under the SEC Notification on the Arbitration Procedure (2008), the conditions stipulated are:

(a) The damages or the amount in dispute is not exceeding one million baht per one client;

(b) The application for arbitration is submitted within six months from the date that the client perceives or should have perceived the cause of dispute and within one year after the dispute occurred;

(c) The dispute is between an individual client who entered into contracts with or utilised services of securities companies; and

(d) The client has already filed his or her complaint with the securities company according to the SEC Client Complaint Regulation but the company has not satisfactorily resolved such complaint.
IV Focus Offences for this Study

As described earlier, the current Thai anti-brokerage fraud regime covers multiple levels of wrongdoing, from high-level contraventions involving corporate executives and large-volume investors such as market manipulation and insider trading, to low-level contraventions involving securities brokers and general investors. This research focuses on four low-level brokerage frauds and regulatory violations, which from less severe to most severe are:

1) The offence of failing to properly record trading orders;
2) The offence of making trading decisions on behalf of clients;
3) The offence of using a client’s account for the broker’s own benefit; and
4) The offences of deception and misappropriation.

The justifications for choosing these four offences for case studies in this research are: (1) based on the published statistics, these low-level offences are more prevalent than other brokerage and securities offences in the Thai securities market;\(^{352}\) (2) although the damage done in each single case is usually low, the accumulated damage to the public and to the market is immense, as repeatedly emphasised by high-ranking officers of the SEC;\(^{353}\) (3) the prevalence of these frauds has a strongly negative effect upon the confidence of investors, which consequently hinders the growth of the Thai capital market;\(^{354}\) (4) while new regulations and innovative tools have been implemented to prevent the commission of these offences, including the introduction of the Automatic Transfer System (ATS) and risk-based inspections by officers, many brokers are

\(^{352}\) From 2011 to 2015, there were 320 administrative cases (excluding minor cases where the SEC Office only issued reprimands) relating to brokerage fraud and related violations, while there were 30 cases in relation to more serious unfair trading practices.


still able to find ways to circumvent the system;\textsuperscript{355} and (5) these four offences are intrinsically connected. To commit more severe offences of fraud and misappropriation, it is highly likely that offenders have previously committed lesser offences or are committing the lesser offences as a part of fraud and misappropriation. As a result it would be impossible to gain insight into the causes of fraud and misappropriation offences without also considering the other three related regulatory violations.

In each offence focused on, two notable cases are selected from the database of the SEC Office for analytical purposes. Each is selected based on offending methods and motives of offenders as well as sanctions that the SEC Office imposed on the offending brokers in each case. Note that the forms and the magnitude of administrative sanctions relating to these focus offences were significantly amended in 2011.\textsuperscript{356} Therefore, those cases derived from the SEC News Releases dated earlier than 30 June 2011 were decided under previous regulation carrying a lower magnitude of sanctions.\textsuperscript{357}

\textbf{A The Offence of Failing to Properly Record Trading Orders}

The first focus offence of this study is that of failing to properly record trading orders committed by securities brokers when taking telephone orders from clients. \textit{The SEC Notification No. KorWor. 12/2011, Group 2.4.1 Failing to properly record trading orders} is the main provision which defines and regulates this offence. It states that any securities broker who cannot provide proper records of trading orders or fails to record ticket orders in an acceptable form shall be punished by a suspension of licence from one month at minimum as well as publication of the name of the offender and his or her employing company.

Having clear and complete trading records available for revision and inspection is essential for every party participating in the securities market. For clients and

\textsuperscript{355} See details in Chapter 3.
\textsuperscript{356} \textit{The SEC Notification No. KorLorTor.Khor.Wor 12/2011}. The notification was in effect from 30 June 2011.
\textsuperscript{357} \textit{The SEC Notification No. Thor.Wor. 27/2002}.
brokers, transaction records allow them to examine purchase and sale transactions conducted in a particular period and to verify their correctness. This is especially important in providing primary evidence when there are disputes regarding the orders, such as the correctness in the execution of trade, the accuracy of information given by the brokers, or who is to blame for unexpected losses. For securities companies, the records allow them to monitor employees’ conduct and improve customer services. They can also rely on such records as the basis of settlement negotiations with clients engaged in disputes. For regulators, the records allow them to make an inquiry into the matter when there are complaints by clients or the public. The SEC Office also engages in a periodic audit of securities companies’ trading records. SEC officers are sent to examine trading documents as well as listen to voice records, which could lead to a discovery of a series of offences perpetrated such as making trading decisions on behalf of clients, unauthorised use of accounts, insider trading, market manipulations, etc.

Under the current trading system, there are three methods of recording orders, based on different trading channels. The first is a voice recording of telephone conversations between clients and brokers. Clients wanting to buy or sell shares call their broker through dedicated office telephone numbers. The conversation is recorded by the securities companies' telephone system and later inspected by the securities company's compliance department. The second method is the use of form ‘F8’. This method is specifically for clients who engage in trade at securities companies’ trading rooms. At trading day’s end, brokers produce a summary of all orders that clients have made and ask clients to put their signatures on the form. If the form has been signed, it is deemed that all trading orders have been properly recorded. The third and last method is an automated record of electronic orders made via the Internet trading channel.

There are several potential reasons for the prevalence of these violations. First, current regulation requires that for clients to send trading orders to their brokers, they must make such calls to the assigned office numbers, where the conversations are recorded officially. If clients send trading orders via other
channels, such as by calling brokers’ mobile numbers or sending emails or text messages, and brokers engage in trade per such instructions, brokers are deemed to contravene the SEC regulation. It is interesting that even if parties have attempted to create their own records, such as manually recording mobile phone conversations or keeping emails and chat logs, the SEC Office does not consider such records as evidence. Only voice recording via securities company’s office lines is deemed acceptable.

Second, the regulation does not provide a guideline as to what constitutes an acceptable voice order. As a result, there are sometimes contested issues between regulators and regulatees such as how clear the clients’ instructions have to be or whether mere trading suggestions by brokers and clients’ short acceptance constitute proper voice records as required by the regulation. The consideration is therefore at the discretion of the responsible officers on a case-by-case basis.

Third, the clients and the brokers may intentionally avoid having their conversation recorded by the system since they are contravening or attempting to contravene others regulations of the SEC or the SET, such as insider trading or market manipulation. Fourth and last, trading orders might be executed with no actual instruction whatsoever from clients. Therefore, brokers cannot provide legitimate voice records to satisfy the regulatory requirement. There are several instances where such situations may happen, including (1) brokers have been authorised to make trading decisions on behalf of their clients, (2) brokers have used clients’ accounts for their own benefit with or without clients’ consent, and (3) brokers have engaged in deception or misappropriation of clients’ assets.

To induce brokers to properly record trading orders, the Office of the SEC has employed the administrative punishment of a suspension of licence from one month at minimum and publication of an offending broker’s name as its main tool. In addition, if the violations repeatedly occur in a particular securities company, and officers determine that such violations are the result of the company’s failure to establish and maintain credible internal control and risk
management mechanisms, the officers are empowered to require the company to rectify such issues as well as imposing a criminal fine not exceeding 300,000 baht and a further fine not exceeding 10,000 baht for every day during which the violation continues. In terms of enforcement, the Office normally acts upon claims brought by injured clients. The officers ask the securities company to submit relevant records for inspection. The Office of the SEC, via its Licensing Department, also performs routine periodic inspections and ones based on risk profile and infringement records. On-site officers compare selected trading items with voice records, automated Internet trading records, and signed F8 forms. If they find that records are missing, they ask the brokers and the securities company to provide further explanations. The case files are then passed to the Capital Market Personnel Disciplinary Committee (CMPDC) to determine a proper level of sanction upon the offending brokers.

Example Cases

Case One: Nonthanasin and Mekwichai Taking Orders via Mobile Phones

The SEC Office imposed a suspension of licence on two securities brokers for failing to properly record trading orders. Mrs Ubolrat Nonthanasin of Maybank Kim Eng Securities (Thailand) Public Company Limited was suspended for one month while Mr Kowit Mekwichai of ASIA PLUS Securities Public Company Limited was suspended for two months. The suspension orders were effective from 15 May 2012. Following referral from the SET, the SEC Office launched

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359 It should be noted that example cases were chosen based on their notable facts and the offences committed, irrespective of offenders’ gender. Based on these cases, it should not be inferred that there are more female brokers/offenders than male brokers/offenders in the Thai brokerage industry. In addition, the accurate information on the ratio between male and female brokers in the Thai brokerage industry is not available from any source. For this reason, as well as the exploratory nature of this study, the gender of the personnel was not included as being one of the core factors. In addition, it is not possible to provide additional details of the facts pertaining to these example cases. Under the current system, the SEC Office only makes available a brief version of the facts to the general public, as administrative cases are deemed to be a private matter. The facts as they appear in these example cases are already an extended version specially approved and provided by the SEC Office to the researcher for the purposes of the research.
an investigation and found that Mrs Nonthasnain and Mr Mekwichai had repeatedly failed to record a large number of voice orders. The offenders claimed that they had taken clients’ orders mainly via mobile phone.

In relation to the violation committed by Mrs Nonthanasin, Maybank Kim Eng Securities (Thailand) Public Company Limited as her employer was found to be in breach of section 113 of the Securities and Exchange Act B.E. 2535 (1992) on the non-compliance of the CMSB regulation. The company accepted a criminal fine of 159 375 Baht from the Settlement Committee.\(^{361}\)

In relation to the violation committed by Mr Kowit Mekwichai, ASIA PLUS Securities Public Company Limited as his employer was found to be in breach of section 113 of the Securities and Exchange Act B.E. 2535 (1992) on the non-compliance of the CMSB regulation. The company accepted a criminal fine of 488 250 Baht from the Settlement Committee.\(^{362}\)

**Case Two: Pariyapanish Record Orders after Executing Transactions**

The SEC Office imposed a suspension of licence for two months on Miss Arporn Pariyapanish of the SCB Securities Company Limited.\(^{363}\) The suspension order was in effect from 23 January 2013. The SEC Office received a notice from SCB Securities Company Limited that one of its employees had failed to record trading orders of a number of her clients with high frequencies. It was noted that the SEC Office and the securities company had already reprimanded Miss Pariyapanish twice before for this particular infringement. Miss Pariyapanish claimed that she had mistakenly understood that using the office line to call her clients back after she had already executed their orders would satisfy the regulatory requirement. The SEC Office further clarified in *The SEC News Release No. 6/2556 (2013)* that to fully comply with the regulation, securities brokers must record the full telephone conversation including advice given and clients’ clear trading instructions before orders are executed.

\(^{361}\) *The SEC Settlement Order No. 76/2554 (2011)*, 24 November 2011.

\(^{362}\) *The SEC Settlement Order No. 77/2554 (2011)*, 24 November 2011.

B The Offence of Making Trading Decisions on Behalf of Clients

The second focus offence examined in this thesis is that of making trading decisions on behalf of clients. The SEC Notification No. KorWor. 12/2011, Group 3.1.1 Making Trading Decisions on Behalf of Clients is the main provision of this offence. It states that any securities broker who is assigned by his or her clients to make trading decisions on their behalf, and has done, shall be punished by a suspension of licence for a minimum of three months as well as by having the name of the offender and the name of his or her employing company published.

One of the most fundamental ethics of Thai securities brokers is that they must refrain from interfering with clients’ assets. During the course of their work, brokers are required to provide information and advice to their clients in a professional manner as well as acting within the scope designated by the securities company. It is important that clients make their own trading decisions. Securities brokers are strictly forbidden from making such decisions for their clients, even if clients give consent or instruct them to do so. If brokers make trading decisions in violation of this regulation, they may be administratively sanctioned. They may also be in dispute with their clients in cases where their trading decisions resulted in losses to the clients’ assets. In such situations, clients may claim that they did not make the trading decisions themselves; therefore they should not be held responsible for losses incurred. Even if the clients did instruct the brokers to make such decisions on their behalf, they may later claim that they did not and ask the securities company to reimburse their losses and punish its employees for breach of duty.

From the clients’ perspective, having brokers make trading decisions on their behalf may bring certain advantages. Many clients do not have adequate market knowledge or of the particular stocks they want to trade, and believe that the brokers can make better judgments. In addition, when trading particularly volatile stocks where prices change quickly, the brokers who are always in front

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364 The SEC Notification No. KorLorTor/BorThor. 3947/2013: Do and Don’t check list.
365 In the current Thai securities market structure, only fund managers, who are holding their respective licences, may make trading and investment decisions for their clients.
of their trading screens may be more likely to engage in trade at the optimal moment; buying at the lowest price and/or selling at the highest price.

However, disadvantages or risks of this practice far outweigh the potential advantage. First, it is not certain that brokers have better knowledge of particular stocks than clients possess since they usually have to take care of a large number of clients having diverse portfolios. Also, brokers being trusted fully by less knowledgeable clients is directly against the SET’s policy to encourage investors to gain as much understanding as possible of the capital market and the investment products therein.366

Second, the brokers’ trading decisions may not be suitable to clients’ investment objectives. Clients may want to engage in a conservative or moderate growth trading strategy, but brokers might see an opportunity and make trading decisions more aligned with an aggressive growth strategy carrying higher risk.367 One of the main reasons for such practice is that the more aggressive the trading strategy, the higher commissions the brokers will make.368

Third and most important, there are significant conflicts of interest when brokers make trading decisions on behalf of clients. As mentioned in the previous chapter, the main income of securities brokers is from shared commission fees. The more frequent and the larger the volume of trade, the higher the fees the brokers generate. Thus brokers have an incentive to encourage clients to engage in excessive amounts of trades, which can ultimately lead them to commit an offence of churning. In contrast, for the clients, commission fees are costs lessening return on investment and should be kept as low as possible. As a result, when brokers make trading decisions on behalf of clients, they have significant conflicts of interest: whether to engage in higher volume of trade to generate commission fees for themselves, or to maximise the capital gain of their clients without regard for their own benefit.

367 Stoneman et al, above n 6.
368 Ibid.
There are several potential reasons for securities brokers agreeing to make trading decisions for clients even though it contravenes the SEC Regulation and may lead to disputes if their trading decisions result in losses to clients’ assets. First, some brokers - with goodwill - may see that making decisions for their clients, from time to time as requested, is a part of their duty to clients. They may also see this as a general industry practice. On the other hand, there are those who see that having such decision-making power is an easy way to increase their trading volume when they are unable to meet the monthly goal set by the securities companies. Nonetheless, the most blatant situation is where brokers are formally instructed by clients to act in the capacity of fund managers even though the brokers lack the required qualifications and licences. In such cases, brokers are likely to receive certain forms of compensation from clients: a service fee or a share of profit if the brokers’ trading decisions result in growth of client assets.

To deter securities brokers from making trading decisions for their clients as well as inducing them to reject clients’ requests for such wrongful practice, the Office of the SEC has employed the administrative punishment of a suspension of licence from three months at minimum and publication of an offending broker’s name and his or her employees as its main sanctions. It should be noted that, unlike the offence of failing to properly record trading orders, there is no corporate criminal fine possible in relation to this offence. In terms of enforcement, clients suffering losses from brokers’ trading decisions, and who cannot settle their disputes with the securities companies, often bring the violations to the attention of the SEC Office. SEC officers then ask the clients, brokers, and securities companies to present statements and evidence for further investigation. Alternatively, the Office may discover the violations via routine periodic inspections of securities companies’ trading records and business activities. In this case, on-site officers may at first discover the presence of a large number of trades without voice-recorded orders. With further investigation, they may conclude that the reason for the lack of such records is brokers making trading decisions on behalf of clients, and thus there is no record of the conversation.
Example Cases

**Case One: Vairojanakit Making Decisions for Clients and Taking Orders from an Unauthorised Person**

The SEC Office suspended Miss Jirattaya Vairojanakit’s licence for five months after receiving a notice from KT Zmico Securities Company Limited that Miss Vairojanakit had been assigned by her clients to make securities trading decisions on behalf of them on a continual basis, involving a large number of high-volume transactions. Moreover, the records indicated that she had taken trading orders from one of the client’s sons, who was not the account owner’s appointee. Miss Vairojanakit also failed to keep complete records of her clients’ orders. Miss Vairojanakit admitted that she had often taken orders from such an unauthorised person, as well as taking orders via mobile phone. The SEC Office deemed that Miss Vairojanakit’s actions were in breach of three sections: making trading decisions on behalf of clients, taking securities trading orders from persons being neither account owner nor account owner’s appointee, and failing to keep a complete record of trading orders. Taking into account that Miss Vairojanakit had already been suspended by KT Zmico Securities Company Limited for two months and 12 days, the suspension imposed by the SEC Office was a further suspension of two months and 18 days, effective from April 25, 2013.\(^{369}\)

**Case Two: Perkhong Managing Accounts for Clients Causing Substantial Damages**

The SEC Office revoked Mr Sayan Perkhong’s licence for five years after obtaining a report from UOB Kayhian Securities (Thailand) Public Company Limited on its investigation of Mr Perkhong’s behaviour, who at that time was one of the company’s former securities brokers. The company found that Mr Perkhong had engaged in trade without recording orders from clients. His misconduct caused damage to the company, which then dismissed him. The SEC Office conducted further investigations and found that Mr Perkhong had agreed

to manage trading accounts for clients by using their logins and passwords for submitting trading orders via the Internet. Mr Perkhong submitted securities trading orders using clients’ accounts for his own benefit and for the benefit of third parties. In addition, he had acted as an intermediary to acquire loans for his clients for the purpose of buying and selling securities. The value of trade through those accounts was over 800 million baht in six months, generating him substantial commission fees. The SEC Office considered Mr Perkhong’s misconduct as severe wrongdoing and deemed him unfit to perform his duty as a securities broker. It should be noted that at the date of the sanction order, Mr Perkhong no longer retained the status of approved investor contact, since he had not previously renewed his licence. The SEC Office, therefore, could not revoke a non-existant licence. Mr Perkhong’s record was nevertheless included in the SEC Office’s misconduct list and he was prohibited from resubmitting an application for an approved capital market personnel status for five years, effective from 18 June 2011.  

C. The Offence of Using a Client’s Account for the Broker’s Own Benefit

The third focus offence analysed in this thesis is the offence of using a client’s account for the broker’s own benefit. The SEC Notification No. KorWor. 12/2011, Group 1.2.2 Using a Client’s Account for the Broker’s Own Benefit defines this offence and its appropriate sanctions. The notification states that any securities broker who uses his or her clients’ accounts for his or her own benefit shall be punished by a suspension of licence for at least six months as well as publication of the name of the offender and his or her employing company.

There are two ways that securities brokers use clients’ accounts for their own benefit: with and without client consent. In the case of using clients’ accounts without consent, offending brokers place trading orders in the trading system without the knowledge of the clients owning those accounts. The common circumstance where such wrongdoing is committed occurs when the broker would like to increase his or her trading volume and a trading account has been

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neglected by its owner. The unscrupulous broker may wrongfully use such account to buy shares with his or her own money then sell those shares to create artificial trading volume and increase his or her share of commission fees.

The other manner in which a broker may employ a client’s account for his or her own benefit is where he or she has obtained consent from the client to do so. It should be noted that even though the client has given authorisation, the SEC Office considers such an act a serious regulatory offence since securities brokers must strictly refrain from interfering with clients’ assets. An underlying reason for securities brokers wanting to gain authorisation from clients to use their accounts is the current rules of the Association of Thai Securities Companies (ASCO) regulating securities trading by employees and directors of securities companies. The purposes of these rules are to prevent personnel of the companies from taking advantage of clients, reducing conflicts of interest, and increasing business transparency.371 Under the Notification of the Association of Thai Securities Companies Re: Rules on Securities Trading of Employees and Directors of Securities Companies, securities brokers as employees of securities companies may have trading accounts and engage in securities trading but they must follow rigorous requirements and procedures before they can place trading orders.

In essence, there are three main rules that any broker who would like to buy or sell shares for himself or herself has to follow. First, securities brokers can only have a trading account with the securities companies whom they work. If they have accounts with other securities companies before they begin to work at the current companies, they have to close those accounts as soon as possible.372 Second, securities companies are required to establish mechanisms and procedures to approve and monitor trading activities of their employees.373 Third, any employee working in the front office or business sections having access to clients’ real-time trading information may not, by themselves, put their

371 Notification of the Association of Thai Securities Companies Re: Rules on Securities Trading of Employees and Directors of Securities Companies.
372 Ibid r 2.1.
373 Ibid r 3.7.
trading orders in the trading system. They have to send trading requests to the compliance unit for an approval and have the compliant officers put in the trading orders for them.\textsuperscript{374} Due to the above requirements, it is inconvenient and disadvantageous for securities brokers to engage in trade from their own accounts, particularly when they would like to buy or sell volatile stocks whose prices move quickly. Unscrupulous brokers, therefore, attempt to circumvent such disadvantages by colluding with clients and obtain consent to trade for themselves using clients’ accounts.

To be more specific, there are two well-known colluding methods in the Thai brokerage industry. The first is a joint investment between a broker and a client. In this manner, the broker would deposit his or her own funds in the client’s account and use such increased funds to help the client engage in a higher volume of securities trading. If such trade results in a profit, broker and client typically divide that profit by pre-agreed percentages. Also, the broker receives as income a share of commission fees from these trading orders. The second and more prevalent method is termed ‘nominee accounts’. Under this method, the broker asks a friend, or anyone he or she trusts, to open a trading account with a securities company he or she works with. Such person then reveals the assigned login and password to the broker and the broker would use such a nominee account to engage in securities trading instead of his or her restricted account. Similar to the previous method, those acting as fake clients usually receive certain monetary benefits for facilitating such unlawful arrangements and the broker then receives his or her trading volume commission from these trading orders. Both methods significantly heighten risk for the colluding client. In the case of joint investment, when there are losses from the trade, there are likely to be severe disputes between the client and the unscrupulous broker about who is accountable for such losses. In the case of nominee accounts, if the losses are substantial, the broker may ‘run away’ or refuse to pay for deficits in a cash

\textsuperscript{374} Ibid.
account\textsuperscript{375} or credit balance account,\textsuperscript{376} leaving the person whose name is specified as the account owner liable for the payment.

To deter securities brokers from using client’s accounts for his or her own benefit, with or without consent, the SEC Office has employed the administrative punishment of a suspension of licence for a minimum of six months and publication of an offending broker’s name and his or her company’s name as the main sanctions. In addition, if the violations occur repeatedly and investigators determine that such violations result from the company’s failing to establish and maintain credible mechanisms to approve and monitor trading activities of their employees, the officers have the power to require the company to rectify such issues. A criminal fine not exceeding 300 000 baht and a further fine not exceeding 10 000 baht for every day in which the violation continues can also be imposed.\textsuperscript{377} In terms of enforcement, claims from injured or colluding clients are the main source of discovery of the wrongdoing. While a routine inspection by the Licensing Department may uncover unauthorised uses of clients’ accounts, such inspections are unlikely to uncover a joint-investment scheme or a nominee-account scheme since distinguishing them from regular trading accounts and orders is difficult.

\textit{Example Cases}

\textbf{Case One: Pansawat Using a Client’s Inactive Account to Trade for Herself}

The SEC Office imposed a three-month licence-suspension on Miss Sutasasinee Pansawat of Kiatnakin Securities Company Limited after she used a client’s

\textsuperscript{375} Cash account is a trading account where a securities company provides a trading credit to clients. The clients are first required to deposit 15\% of the amount of the credit limit before he or she can place trading orders. When the client purchases shares into his or her cash account, he or she has to settle the purchase price with the company within three working days. Similarly, when the client sells shares, he or she has to wait three working days for the money to be credited into his or her account.

\textsuperscript{376} Credit balance or a margin account is a trading account where a securities company allow clients to borrow money to buy shares. The clients initially put down the first 50\% of the value of share purchase and borrow the other 50\% from the companies. The loan is collateralised by the securities and cash in the account.

\textsuperscript{377} \textit{Securities and Exchange Act B.E.2535 (1992) s 282}. 
account for the benefit of herself and others. Following complaints from clients, the SEC Office asked Kiatnakin Securities Company Limited to investigate on the matter. During the investigation, Miss Pansawat admitted that she had used a client's inactive trading account with an outstanding credit balance to trade securities for herself. In doing so, she told the client that she had inadvertently sent incorrect trading orders. This conduct was deemed as using the client's account for the benefit of oneself or any person who is not the account owner. The SEC Office therefore suspended an approval status of Miss Pansawat for three months, effective from 21 November 2009.378

Case Two: Jansangaram Using a Client’s Account for Her Friend’s Benefits

The SEC Office revoked the licence of Miss Sirirat Jansangaram of Finansia Syrus Securities Public Company Limited and prohibited her from submitting a re-application for 15 months. Following client complaints, the SEC Office upon investigation found that Miss Jansangaram had agreed to buy securities for her friend, who was in the process of opening a securities trading account. She did so with the assistance of one of her clients. After the trading account was opened, her friend asked for the transfer of securities to her account. It was found that the client had already sold the securities. Miss Jansangaram then asked two other friends, who were clients of other securities companies, to buy securities and transfer them to her friend’s account. In addition, Miss Jansangaram had instructed her colleague, an investment consultant in charge of a client’s securities trading account, to make trading decisions for the client. From the inspection of communications records, no clear source of trading orders was clear. There were only transaction confirmation statements made by the investment consultant, signifying that the consultant had made trading decisions before giving a report to the client. The client then acknowledged the transactions without any objection and made payment accordingly. Miss Jansangara’s actions were found as using a client’s securities trading account for her own or for others’ benefit and making trading decisions on clients’ behalf. The SEC Office therefore revoked her status as an approved capital market

investment consultant and prohibited her from making a re-application for 15 months. However, taking into account that Miss Jansangaram had already been suspended by Finansia Syrus Securities Public Company Limited for six months, the remaining period before possible re-application was nine months, effective from 11 April 2013.\footnote{379 The SEC News Release No. 40/2556 (2013), 11 April 2013.}

In relation to the violation committed by Miss Sirirat Jansangaram, Finansia Syrus Securities Public Company Limited as her employer was found to be in breach of section 113 of the Securities and Exchange Act B.E. 2535 (1992) for non-compliance with the CMSB regulation. The company agreed with the Settlement Committee to settle a criminal fine of 344 000 baht.\footnote{380 The SEC Settlement Order No. 10/2556 (2013), 27 February 2013.}

\textbf{D The Offences of Deception and Misappropriation}

The last set of offences to analyse, and the principal focus of this research, is a group of offences in the category of deception and misappropriation. In essence, this group of offences consists of an offence of deception and another of misappropriation\footnote{381 Under the Thai Penal Code, the offence of fraud and the offence of misappropriation differ in two main points. Firstly, in fraud outcomes of the offences includes transferring of property and executing, revoking, or destroying documents of right, whereas misappropriation only covers the transfer of ownership of the property from one person to another. Secondly, the transfer of property in fraud happens after the deception was committed. While in misappropriation, the transfer of property happened beforehand and the offence is committed only after the possessors illegally transfer such property to himself or herself. See, Penal Code ss 341, 352.} together with related offences of fabrication of documents and forging of signatures\footnote{382 Ibid ss 244, 246.} that securities brokers commit to obtain the property of their clients. The current anti-brokerage fraud regime employs both the administrative provisions and the criminal provisions to deter brokers from committing these offences against clients.

There are several methods that unscrupulous brokers may employ to commit deception and misappropriation against their clients.\footnote{383 Information on these fraudulent methods is derived from administrative cases sanctioned by the Office of the SEC, data from the pilot interviews, and the researcher’s own experiences.} The following are examples of fraudulent acts that have been committed by Thai securities brokers.

381 Under the Thai Penal Code, the offence of fraud and the offence of misappropriation differ in two main points. Firstly, in fraud outcomes of the offences includes transferring of property and executing, revoking, or destroying documents of right, whereas misappropriation only covers the transfer of ownership of the property from one person to another. Secondly, the transfer of property in fraud happens after the deception was committed. While in misappropriation, the transfer of property happened beforehand and the offence is committed only after the possessors illegally transfer such property to himself or herself. See, Penal Code ss 341, 352.
382 Ibid ss 244, 246.
383 Information on these fraudulent methods is derived from administrative cases sanctioned by the Office of the SEC, data from the pilot interviews, and the researcher’s own experiences.
against clients. The first and most simple method involves a securities broker asking his or her client to put a signature on a blank securities withdrawal form, a blank cash withdrawal form, and/or a blank securities transfer request form. Some clients may trust their securities brokers and leave signed blank forms with the brokers for the broker’s convenience. Such practice is highly risky since dishonest brokers may use such forms to easily transfer cash and shares to themselves. The second method involves forging clients’ signatures in the abovementioned forms for the same purpose.

The third method is where clients allow securities brokers to arrange for or accept payment on their behalf. In such situations, clients may give cash, ATM cards, and/or passbooks to brokers. This also includes brokers asking clients to transfer funds to brokers’ personal accounts for such purpose. The practices are highly risky since unscrupulous brokers may easily misappropriate client funds.

The fourth method involves securities brokers committing fraudulent acts by deceitfully telling clients that they are able to arrange for clients to buy initial public offerings (IPO) or unlisted securities at a discount and ask the clients to transfer the amount to the brokers’ personal accounts when, in truth, they cannot gain the discount. The unscrupulous brokers then withdraw such funds and flee with the money.

The fifth - and the most complicated - method, which incorporates commission of focus offences also in this research, sees securities brokers being authorised to make trading decisions for clients or are authorised to use clients’ accounts for their own benefit. Brokers then make trading decisions to receive monetary benefits and to the detriment of clients. Unlike the preceding methods, which are mostly one-off offences since the victims would soon know of the damage, this type of fraudulent trading can be committed repeatedly over a period of time as offending brokers usually take complicated steps to conceal wrongdoing. One

As a general practice in the Thai brokerage industry, every securities company provides their clients with corporate bank accounts that the clients are required to transfer funds to. Clients are strongly advised against transferring any payment to the brokers’ personal bank accounts.
example begins with forging a client’s signature on a change of mailing address form, resulting in actual confirmation and monthly statements being sent to the brokers’ addresses instead of the clients’. The unscrupulous brokers then fabricate trade confirmations and monthly statements showing false trading information and asset balances, which are subsequently mailed to the account owners. Owing to such deception, it usually takes considerable time before the injured clients notice (if ever) that the wrongdoing has been committed.

To deter securities brokers from committing these severe offences of fraud and misappropriation, together with related offences against clients, the SEC Office has employed both administrative and criminal sanctions in response. The administrative sanctions include revoking the brokerage licence and prohibiting licence re-applications by offending brokers for a minimum of five years as well as publication of their names and those of their employing companies.\(^{385}\) Criminal punishments for the offence of fraud and misappropriation committed by securities brokers can be as punitive as imprisonment not exceeding five years or a fine not exceeding 10,000 baht, or both for each count of fraud.\(^{386}\) It should be noted that under Thai criminal law, related offences of fabrication of documents or forging of signatures if committed for the purpose of committing fraud or misappropriation do not constitute separate counts or separate offences,\(^{387}\) and only the provision carrying the severest punishment is applied to the offender.\(^{388}\)

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\(^{385}\) *The SEC Notification No. KorWor. 12/2011 (Group 1.1 Dishonesty).*

\(^{386}\) It should be noted that, under section 91 of the *Penal Code*, if a broker is convicted on multiple counts of offences, the Court may inflict upon such broker the punishment prescribed for each count of offence. However, the total punishment of must not exceed the following determination:

1. Ten years in case of the severest offence to have the rate of the maximum punishment of imprisonment not exceeding three years;
2. Twenty years in case of the severest offence to have the rate of the maximum punishment of imprisonment exceeding three years upwards, but not more than ten years; or
3. Fifty years in case of the severest offence to have the rate of the maximum punishment of imprisonment exceeding ten years upwards, unless in the case where the Court inflicts upon the offender the punishment of imprisonment for life.

\(^{387}\) Twekiat Menakanist, Amnart Netayasupha and Chanchai Arreewittayalerd, *General Principles of Criminal Law* (Faculty of Law, Thammasat University, 2014).

\(^{388}\) *Penal Code* s 90.
In terms of enforcement, injured clients suffering losses from fraud and misappropriation usually bring the violations to the attention of the SEC Office. Similar to the three offences analysed above, SEC officers ask the clients, brokers, and securities companies to present statements and evidence for further investigation. If the investigation indicates that fraud or misappropriation has occurred, the officers present the case to the Capital Market Personnel Disciplinary Committee (CMPDC) for consideration on the proper form and to determine the magnitude of administrative punishments to be imposed upon the offending brokers. In relation to the criminal proceedings, it is important to note that the SEC Office deems that the offences of fraud and misappropriation are solely committed against certain clients of securities companies and not against the agency or the public, unlike the offences of market manipulation or insider trading. As a result, the SEC Office do not pursue criminal sanctions against the offending brokers and leave the decision to prosecute with the injured clients. If the injured clients, who may or may not successfully negotiate a settlement with the broker's security companies, decide to pursue criminal sanctions against offending brokers individually, they may file complaints to the Economic Crime Investigation Division (ECID) of the Royal Thai Police. The ECID will conduct further investigation. If they consider there are valid grounds for prosecution, the ECID will send the case files to the Office of The Attorney General (OAG) for prosecution in the Courts of Justice.\textsuperscript{389}

\textit{Example Cases}

\textbf{Case One: Tangsongsuwan’s Gross Fraudulent Scheme}

The SEC Office revoked the licence of Miss Tida Tangsongsuwan for severely violating the SEC regulations on standards of conduct.\textsuperscript{390} Miss Tangsongsuwan’s misconduct involved the following violations: (1) making securities trading

\textsuperscript{389} See details below.
\textsuperscript{390} This case was decided before the \textit{SEC Office Notification No.KorWor. 12/2011} came into effect. Therefore, (1) the name of the employing securities company was not revealed, and (2) the revocation order did not specify the length of a prohibition on re-application for the brokerage licence.
decisions for her client, (2) withdrawing the client’s assets without authorisation, (3) using the client’s trading account to trade securities for her own interest, (4) forging the client’s signature in order to have the client’s correspondence from the securities company sent to her own address, and (5) withdrawing cash from the client’s banking account by using the client’s passbook which had been left in her care with blank withdrawal forms signed in advance by the client.\footnote{391}{The SEC News Release No. 39/2549 (2006), 24 May 2006.}

The SEC Office made further statements in the SEC News Release No. 39/2549 (2006) that clients should not trust their securities brokers to such an extraordinary extent and should not assign brokers the role of managing assets and securities trading accounts on their behalf since there is high likelihood that brokers may abuse such power. The SEC Office strongly advised clients to regularly check the accuracy of daily securities trading reports, monthly transaction reports, and securities balance reports. When there is inaccuracy or irregularities in such reports, clients were advised by the SEC that they should immediately contact the back office of the securities companies for immediate correction or clarification.

**Case Two: Sripurd’s Gross IPOs Frauds**

The SEC Office revoked the licence of Miss Wanvadee Sripurd for severely violating the SEC regulations on standard of conduct, effective from February 21, 2007.\footnote{392}{This case was decided before the SEC Office Notification No.KorWor. 12/2011 came into effect. Therefore, (1) the name of the employing securities company was not revealed, and (2) the revocation order did not specify the length of a prohibition on re-application for the brokerage licence.} Miss Sripurd’s severely wrongful acts were:

(1) Deceiving investors into believing that she would open trading accounts for them and asking them to transfer money to her personal bank account, supposedly for the investors’ securities purchases. She also tricked her clients into transferring their money to her personal bank
account, claiming that she would subscribe for IPOs or purchase unlisted securities for the clients. In reality, Miss Sripurd neither opened trading accounts nor bought any securities for the clients;

(2) Falsifying her clients’ transaction reports, outstanding balance reports, and copies of bank deposit receipts in order to deceive the clients into thinking that she had purchased and/or sold securities according to their orders; and

(3) Making unauthord trading decisions without clients’ orders and using clients’ accounts to trade securities for her own financial benefit.

The SEC Office’s further investigation revealed that Miss Sripurd had engaged in these deceitful behaviours since 2005, causing damage to investors in excess of 130 million baht.\footnote{The SEC News Release No. 15/2550 (2007), 21 February 2007.}
Chapter 4

The Fraud Triangle and Extended Models

1 The Fraud Triangle

The main objective of this research is finding ways of deterring fraud and related offences committed by retail securities brokers against clients and general investors in the Stock Exchange of Thailand. In finding effective legal and non-legal anti-fraud measures, it is important to identify factors leading to such commission of fraud and regulatory violations, taking into account Thai cultural and business contexts. In this thesis, Donald Cressey’s Fraud Triangle is employed as the main theoretical background.\(^{394}\) The use of the Fraud Triangle to explore factors leading to brokerage fraud in this research has been influenced by the growing trend in the research area of accounting and financial fraud where the application of the Fraud Triangle to prevent and detect fraud has attracted considerable interest from both researchers and regulators.\(^{395}\) Various revised and extended models of the Fraud Triangle have been proposed by accounting and finance academics in order to better understand the nature of fraud and to effectively apply the Fraud Triangle in different settings.\(^{396}\) As for the regulatory community, the three elements of the Fraud Triangle (perceived pressure, perceived opportunity, and rationalisation) have been incorporated into working manuals and standards of leading regulatory oversight bodies in the United States, including the Association of Certified Fraud Examiners (ACFE)’s ‘Fraud Examiners Manual’, the Public Company Accounting Oversight Board (PCAOB)’s AU Section 316, ‘Consideration of Fraud in a Financial Statement Audit’, and the American Institute of Certified Public Accountants (AICPA)’s SAS no. 99, ‘Consideration of Fraud in a Financial Statement Audit’.\(^{397}\) Similarly in Australia, the AUASB’s ASA 240, ‘The Auditor’s Responsibilities Relating to Fraud

\(^{394}\) Cressey, above n 11.


\(^{396}\) See the extended and revised models of the Fraud Triangle below.

\(^{397}\) Dorminey et al, above n 23.
in an Audit of a Financial Report', also defines characteristics of fraud based on the elements of Cressey's Fraud Triangle. Because of its apparent strength in identifying the causes of fraud and in assessing fraud risk, this research has applied a selected version of the Fraud Triangle to explore incidents of brokerage fraud and related regulatory violations in the Stock Exchange of Thailand. The model is exploratory in nature and incorporates the Thai business context as an important societal factor.

This literature review section starts with a brief revision of differential association theory. Then Donald R. Cressey's original Fraud Triangle is reviewed in detail. The third part of this section examines different extended models of the Fraud Triangle as well as other models relating to fraud deterrence and detection. The last part is a brief examination of studies on fraud risk factors conducted by scholars in the accounting and auditing fields.

A Differential Association Theory

Causes of crime and how to use such knowledge to prevent or deter crime have been the subject of research for years in the disciplines of biology, psychology, sociology, criminology, and law. Theories of crime can be largely classified into three categories: classical and rational choice, biological, and sociological theories. In essence, classical and rational choice theorists believe that individuals have free will and are rational calculators who weigh up the costs and benefits of the consequences of each action including crime. Biological theories suggest that some individuals are 'born into crime' and that certain gene patterns and combination have linkage to violent criminal behaviour. Last, sociological theories of crime essentially propose that crime is caused by different conditions in which individuals live as well as their relationship to

399 Michael R Gottfredson and Travis Hirschi, A general theory of crime (Stanford University Press, 1990)
400 Derek B Cornish and Ronald V Clarke, The reasoning criminal: Rational choice perspectives on offending (Transaction Publishers, 2014)
401 Gottfredson and Hirschi, above n 399.
other individuals and/or institutions in their life. Prominent theories in this category include social learning theory, social control and self-control theories, social disorganisation theory, social ecology theories, anomie and strain theories, conflict theory, subcultural theories, and differential association theory. The differential association theory is most relevant to this research because of its influence on the development of Donald Cressey's Fraud Triangle theory, the main theoretical background of this study. The concept of rationalisation, the third side of the triangle, was notably borrowed from Edwin H. Sutherland's differential association theory, although was defined with a different view. Essentially, while Sutherland argued that rationalisation helps to explain why professional criminals proudly consider themselves as such, Cressey conceptualised that embezzlers need to rationalise their fraudulent behaviour in ways that convince themselves they were actually being honest before committing embezzlements. The other notable reason for adopting the theory of differential association is that while others sociological theories were developed to explain the delinquency phenomenon, especially in youth, the theory of differential association was originally developed to explain more general phenomenon of crime, including financial crime and organized crime.

The criminological theory of differential association was proposed by Edwin H. Sutherland, a sociologist, in 1939. The theory considers at deviant behaviour to be learned behaviour and focuses on how individuals learn to become criminals. Prior to the development of the theory, Sutherland reviewed the research literature on criminology and felt that the multiple-factor approach

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402 Ibid.
403 Henry and Lanier, above n 398.
405 Edwin H Sutherland, The Professional Thief (Chicago, 1937).
406 Cressey, above n 11.
prevailing at the time was parsimonious and failed to provide a scientific understanding of any type of crime.\textsuperscript{410} He believed that a scientifically-derived general causal theory of crime should be developed by identifying conditions that are always present when any type of crime is committed and always absent when crime is not committed.\textsuperscript{411} In doing so, he developed the theory of differential association based on three interrelated concepts (1) normative (culture) conflict, (2) differential association, and (3) differential social organisation.\textsuperscript{412} These concepts then operate at two levels (1) the societal and the (2) individual.

In essence, the theory is based on the notion that crime is caused by normative conflicts where different groups in society conflict over norms, values, and interests.\textsuperscript{413} At the society level, some groups define that a given rule should be followed under all circumstances; others define that the same rule should be violated in all cases; and the rest define the rule to be violated under certain circumstances. Such conditions of normative cultural and legal conflict result in high rates of crime.\textsuperscript{414} At the individual level, criminal behaviour is learned in the process of differential association through communication with other persons, notably with peers in intimate groups.\textsuperscript{415}

The content of such learning includes: (1) the techniques and skills of committing crimes, and (2) the specific influence directions of motives, drives, rationalisation, and attitudes. The second set of elements is most important since it points an individual towards certain direction of a definition of a given rule, whether it is to be followed or to be violated. Due to the normative conflict at the societal level, individuals, consciously and unconsciously, associate with and learn from those defining the rule favourably and those defining the rule

\textsuperscript{410} Criminal behaviour was explained by independent causes including mental deficiency, broken homes, minority status, age, class, inadequate, socialisation, alcoholic parents, and etc. See: M Zachariah, 'Criminological theory - the search for causation (from fundamentals of criminal justice - a syllabus and workbook, 1977, 2D ED., by Dae H Chang-See NCJ-44045)' (1977).
\textsuperscript{411} Matsueda, above n 408.
\textsuperscript{413} Matsueda, above n 408.
\textsuperscript{414} Ibid.
\textsuperscript{415} Ibid.
unfavourably. Sutherland concluded that criminal behaviour occurs when the individuals learn an excess of definitions favourable to violation over definition unfavourable to violation.\textsuperscript{416} Nevertheless not all definitions have equal influence on individuals during the differential association process, definitions are weighted by four correlating factors: frequency, duration, priority, and intensity. Therefore, definitions that the individuals encounter frequently, for a longer time, earlier in life, and from a more prominent source or from someone they are in a more intimate relationship with, receive more weight and could have more influence on individual behaviour.\textsuperscript{417} These principles have given rise to much subsequent research, most notably, studies on juvenile delinquency based on peer learning\textsuperscript{418} and the study of embezzlement and other financial crimes based on the verbalisation and rationalisation elements of the differential association theory.\textsuperscript{419}

B Cressy’s Original Fraud Triangle

Donald R. Cressy, a student of Sutherland, began his research on various criminal acts he grouped as ‘criminal violation of financial trust’ in 1950. He established two criteria for criminal acts to be included in his study: (1) the person had accepted a position of trust in good faith, and (2) the person later violated that trust by committing a crime.\textsuperscript{420} His intention was to develop a generalisation explaining such criminal behaviour. Cressy interviewed 250 inmates who were convicted for such acts at the Illinois State Penitentiary at Joliet over a period of five months.\textsuperscript{421} His hypothesis was derived from differential association theory: whether the violation of financial trust occurred when the perpetrators had learned in the course of their business or profession

\textsuperscript{416} Sutherland, above n 409.
\textsuperscript{417} Matsueda, above n 408.
\textsuperscript{419} Dana L Haynie and D Wayne Osgood, ‘Reconsidering peers and delinquency: How do peers matter?’ (2005) 84 (2) \textit{Social Forces} 1109.
\textsuperscript{420} Cressy, above n 11, 20.
\textsuperscript{421} Donald R Cressy, ‘The criminal violation of financial trust’ (1950) 15(6) \textit{American Sociological Review} 738, 740.
that some forms of violations were merely technical and were not really wrong, and that such violations would not occur if this definition of the behaviour had not been learned.\textsuperscript{422} This initial hypothesis was dropped as social learning did not seem to explain these crimes. Not only did many convicts express that they knew that such violations were illegal and wrong, in addition, many also reported that they knew of no one in their profession or business who had committed similar offences.\textsuperscript{423} Cressey then revised his hypothesis and instead focused on multiple factors relating to personal situation and the attitudes of the trust violators towards those situations. He concluded that three factors must be present for the criminal violation of trust to occur: (1) a non-shareable financial problem, (2) knowledge or awareness that the problem could be to some extent solved by means of trust violation, and (3) ability to apply verbalisations, later to be known as rationalisation, to their conduct which allow them to adjust their conceptions of themselves.\textsuperscript{424} Cressey’s hypothesis has over the years become well known as Fraud Triangle with three sides that are ‘pressure’, ‘opportunity’, and ‘rationalisation’.\textsuperscript{425}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{fraud_triangle.png}
\caption{Fraud Triangle\textsuperscript{426}}
\end{figure}

\textsuperscript{422} Ibid 741.
\textsuperscript{423} Ibid.
\textsuperscript{424} Ibid.
\textsuperscript{425} Kassem and Higson, above n 395, 192.
In Cressey’s original paper (1950), the pressure lateral of the triangle was limited to a non-shareable financial problem:\footnote{Cressey, above n 421, 20.} emphasis was placed on the ‘non-shareable’ character of the financial problem. Cressey explained that, in addition to persons in trusted positions having obligations not to violate trust by taking funds or benefits for themselves, those persons also have implied obligations to maintain certain social positions in the community, as well as to refrain from certain activities such as gambling, heavy drinking, and having affairs with women.\footnote{Ibid.} When those trusted persons incur debts resulting from such activities, they often conclude that such debts must be kept secret and non-shareable due to the incompatibility of those activities (and debts incurred therefrom) with their roles and duties as trusted persons. As a result, they do not seek help from others who can provide more productive, non-harmful solutions to the problem but, rather, consider violating - and then can and do violate - the trust placed in them to obtain funds to solve their non-shareable financial problems.

In 1953, in his book ‘Other People’s Money’, Cressey further divided the non-shareable financial problems into six categories: (1) violation of ascribed obligation, (2) problems resulting from personal failure, (3) problems resulting from business reversals, (4) problems resulting from physical isolation, (5) problems related to status-gaining, and (6) problems resulting from employer-employee relations.\footnote{Kassem and Higson, above n 395, 192.}

First, on violation of ascribed obligation, Cressey observed that many trusted persons believe that they are expected to behave in certain ways and are required to maintain a good reputation in their social and professional circles. When they engage in activities less than reputable, although not necessarily illegal, and incur debts, they do not dare tell, or ask for financial help from
others, for fear of losing social status and/or the trusted positions they hold.\textsuperscript{430} Second, in problems resulting from personal failure, many trusted persons fear admitting to others that their bad professional or business decisions have resulted in financial losses to their organisations or others who have put them in positions of trust. They fear that by revealing such information, they will lose their creditability and/or positions, even though they knew that others are able to help them extricate themselves from those difficulties.\textsuperscript{431} Third, in problems resulting from business reversals, the trusted persons suffer financially from a legitimate economic reversal. Such problems are entirely different from those in the first two categories, which arise from vices and bad judgment. Yet many trusted persons take it upon themselves and decide that it is a non-shareable problem that they have to take care of on their own, albeit through illegal means.\textsuperscript{432}

Fourth, in problems resulting from physical isolation, the trusted persons were found by Cressey to be physically isolated from others who they could turn to for help in solving their financial problems. Two interesting examples given by Cressey include a man whose wife had passed away and another who had left his family due to antagonism and misunderstanding.\textsuperscript{433} Fifth, in problems related to status gaining, a non-shareable financial problem does not happen due to the maintaining of status (as in the previous four contexts), but rather because of the trusted person’s aspiration to live at a certain level, essentially beyond their financial means. On discovering that they are not able to do so, the problematic situation became non-shareable, in which many chose to employ illegal means to pay their debts and to continue living such lifestyles.\textsuperscript{434}

The last category of non-shareable issue conceptualised by Cressey concerns problems resulting from employer-employee relations, in which situation the trusted persons are found to resent their status within their organisations, such

\textsuperscript{430} Cressey, \textit{above n 11}, 40.
\textsuperscript{431} Ibid 42.
\textsuperscript{432} Ibid 44.
\textsuperscript{433} Ibid 52.
\textsuperscript{434} Ibid 57.
as from feeling being underpaid, overworked, or unfairly treated, yet at the same time feeling that they must continue working for their organisation. They might want to speak out about their discontent to others but fear that if they do so, they will lose their trusted positions. Such issues together with any of the previous five situations can lead trusted persons to violate their positions so as to both relieve their financial issues and to take revenge on their organisations.\textsuperscript{435}

It can be concluded that in Cressey’s original fraud triangle theory, pressure factors are limited to personal motivation stemming from the ‘non-shareable’ character of their financial problem. In addition, Cressey’s emphasis was strictly on fraud incidents committed by ‘a person in a trusted position’. When the theory was later applied to different circumstances and/or to people in different positions, later scholars found that Cressey’s original concept of pressure was inadequate and that other pressure factors could induce the commission of fraudulent behaviour. With that, extended models of Cressey’s Fraud Triangle encompassing and reclassifying various pressure/motivation factors have been proposed. These models are discussed in detail in the following section.

2 Opportunity

The second lateral of the Fraud Triangle is opportunity to commit trust violations. Trusted persons perceive that their positions offer a solution to their non-shareable problem. They may not at first see their position in such a way when accepting their position, but change their perception after their non-shareable problems become present. Cressey further conceptualised that such perception was mainly based on each trusted person’s past experience. Without that past experience, the persons would not be able to perceive that such positions could be employed to relieve their financial difficulties.\textsuperscript{436} An individual’s past experience can draw on multiple discrete sources, such as information they receive from general news relating to fraud, from associates who engage in such behaviour, or from the general implication that their

\textsuperscript{435} Ibid 57-66.\textsuperscript{436} Ibid 78.
positions can be violated for certain monetary gains. In addition to such perception, Cressey further pointed out that trust violators must also have the required knowledge and technical skills according to their professions or businesses to successfully commit the violation and to conceal their illegal acts. It is interesting to note that in many situations, the skills that allow the perpetrators to successfully commit frauds are the same skills required for individuals to hold such positions in the first place. To illustrate, auditors and accountants are usually educated on the characteristics of different types of frauds so that they can detect and report them to management. These individuals, when faced with financial difficulties themselves, may decide to use such knowledge to exploit the current control system and find ways to successfully conceal their fraudulent behaviour. In conclusion, perceived opportunity is the perception held by the perpetrators that (1) certain violations can relieve them from their financial difficulties, (2) there is a control weakness that they can exploit, and (3) the probability of their violation being detected is low.

3 Rationalisation

The third side of the Fraud Triangle is rationalisation. Rationalisation is the trust violators’ attempt to reduce the cognitive dissonance that arises within themselves. In doing so, they apply verbalisation to their conduct enabling them to adjust their contradictory conceptions of themselves between the trusted persons and the illicit users of entrusted funds to solve their non-shareable problems. Many admit that they committed certain illegal acts but deny that they were wrong, thus allowing them to maintain their decent self-

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437 Ibid 77.
438 Albrecht, above n 12.
439 A control weakness in this context is defined as perceived loopholes in mechanisms that prevent fraud and/or the lack of credible sanctions against offenders.
440 Dorminey et al, above n 23, 558.
442 Cressey, above n 11, 94.
image.\textsuperscript{443} Cressey further noted that most trust violators are first-time offenders with no criminal records. They see themselves as ordinary and honest people who are caught in situations.\textsuperscript{444} These people wish to remain within their comfort zone, so they use verbalisation to justify their fraudulent acts before the commission of the violation.\textsuperscript{445} The common verbalisations that the trust violators employ are ‘I am borrowing, not stealing’, ‘All people steal when they get in a tight spot’, ‘It is an ordinary thing in this business’, and etc.\textsuperscript{446}

Later studies show that rationalising tactics employed by the perpetrators to justify the practices can take several forms, including appeal to higher loyalties, sad tales of the past, condemnation of the condemners, and denials.\textsuperscript{447} The latter can be further divided into denial of responsibility, denial of injury, and denial of victimisation, respectively.\textsuperscript{448} First, a denial of responsibility is the perpetrators’ attempts to convince themselves that the violations are the result of circumstances that leave them no choice but to commit such violations.\textsuperscript{449} Those who rationalise their acts in this way either shift blame to the victims or deny benefitting from such violations. They may instead claim that their acts are, in fact, altruistic and benefit others. Second, a denial of injury is attempts of perpetrators to claim that nobody is harmed by such violations.\textsuperscript{450} Such rationalisation happens often where the victims are big organisations or are insured.\textsuperscript{451} Third and last, a denial of victims occurs when the perpetrators believe that the victims deserve such transgressions or believe in rightful retaliation against victims.\textsuperscript{452} This type of denial is common where employees


\textsuperscript{444} Kassem and Higson, above n 395, 191.

\textsuperscript{445} Dorminey et al, above n 23.

\textsuperscript{446} Cressey, above n 11, 96.

\textsuperscript{447} Dellaportas, above n 17, 32.

\textsuperscript{448} G Sykes and D Matza, 'Delinquency and drift' (1964) New York.


\textsuperscript{450} Piquero et al, above n 418.

\textsuperscript{451} Anand et al, above n 449.

\textsuperscript{452} Piquero et al, above n 418.
have to tolerate poor workplace conditions. A study by Hollinger and Clark shows that it is easier for employees who steal money from employers to rationalise their illegal behaviour as compensation for such unpleasant working conditions.\(^{453}\) The most common verbalisations used in such situation are ‘They owe me’ and ‘I want to get even’.

4 Critiques of the Fraud Triangle

Cressey’s Fraud Triangle is not without criticism. On the generalisation of the theory, white-collar crime criminologists question whether a model from a study of embezzlers can be perfectly applied to other financial crimes, especially to financial statement fraud.\(^{454}\) Later studies on white-collar crime classify offenders into lower and higher status categories, where the embezzlers are in the former and the securities law violators are in the latter. These studies show many differences between them including personal income and social status. It is, therefore, questionable to many whether the Fraud Triangle can be a general theory of financial crime.\(^{455}\)

As for criticisms on the specific components of the model, on the pressure side of the Fraud Triangle, criminologists have argued whether a non-shareable financial problem is a necessary element of fraud. J W Coleman questions whether embezzlement cannot result from a simple desire for more money.\(^{456}\) Others believe that other, non-financial factors that impose pressure on the perpetrators to commit fraud, such as ego, ideology, political pressure, social pressure, and etc.\(^{457}\) On the opportunity side, critiques claim that Cressey does not give enough emphasis on the capability of the perpetrators to commit fraud. David T. Wolf and Dana R. Hermanson assert that fraud can only occur when

\(^{455}\)Donegan and Ganon, above n 17, 3.
\(^{456}\)Jame W Coleman, *The Criminal Elite* (St. Martin’s Press, 2002).
there is a person with appropriate capabilities to implement steps that lead to the commission and the concealment of fraud. On the rationalisation side, William Albrecht and his colleagues in the area of forensic accounting and auditing note that rationalisation is hard to observe and profile. They propose that rationalisation should be replaced with ‘personal integrity’, which is more observable.\textsuperscript{458} These criticisms and comments subsequently lead to expansions and revisions of the original Fraud Triangle, which will be examined in detail in subsequent sections.

As for the overall structure of the model, Steven Dellaportas comments that Cressey’s Fraud Triangle is strictly based on the assumption that the triangle is equilateral where the three sides carry equal weight elements.\textsuperscript{459} The strength or the influence of the relationship between and the weighting of the three variables have not been adequately tested and should be examined in future studies. Second, Joshua K. Cieslewicz in his qualitative study of fraud in China notes that the Fraud Triangle has been developed exclusively with US-centric assumptions about causes of fraud.\textsuperscript{460} As a result, the model does not provide for other factors influencing fraud in different cultural, sociological or business settings. He proposes that for the Fraud Triangle model to be efficiently applied to study fraud in other countries including China, different societal-level factors also need to be included in the model. This cross-cultural criticism receives special attention in this thesis and is further examined in detail in the later part of this chapter.

In a recent article by Clinton Free, he points out that Fraud Triangle studies and subsequent revised models have fallen short in three key theoretical areas.\textsuperscript{461} The first area is a lack of empirical studies on actual fraudsters. Free points out that although the Theory of Fraud Triangle was borne out of empirical studies where Cressey interviewed embezzlers incarcerated in federal prisons, few


\textsuperscript{459} Dellaportas, above n 17, 32.

\textsuperscript{460} Cieslewicz, above n 24.

\textsuperscript{461} Clinton Free, 'Looking through the fraud triangle: a review and call for new directions' (2015) 23(2) \textit{Meditari Accountancy Research} 175.
subsequent studies have been conducted in such a fashion. The research area of fraud, notable in accounting and auditing, is strewn with over-simplified, individual-oriented models that are unable to capture the complex notion of fraud in practice.\textsuperscript{462} He suggests that there is large scope for future research in examining the perspective of actual fraud perpetrators though field research. Nevertheless, he realises that conducting research with convicted perpetrators is not an easy task, as researchers need to obtain access to prisons and permission to talk to inmates, and to possess qualities to encourage openness and elaboration from the participants.

The second critique by Free is that the current research and application of the Theory of Fraud Triangle to combat organisational fraud, which is sponsored by the ACFE\textsuperscript{463} and the AICPA,\textsuperscript{464} only emphasise pressure and opportunity factors of the triangle. Rationalisation has received scant attention.\textsuperscript{465} In their published rule, the AICP goes so far as to suggest that 'rationalisation may not be observable'.\textsuperscript{466} Due to this, to date there has no empirical research conducted to validate or further investigate the actual roles of rationalisation in fraud, comparing to numerous pieces on pressure and opportunity. Future research may further delineate reationalisation and provide insight into its different categories that will be helpful for fraud detectors and regulators.\textsuperscript{467}

The third and last critique by Free is that the theory of Fraud Triangle is largely predicated on fraud committed by a single person, in which pressure, opportunity and rationalisation perceived by an individual are thought to be the main factors leading to fraud.\textsuperscript{468} However, recent major incidents of fraud, notably corporate fraud at Enron, WorldCom, and Parmalat were all committed by multiple individuals and illustrated that collusion is a core element of

\textsuperscript{462} Ibid.
\textsuperscript{463} The Association of Certified Fraud Examiners.
\textsuperscript{464} The American Institute of Certified Public Accountants.
\textsuperscript{465} Free, above n 461.
\textsuperscript{466} The Association of Certified Fraud Examiners, \textit{Consideration of Fraud in a Financial Statement Audit}, 2002, Sec. 316.35.
\textsuperscript{467} Pamela R Murphy and M Tina Dacin, 'Psychological pathways to fraud: Understanding and preventing fraud in organizations' (2011) 101(4) \textit{Journal of Business Ethics} 601.
\textsuperscript{468} Free, above n 461.
fraud. Free points out that, apart from the A-B-Cs model of Fraud that lightly touches on the concept of collusive and organisational-wide fraud, there is a lack of a revised Fraud Triangle model that can concretely explain the phenomenon of collusive fraud, and that the research area of forensic accounting has fallen behind other research areas in respect of theoretical work on criminal groups, collusion, and co-offending. Nevertheless, criminological studies conducted in those areas tend to focus primarily on the area of juvenile delinquency, where differences between age and sex of offenders, education, conviction rates, opportunity structures, consequences, reationalisation, and motivation make it difficult to generalise such findings to fraudulent activities of corporate employees and professionals. As a result, a future theoretical framework in collusive fraud that can provide a better understanding about the phenomenon is called for. A critical article on a genealogy of the Fraud Triangle by Jeremy Morales and his colleagues also reiterates the weakness of the theory in explaining the phenomenon of collusive fraud. They further assert that the ACFE, who had championed the use of the Fraud Triangle by their membered practitioners as the tool to combat corporate fraud, has deliberately translated Cressey’s original propositions and redefined fraud in selective angles for their professional purposes, by privileging the theory’s individualistic explanation to the detriment of competing micro-sociological and macro-sociological theories of financial crime.

C Revised and Extended Fraud Triangle Models

In the original Fraud Triangle model, there are only a few factors associated with each of the three variables of pressure, rationalisation and opportunity. Due to

472 Free, above n 461.
473 Morales et al, above n 404.
474 Micro-sociological theories focus on the link between individual perpetrators and their immediate organisational circumstances; ibid 174.
475 Macro-sociological theories focus on the broader historical, economic and political factors that impact organisations and individual in such organization; ibid 174.
the growing complexity of financial markets and white-collar crime schemes, researchers in the areas of criminology, accountancy and auditing view that the model does not adequately explain many of the antecedents to fraud. They have, therefore, attempted to propose revised models and extended theories to include more variables as well as new approaches to conceptualise factors associated with each variable leading to the commission of fraud with different psychological or sociological antecedents. This section examines revised models of the Fraud Triangle and other notable relating theories on the commission of fraud.

1 Different Classifications of Pressure and Motivation Factors

Some researchers have proposed additional pressure and motivation factors leading to commission of fraud other than a ‘non-shareable financial problem’ emphasised in the original model. These additional factors are defined and classified differently based on the areas of fraud focused upon. For example, Linda Lister, in the area of corporate fraud, compares fraud to a fire. In her view, the pressure or the motive to commit fraud is ‘the source of heat to the fire’. She classifies these pressure/motive factors as three: (1) personal pressure to pay for lifestyle, (2) employment pressure from compensation structure and management’s financial interest, and (3) external pressure such as the financial stability of the business and market expectation of the business. Lister further describes opportunity as ‘the fuel that keeps the fire going’ and rationalisation as ‘the oxygen that keep the fire burning’, respectively.

Leonard Vona, on the other hand, classifies motive to commit fraud as personal pressure and corporate pressure on individuals. He emphasises the role of the position of individuals within the organisation that both influences such individuals to commit fraud and contributes to the opportunity to commit fraud.

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476 Dorminey et al, above n 23.
477 Linda M Lister, ‘A practical approach to fraud risk: comprehensive risk assessments can enable auditors to focus antifraud efforts on areas where their organization is most vulnerable’ (2007) 64(6) Internal auditor 61.
478 Leonard W Vona, Fraud Risk Assessment: Building a Fraud Audit Program (John Wiley and Sons, 2008).
William Albrecht and his colleagues provide an extensive list of pressure/motive factors, classifying them as financial pressure, vice pressure, work-related pressure, and other pressure. Examples of financial pressure factors are greed, personal financial losses, living beyond one’s means, personal debts, poor credit, and personal debts. Examples of vice pressure are gambling, drugs, alcohol, and expensive extramarital relationships. Examples of work-related pressure are getting little recognition for job performance, having a feeling of job dissatisfaction, fearing losing one’s job, being overlooked for a promotion, and feeling underpaid. Examples of other pressure are the need to uphold social status and a challenge to beat the system.

Hernan Murdock offers three categories of pressure factor: financial, non-financial, plus political and social, respectively. His emphasis is on political and social pressure, for example where people feel they cannot appear to fail due to status or reputation. Meanwhile, a study by Kristy Ray and Nava Subramaniam, focusing on employee fraud, identifies primary motivation factors as greed and personal financial problems.

A study of executive fraud by Sridha Ramamoorti, Daven Morrison, and Joseph W. Koletar provides an interesting additional pressure/motivation factor to the Fraud Triangle. They attempt to understand the reasons that wealthy and influential individuals would risk being involved in fraud schemes. They find that social status comparisons may suffice as the sole motivation to commit fraud.

480 Murdock, above n 457.  
481 Opportunity is defined as a weakness in the system where the employee has the ability to exploit while rationalisation is defined as the employee’s lack of personal integrity or moral reasoning. See, Kirsty Rae and Nava Subramaniam, 'Quality of internal control procedures: Antecedents and moderating effect on organisational justice and employee fraud' (2008) 23(2) Managerial Auditing Journal 104.  
482 Sridhar Ramamoorti, Daven Morrison and JW Koletar, 'Bringing Freud to Fraud: Understanding the state-of-mind of the C-level suite/white collar offender through “ABC” analysis' (2009) The Institute for Fraud Prevention 1  
483 Ibid.
Similarly, James W. Coleman proposes that a culture of competition can be an important pressure or motivating factor of executive fraud.\footnote{Coleman, above n 443.}

Another notable expansion and classification of pressure/motivating factors is the model called M.I.C.E., proposed by Mary-Joe Kranacher, Richard Riley, and Joseph T. Wells in 2011. The acronym stands for \textit{money, ideology, coercion,} and \textit{ego}. \textit{Money} in this model stands for all financial-related motivating factors. \textit{Ideology} factors occur where perpetrators justify the means that they can commit fraudulent acts to realise their perceived greater good or other personal beliefs. An example is tax evasion. Perpetrators are often expressed as ‘These taxes are unconstitutional’ or ‘The rates are too high’.\footnote{Dorminey et al, above n 23, 563.} \textit{Coercion} occurs where individuals are unwilling but are pressured to participate in fraudulent acts. An example is where employees are coerced to take part in illegal schemes that their bosses have operated. \textit{Ego} involves factors of reputation or social status. Many individuals do not want to lose their social status or reputation within society so that they succumb to social pressure and resort to fraud as a means of retaining social or work status. Note that unlike other models of pressure factors, M.I.C.E. points to the possibility of collusion, as in cases of fraud arising from ideology or coercion factors.\footnote{Ibid 564.}

The following table is the researcher’s attempt to put together a meta-classification of pressure/motivation factors as proposed by the aforementioned scholars. Although their models focus on the occurrence of different types of frauds (corporate fraud, employee fraud, and executive fraud), as well as putting emphasis on different aspects of pressure/motivation, those factors have shared elements that can be appropriately grouped together and re-classified. The meta-classification comprises three major sources of pressure/motivation: ‘\textit{Personal Pressure}', ‘\textit{Corporate/Employment Pressure}', and ‘\textit{External Pressure}'. Each source of pressure/motivation is then further divided into sub-classification of financial and non-financial factors.

\footnotetext[484]{Coleman, above n 443.}
\footnotetext[485]{Dorminey et al, above n 23, 563.}
\footnotetext[486]{Ibid 564.}
Table 22: Classifications of Pressure/Motivation Factors Compiled from Different Research on Fraud

<table>
<thead>
<tr>
<th>Personal Pressure</th>
<th>Financial: greed, gambling and alcohol addiction, unexpected financial needs, paying for lifestyle, living beyond one's mean, personal debts, extra-marital relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-Financial: lack of personal discipline, different ideologies/beliefs</td>
</tr>
<tr>
<td>Corporate/Employment Pressure</td>
<td>Financial: continuation of business, compensation structure, management financial interest, low salaries</td>
</tr>
<tr>
<td></td>
<td>Non-Financial: unfair treatment, insufficient recognition, fear of losing jobs, frustration with work, a challenge to beat the system, coercion</td>
</tr>
<tr>
<td>External Pressure</td>
<td>Financial: threat to business financial stability, market expectation, culture of competition</td>
</tr>
<tr>
<td></td>
<td>Non-Financial: ego, image, reputation, influence of others, social status comparison, social pressure</td>
</tr>
</tbody>
</table>

2. The Triangle of Fraud Action

The second notable extension of the Fraud Triangle is the Triangle of Fraud Action, sometimes known as the Element of Fraud.\textsuperscript{487} As the Fraud Triangle model identifies factors and conditions leading to the commission of fraud, the Triangle of Fraud Action identifies actions that fraudsters must generally perform to successfully commit such fraudulent acts. The triangle has three components: (1) the \textit{act}, (2) \textit{concealment}, and (3) \textit{conversion}, as seen in the figure below.

\textsuperscript{487} Albrecht et al, above n 458.
The first component, the *act*, is the execution of the fraud itself, ranging from embezzlement, receipt fraud, cheque fraud, to fraudulent financial reporting. The second, *concealment*, is an attempt to cover up fraudulent acts. Examples include fabrication of documents, falsifying accounting documents, and destruction of files and records. The last component, *conversion*, is an attempt to convert such illegal benefit into a legitimate fund or property by way of money laundering.

The value of the Triangle of Fraud Action is in identifying actions and steps that perpetrators need to take to commit fraud. Government officers and/or auditors can, therefore, focus on these actions and use them as control points to prevent, detect, remediate, and to obtain evidence for prosecution.\(^{489}\) While the Fraud Triangle provides insight into why individuals commit fraud, the Triangle of Fraud Action complements the former by identifying actions that such individuals need to take. The perpetrator’s abilities to successfully engage in *execution*, *concealment*, and *conversion* of fraud also reflect back to the opportunity side of the Fraud Triangle. If it is easy for the individuals to execute

\(^{488}\) Kranacher et al, above n 457.
\(^{489}\) Dorminey et al, above n 23, 559.
and conceal their fraudulent acts, it can mean that opportunity to commit fraud is high owing to a loophole in the system that needs to be addressed.

3 The Fraud Scale

The third extension model is known as the Fraud Scale, developed by William Albrecht and colleagues in 1984 through an analysis of 212 occupational frauds. They concluded that fraud is difficult to predict and that occupational fraudsters are difficult to profile. Because of difficulty in determining the fraud risk, they propose that a Fraud Scale be used in place of the Fraud Triangle. The Fraud Scale shares two components with the Fraud Triangle, namely pressure and opportunity. Rationalisation, however, is replaced by ‘personal integrity’ - that is, ‘the personal code of ethical behaviour each person adopts’. This personal integrity element can be observed through an individual's ethical decision-making as well as through his or her decision-making process. It is said that the use of Fraud Scale in determining fraud risk is particularly applicable to types of fraud where sources of pressure are readily observable and have direct impact on individuals’ decision making. An example is financial reporting fraud where pressure from analysts’ forecasts, management’s earnings guidance, history of sales and earning growth, and market expectation can have direct impact on decisions by management and employees. Therefore, the observation of individuals’ past behaviour and decisions in relation to different pressure factors is central to the application of the Fraud Scale to determine fraud risk in any particular setting.

490 Albrecht et al, above n 458.
491 Ibid 18.
492 Kassem and Higson, above n 395, 194.
Referring back to the Fraud Triangle, the Fraud Scale model can also be viewed as a modifier to rationalisation. Level of personal integrity potentially affects the probability that individuals may rationalise fraudulent behaviour and subsequently commit fraud.

4 The Fraud Diamond

The fourth extension of Cressy's original model is known as the Fraud Diamond. The model adds a fourth element, capability, to the Fraud Triangle. David T. Wolf and Dana R. Hermanson believe that even when opportunity is present, many frauds would not have occurred without the right individuals with the specific capabilities to implement actions leading to the completion and concealment of such fraudulent behaviour. This model gives additional consideration to individuals' capability to commit complicated fraud and focuses on personal

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493 Albrecht et al, above n 12.
494 Dorminey et al, above n 23, 562.
traits of individuals that play a major role in such fraudulent incidents.\textsuperscript{496} Wolf and Hermanson further suggested four observable traits relating to the capabilities of individuals to commit fraud: (1) authoritative position or function within the organisation, (2) capacity to understand and exploit accounting systems and internal control weaknesses, (3) confidence that he or she will not be detected, or if caught will easily evade punishment, and (4) capability to deal with stress relating to the illegal acts committed.\textsuperscript{497}

The value of the Fraud Diamond is that the model highlights the importance of the individuals’ capabilities in the commission of fraud, especially in complicated and large-volume fraud. It points out that not everyone who is under pressure and presented with an opportunity may successfully commit serious fraud. Only those possessing essential traits could. It is said that large-scale fraud is only committed by intelligent, experienced, and creative individuals in key positions within organisations.\textsuperscript{498} The model directs anti-fraud officers and auditors to focus resources on individuals with required capabilities and in a position to gain access to significant assets and to exploit internal weaknesses of control and management. Also, when a fraud is discovered, capability can be used as a screening criterion to determine who the perpetrator is.

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{fraud-diamond.png}
\caption{The Fraud Diamond\textsuperscript{499}}
\end{figure}

\textsuperscript{496} Dorminey et al, above n 23, 564.
\textsuperscript{497} Wolfe and Hermanson, above n 495.
\textsuperscript{498} Dorminey et al, above n 23, 565.
\textsuperscript{499} Wolfe and Hermanson, above n 495.
In the context of the Fraud Triangle, individuals’ capabilities can be seen as a modifier of opportunity. By taking capability into account, access to opportunity would be limited to fewer individuals thought to have the necessary capabilities in a particular setting. That is, capability affects the probability that individuals are able to exploit available opportunities and successfully commit fraud.\textsuperscript{500}

5 Predators versus Accidental Fraudsters

The theory of the Fraud Triangle is based on assumptions that fraudsters are often first-time offenders, well-educated, trusted, in a position of responsibility, and who under normal circumstances would never consider committing fraud.\textsuperscript{501} In other words, these individuals can be characterised as ‘accidental fraudsters’.\textsuperscript{502} However, behaviour of some perpetrators does not follow those assumptions. They instead commit fraud with malicious intent and may go so far as to intentionally seek out organisations or individuals to commit fraud against. These individuals are not ‘accidental fraudsters’ but are instead characterised as ‘predators’.\textsuperscript{503}

One explanation for the phenomenon of predatory fraudsters is that the fraudsters’ need for rationalisation to reduce internal moral conflicts is temporary.\textsuperscript{504} Once the fraudulent acts have occurred several times, rationalisation is cognitively dismissed and becomes unnecessary as the fraudster becomes desensitised.\textsuperscript{505} In studies of occupational fraud by Mark S. Beasley and his colleague, they conclude that once fraud has been committed, the fraudulent act usually becomes continual until detected.\textsuperscript{506} For that reason, many accidental fraudsters evolve into predatory fraudsters. Also, predators are usually better organised, have higher capability to recognise opportunity,

\textsuperscript{500} Dorminey et al, above n 23, 565.
\textsuperscript{501} Association of Certified Fraud Examiner (ACFE), Fraud Examiner Manual (TX: ACFE, 2009).
\textsuperscript{502} Dorminey et al, above n 23, 565.
\textsuperscript{503} Ibid 566.
\textsuperscript{504} Cressey, above n 1, n 23.
\textsuperscript{505} Ibid.
conceive better concealment schemes, and are better prepared to deal with the authorities and/or auditors.\textsuperscript{507}

In relation to the Fraud Triangle, the model does not fully explain the behaviour of fraud predators since pressure and rationalisation are not essential elements in committing fraud. It can be said that the predatory fraudsters only need opportunity.\textsuperscript{508} As a result, in the modified Fraud Triangle model for predatory fraudsters, it is suggested that pressure and rationalisation should be replaced, respectively, with arrogance and a criminal mindset.\textsuperscript{509} A number of researchers in the area of fraud prevention and detection see arrogance as a key characteristic of predatory fraudsters.\textsuperscript{510} Corporate and financial-statement fraudsters are known particularly for arrogance and overconfidence.\textsuperscript{511} Many executives who have committed large-scale fraud go so far as to believe that legal and societal norms do not apply to them. They also believe that they are smarter than other people and will never get caught or be held accountable for their action.\textsuperscript{512}

Having a criminal mindset is another key characteristic of predatory fraudsters. Frauds are no longer committed because of a need or pressure but because the perpetrators can and want to.\textsuperscript{513} Martin Biegelman, a Regent Emeritus and member of the Board of Directors for the ACFE Foundation, has asserted that predatory fraudsters have a different mindset than honest and law-abiding people. Combining with arrogance they are typically found to have a lack of integrity and responsibility, have great greed and little regard for others.\textsuperscript{514} In

\begin{footnotesize}
\textsuperscript{507} Kranacher et al, above n 457.
\textsuperscript{508} Dorminey et al, above n 23, 566.
\textsuperscript{509} Ibid.
\textsuperscript{512} Biegelman, above n 510, 17-20.
\textsuperscript{513} Dorminey et al, above n 23, 566.
\textsuperscript{514} Biegelman, above n 510, 17-20; Klarskov Jeppesen and Leder, above n 511, 870-871.
\end{footnotesize}
addition, committing fraud and getting away with it becomes addictive to them. They often find excitement from the activities and find it harder to stop their wrongdoing. Such excitement or the thrill of being in danger is also found to be the main cause of recidivism in many fraud cases. Even after fraudsters have been prosecuted and served their sentences, many return to their fraudulent behaviour. One of the best-known examples is the case of Barry Minkow. Minkow conducted a one-hundred-million-dollar securities fraud in the 1980s. After serving a seven-and-a-half-year imprisonment, he claimed that he had made a fresh start. He founded a fraud-investigation firm and became a minister at a church in San Diego. Yet in 2011 he pleaded guilty in a federal court to conspiracy to commit securities fraud and extortion against one of the companies that his firm had conducted an investigation into. Minkow was sentenced to five years in prison and was ordered to pay $583.5 million in restitution.

Figure 10: Attributes of the Predator

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515 Biegelman, above n 510, 11.
516 Ramamoorti et al, above n 470, 133.
517 Biegelman, above n 510, 17.
518 Ibid.
The sixth notable model is known as the A-B-Cs of Fraud, proposed by Ramamoorti, Morrison, and Koletar in 2009. A stands for a bad apple, B for a bad bushel, and C for a bad crop.\textsuperscript{519} The bad apple refers to an individual who commits fraud. A study by the Association of Certified Fraud Examiners (ACFE) of corporate fraud shows that the aggregate characteristics of fraudsters are (1) being aged 45 to 55, (2) having a college degree, (3) having been with the organisation for 10 to 15 years, and (4) having a clean past.\textsuperscript{520} The bad bushel refers to collusive fraud where certain relationship and dynamic in the group encourage or facilitate fraud.\textsuperscript{521} There are two common situations in which a bad bushel can present itself. The first occurs when two or more employees in an organisation voluntarily collude to commit fraudulent acts against their employing organisation or clients. The second occurs when individuals are forced into the fraud due to management override or due to their proximity to their colleagues who engage in fraud.\textsuperscript{522} The bad crop refers to cultural and societal mechanisms that can influence the occurrence of fraud, notably a deficiency of morals at the executive level of the organisation.\textsuperscript{523} That is, a bad crop is a fraud-epidemic phenomenon that may spread to affect the industry and society generally.\textsuperscript{524}

In relation to the Fraud Triangle, the A-B-Cs of Fraud Model offers a multilevel analysis to fraud examiners, as well as being the basis for the devising of appropriate measures to counter fraudulent behavior.\textsuperscript{525} In the case of a bad apple, where fraud is committed by individual perpetrators, the examiners only need to determine pressure, opportunity, and rationalisation factors perceived by a particular perpetrator. In such instances an organisation is likely to be advised to invest more in its human-resource function so as to do effective background

\textsuperscript{519} Ramamoorti et al, above n 482.
\textsuperscript{520} Association of Certified Fraud Examiner (ACFE), above n 18.
\textsuperscript{521} Ramamoorti et al, above n 470.
\textsuperscript{523} Ramamoorti et al, above n 470.
\textsuperscript{524} Dorminey et al, above n 23, 568.
\textsuperscript{525} Ramamoorti et al, above n 470, 51.
checks on potential employees and provide extensive training to current employees.\textsuperscript{526} In the case of a bad \textit{bushel} or in cases of collusion between multiple perpetrators, the examiners are first required to identify all accomplices and then determine \textit{pressure, opportunity}, and \textit{rationalisation} factors perceived by those perpetrators. In addition to that, examiners should also consider the dynamics and relationships within such groups in order to accurately identify causes of fraud. In devising proper counter-measures, it is important to recognise that certain internal controls are likely to be ineffective against collusion, such as segregation of duty or a system of authorisation.\textsuperscript{527} Last, in the case of a bad \textit{crop}, a fraud that permeates an entire organisation or industry, examiners have to look for a negative culture that influences organisational and/or industrial behavior and try to devise measures that can change so unhealthy a culture.\textsuperscript{528} For example, when an unhealthy corporate culture results from unlawful behaviour implemented by top management, drastic change is required. The organisation must make sure that executives and high-level officers become good role models to lower-level workers, as honesty and compliance are best reinforced by example.\textsuperscript{529}

Apart from providing multilevel analysis, the A-B-Cs of Fraud Model can also be seen as a modifier to the probability that the combination of the three sides of the Fraud Triangle will result in actual fraudulent acts.\textsuperscript{530} A bad \textit{crop} in any organisation makes it almost certain that fraud will occur since there is plentiful opportunity for perpetrators to commit fraud because of the lack of deterrence mechanisms, notably for top management as they can easily override internal controls. An unhealthy corporate culture also makes it simpler for perpetrators to rationalise their fraudulent behaviour under the commonplace verbalisation that ‘everyone is doing it.’ Similarly, a bad \textit{bushel} or collusion between employees makes it easier for complex fraud to be perpetrated and concealed due to the

\textsuperscript{526} Ibid.
\textsuperscript{527} Ibid 52.
\textsuperscript{528} Ibid.
\textsuperscript{530} Ramamoorti et al, above n 470.
division of labour between employees in different departments. The group dynamic between perpetrators also facilitates rationalisation because of the effects of emotional contagion, in which the emotions of some individuals stimulate others to feel and express similar emotions, or reasoning.

7 The New Fraud Triangle Model

Rasha Kassem and Andrew Higson have recently attempted to integrate (1) the original Fraud Triangle, (2) M.I.C.E. and other pressure/motivation factor classifications, (3) the Fraud Diamond, (4) and The Fraud Scale into the Meta-Fraud Triangle model that should be employed by auditors when assessing fraud risk factors. In doing so, the pressure variable, which originally comprised only non-sharable financial pressure, is expanded with M.I.C.E and other pressure/motivation factor classifications to include non-financial and external pressure factors. Capability factors from the Fraud Diamond are added to the Fraud Triangle juxtaposed with opportunity factors. Last, personal integrity from the Fraud Scale replaces rationalisation in the meta-model due to the reason that personal integrity or the personal record of the individuals’ ethical decisions are easier for the auditors observe and employ in determining fraud risks.

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8 Cultural and Societal-Level Variables and Factors

It is interesting that Cressey’s original Fraud Triangle as well as all of the extension fraud models examined above have been developed in the United States. Because of this, underlying assumptions of these models are based on characteristics and values seen in American corporations and society, such as organisational and psychological factors that influence fraud. Joshua Cieslewicz, conducting research on fraud in China, finds that the Fraud Triangle does not offer the best explanation of the causes of fraud as well as the solutions to reduce fraud in other cultural settings owing to lack of understanding of cultural and societal differences and their impact on the Fraud Triangle model.\footnote{Cieslewicz, above n 24, 219.} He proposes that societal-level factors, varying across nations – be they tradition, culture, social norms, rule of law, socio-economic conditions, or political status – and that have effects on fraud in a local setting should be added to the existing model.

\footnote{Kassem and Higson, above n 395, 194.}
According to the revised model proposed by Cieslewicz, religious and philosophical traditions, culture and social norms, and other societal conditions are introduced as multi-level factors that can affect and modify the occurrence and analysis of causes of fraud in multiple ways. First and foremost, these societal factors greatly influence how individuals view certain acts as fraud (or not fraud). Acts that would be considered fraudulent in one society may not necessarily be considered unacceptable in another due to differences between these societal factors. Second, the occurrence of fraud in different societies is
usually influenced by the presence of different societal-level factors, and where societies have similar societal-level factors, fraud may be influenced by a particular factor to differing degrees. Third, societal-level factors may, directly and indirectly, modify the perception of pressure/motivation factors by individuals. Individuals living in different societies usually perceive pressures differently, owing to differences in social assumptions, appropriate standard of living, and core values they adhere to. Fourth, differences in societal values can greatly influence individuals’ ability to rationalise their fraudulent behaviour, as well as the way they rationalise such behaviour. Fifth, the effects of a similar fraud upon societies, organisations, and individuals often differ between societies due to the influence of different societal factors. Last, the effectiveness of similar fraud prevention and detection strategies may vary greatly across societies because of differences in societal-level factors. Strategies that work well in one nation may not be advisable for adoption in another. For example, recommended solutions for fraud in the United States, such as giving convicted fraud perpetrators stiffer penalties and speeding up the judicial process, are already strong points of the Chinese anti-fraud system. Yet fraud, especially bribery and collusion, is still prevalent in China.537

As for societal factors of Chinese society, during his research Cieslewicz came across the term ‘guanxi’ mentioned by all interviewees when asked about the nature of doing business in China.538 The term has no equivalent concept in English but is often translated by westerners as ‘networking’.539 The ideology of ‘guanxi’ is essentially relationship-building between people through informal exchange of favours.540 The root of such emphasis on relationships is embedded in Confucianism and is an integral part of Chinese culture.541 In Chinese business it is important for all parties to maintain ‘guanxi’ or connection since to them

537 Ibid 223.
538 Cieslewicz, above n 24, 227.
‘mutual acquaintance and recognition provide credentials which entitle people to various kinds of credit’.\textsuperscript{542} Chinese coworkers actively foster relationships with each other by spending time together, having dinner together, giving gifts, asking about family, paying restaurant bills etc.\textsuperscript{543} Building relationships is also crucial in finding new business partners. Only when a relationship of trust is established will business be conducted.\textsuperscript{544}

In terms of fraud assessment, ‘guanxi’, although not synonymous with fraud, must be taken into careful consideration. Building relationships through gifts and various reciprocities between executives or between sellers and buyers can be viewed as bribery or improper conduct in many countries, yet is normal business practice in China. Nevertheless, one can also say that in needing to maintain relationships, ‘guanxi’ lends itself to collusion. For example, in order to create or maintain a relationship, individuals may: (1) find a way to fraudulently assist others, (2) assist someone in questionable activities, or (3) build connections that could help conceal fraud.\textsuperscript{545} Drawing from this example of ‘guanxi’, the understanding of societal factors influencing fraud is crucial to both regulators and auditors as they seek out causes of fraud, attempt to assess fraud risks, and find effective measures to reduce fraud in any non-US setting.

\textbf{D Fraud Risk Factor Studies}

One area of research developing from the Fraud Triangle models discussed above is the study of fraud risk factors in different types of fraud, industry, and geographical settings. Focusing on pressure and/or opportunity variables, researchers aim to identify risk factors for fraudulent activities in particular settings and to rank them according to their perceived likelihood in order to control and reduce such risks.

\textsuperscript{543} Cieslewicz, above n 24, 229.
\textsuperscript{544} Ibid.
\textsuperscript{545} Ibid 230.
Literature in the area of fraud risk factors, especially for accountant and financial reporting fraud, is extensive. Such work commenced with an empirical study by William Albrecht and Marshall Romney in 1986 examining various red flags that can be used to predict fraud. Later, James Loebbecke, Martha Eining, and Jeff Willingham formulated a predictive model based on fraud risk factors outlined in the American Institute of Certified Public Accountants’ (AICPA) Statements on Auditing Standard (SAS) no. 53, *The Auditor’s Responsibility to Detect and Report Errors and Irregularities*, which first designated and clarified auditor’s responsibilities for detecting fraud in 1988. Thereafter, several empirical studies using questionnaires were conducted to expand the Loebbecke, Eining, and Willingham model by expanding the list of fraud risk-factor red flags, as well as testing the predictive power of those factors. Nevertheless, these quantitative studies received criticism in that questionnaires employed were lengthy and subjective. Also, the usefulness of some red flags in empirical studies has been questioned.

A subsequent study by Timothy Bell and Joseph Carcello in 2000 found support for certain fraud risk factors under the Fraud Triangle as predictors of financial reporting fraud. Their regression model predicted incidents of fraud associated with certain risk factors including rapid growth, weak control environment, a preoccupation to meet analysts’ forecasts, over-evasive

546 Albrecht et al, above n 458.
549 Karen V Pincus, 'The efficacy of a red flags questionnaire for assessing the possibility of fraud' (1989) 14(1) *Accounting, Organizations and Society* 153; Yung-I Lou and Ming-Long Wang, 'Fraud risk factor of the fraud triangle assessing the likelihood of fraudulent financial reporting' (2009) 7(2) *Journal of Business & Economics Research (JBER)*.
551 Bell and Carcello, above n 548.
management, ownership status, and management attitude towards financial reporting. However, they did not find a correlation between fraud incidents and traditional risk factors, for example high management turnover, rapid industry growth, significant related party transactions, and compensation arrangements tied to report earning. Zabihollah Rezaee, in his analysis of firms faced with financial reporting fraud, also finds support for the existence of risk factors according to the Fraud Triangle model.\textsuperscript{552}

Apart from abovementioned studies examining overall fraud risk factors, there are also studies focusing on certain risk factors from the perspective of a particular variable in the fraud triangle. For example, when studying risk factors relating to the pressure/motivation variable, a study by Niamh Brennan and Mary McGrath suggested that pressure from monetary incentives that include executive bonuses combined with the need to retain investor confidence can lead to fraudulent financial reporting in the form of earnings management.\textsuperscript{553} Patricia Dechow and her colleagues, in their studies of 92 US companies subject to the SEC's Accountant Enforcement Releases during 1986-1992, find that pressure to attract external funding at low cost is an important motivation to conduct financial statement fraud.\textsuperscript{554} Merle Erickson and his colleagues, in their studies of a sample of firm accused of fraud between 1996-2003, find no relation between pressure/motivation from management's equity incentives and the likelihood of accounting fraud.\textsuperscript{555} A study by Jap Effendi and his colleagues, in contrast, finds that the likelihood of financial statement fraud increases when management has a substantial amount of stock options.\textsuperscript{556}

\textsuperscript{552} Zabihollah Rezaee, 'Causes, consequences, and deterence of financial statement fraud' (2005) 16(3) Critical Perspectives on Accounting 277.

\textsuperscript{553} Niamh M Brennan and Mary McGrath, 'Financial statement fraud: Some lessons from US and European case studies' (2007) 17(42) Australian Accounting Review 49


\textsuperscript{555} Merle Erickson, Michelle Hanlon and Edward L Maydew, 'Is there a link between executive equity incentives and accounting fraud?' (2006) 44(1) Journal of Accounting Research 113.

In studies of risk factors relating to the opportunity variable, William Albrecht and colleagues discuss various risk factors increasing the opportunity to commit fraud, ranging from weak internal control to failure to discipline perpetrators.\textsuperscript{557} Biennial fraud surveys conducted by KPMG repeatedly conclude that weak internal control\textsuperscript{558} is a major contributing factor to fraud.\textsuperscript{559} David Farber finds that firms experiencing financial fraud often have poor governance relative to firms that do not experience fraud, for instance.\textsuperscript{560}

In addition to the studies focusing on certain risk factors mentioned above, other studies have attempted to identify and rank fraud risk factors in connection to a particular industry, a geographical area, and/or in certain working cultures. For example, Chad Albrecht and his colleagues analyse fraud incidents in the four biggest ‘chaebols’\textsuperscript{561} in South Korea.\textsuperscript{562} They find that these organisations have many inherent fraud risks consistent with the Fraud Triangle. Notable risks contributing to both pressure and opportunity factors include family prominence, lack of independence, the effort of ‘chaebol’ founders to keep family within their families, and political pressure. They also note that certain practices considered fraudulent in western societies are widely viewed as smart business movements in South Korean society. This cultural rationalisation can also be considered as a major risk factor contributing to fraud. In a study of auditors’ perception of fraud risks in Hong Kong, Abdul Majid and his colleagues report that the most important fraud risk factors are difficult-to-audit transactions, misstatements in prior audits, indicators of going concern problems, management’s attitude to financial reporting, and management operating style.

\textsuperscript{557} Albrecht et al, above n 12.
\textsuperscript{558} Five primary internal control activities are: (1) segregation of duty, (2) system of authorisation, (3) independent checks, (4) physical safeguards, and (5) document and records: ibid.
\textsuperscript{561} Large conglomerate family-controlled firms in South Korea are characterised by strong ties with government agencies. See, Sung-hee Chwa, The Evolution of Large Corporations in Korea: a new institutional economics perspective of the Chaebol (Edward Elgar Publishing, 2002).
\textsuperscript{562} Albrecht et al, above n 479.
respectively. Another study by Malcolm Smith and colleagues in Malaysia concludes that the most important factors in the eyes of Malaysian auditors are operating and financial stability risks, such as high dependence on debt and deteriorating financial position, followed by risks in relation to managerial characteristics, including attitude about internal control and known history of legal violations. Interestingly, a recent study by Modar Abdullatif in Jordan finds that auditing firms in Jordan give only slight importance to internationally-respected fraud risk factors as indicators for possible fraud. As for the ranking of fraud risk factors, Jordanian auditors rank ones relating to management style, such as previous fraud allegations and/or violations of laws as being most important, while surprisingly ranking factors relating to the difficulties in the client's business performance, such as high competition and declining market shares, as least important.

Related to this thesis, there is a risk factor study conducted in Thailand that should be examined in detail: Organisation Frauds in Thailand: a survey on risk factors. The study was conducted by Pornchai Naruedomkul, Panipa Rodwanna, and Jarunee Wonglimpiyarat in 2010 with the goal of identifying and ranking risk factors causing fraudulent activities in Thai organisations as well as validating that corporate governance and internal control can help reduce fraud risk. Triangulation and qualitative methods were employed. The first phase was a qualitative in-depth interview of executives from 30 non-listed companies to identify fraud risk factors, followed by a quantitative survey (written questionnaire) of 236 companies listed on the SET and 261 non-listed companies. During the qualitative stage of the research, living beyond means was identified as the most important risk factor. Other risk factors mentioned by the interviewees were pressure from relatives, lack of proper internal control, lack

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of good business systems, close relationships between employees and suppliers, debts to coworkers, gambling, and lack of accounting and financial knowledge. Interviewees were also asked for their opinions on types of fraud occurring most frequently and being most damaging to Thai organisations. The responses are, from most to least, collusion between employees and either customers or suppliers, overuse/misuse of company assets for personal use, claiming for reimbursement higher than actual expenses, and accounting manipulation.

A result of the quantitative stage of the research shows risk factors causing fraud in Thai organisations are ranked below from highest to lowest:

1. Living beyond means
2. Financial difficulties
3. Wheeler-dealer attitude
4. Irritability, suspiciousness, or defensiveness
5. Unusually close association with supplier/customer
6. Past legal problems
7. Addiction problems
8. Complaining about inadequate pay
9. Past employment-related problems
10. Instability in life circumstances
11. Excessive pressure from within organisation
12. Excessive family/peer pressure for success
13. Refusal to take vacations
14. Borrowing money from coworkers
15. Control issues, unwillingness to share duties
16. Complaining about lack of authority
17. Divorce/family problems
18. Gambling

As for the third question asked by these researchers in their research in Thailand, whether corporate governance and internal control could manage the risk of fraud in three categories of occupational fraud (asset misappropriation,
corruption, and fraudulent statements\textsuperscript{567}, the researchers provide the summary of findings in the following table.

Table 23: Summary of Risk Factors in Thai Organisations That Can Be Controlled by Corporate Governance and Internal Control\textsuperscript{568}

<table>
<thead>
<tr>
<th>Fraud Risk Factors</th>
<th>Corporate Governance</th>
<th>Internal Control</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Asset Misappropriation</td>
<td>Corruption</td>
</tr>
<tr>
<td>Living beyond means</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Financial difficulties</td>
<td></td>
<td>✔️</td>
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<tr>
<td>Wheeler-dealer attitude</td>
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<td>✔️</td>
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<tr>
<td>Irritability, suspiciousness, or defensiveness</td>
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<td>Addiction problems</td>
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<tr>
<td>Complaining about inadequate pay</td>
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<tr>
<td>Past employment-related problems</td>
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<tr>
<td>Instability in life circumstances</td>
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<tr>
<td>Excessive pressure from within organisation</td>
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<tr>
<td>Excessive family/peer pressure for success</td>
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<tr>
<td>Refusal to take vacations</td>
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<td>✔️</td>
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</table>

\textsuperscript{567} Occupational fraud is generally classified into three categories: asset misappropriation, corruption, and fraudulent statements. Asset misappropriation involves theft or misuse of an organisation’s assets. Corruption involves employees wrongly using their influence in business transactions for their own benefits. Fraudulent statements involve falsification of organisation’s records and documents. See, Holtfreter, above n 18.

\textsuperscript{568} Naruedomkul, Rodwanna and Wonglimpiyarat, above n 566, 217.
The researchers conclude that corporate governance and internal control mechanisms administered by Thai organisations could help reduce certain risk factors in certain categories of fraud, yet they have no positive effect on other identified risk factors. In relation to asset misappropriation, corporate governance can reduce fraud risk factors arising from living beyond means, irritability, close association with a supplier/customer, excessive peer/family pressure for success, and refusal to take vacations, whereas internal control helps reducing risk factors from living beyond one’s means, financial difficulties, excessive pressure from within an organisation, excessive peer/family pressure for success, refusal to take vacations, borrowing money from coworkers, and unwillingness to share duties. In relation to corruption, corporate governance has positive effects on risk factors of addiction problems, inadequate pay, past employment-related problems, and instability in life circumstances, whereas internal control has effects on financial difficulties, close association with supplier/customer, past legal problems, inadequate pay, instability in life circumstances, and borrowing money from coworkers. Last, in the case of fraudulent statement fraud, corporate governance reduces fraud risk factors of living beyond means, financial difficulties, a ‘wheeler-dealer’ attitude, irritability, refusal to take vacations, and borrowing money from coworkers, whereas internal control only helps reducing risk factors of a ‘wheeler-dealer’ attitude.

The researchers then noted that neither corporate governance nor internal
control could help mitigate risk factors stemming from the lack of authority, divorce/family problems, and gambling.

In the empirical part of this study, the aforementioned fraud risk factors found in Thai organisations, as proposed by Naruefomkul, Rodwanna, and Wonglimpiyarat, were employed as a guideline in devising interview questions exploring pressure, opportunity, and rationalisation borne by Thai securities brokers in the commission of brokerage frauds and relating violations.569

II The Fraud Triangle Model Employed in this Research

Deriving from literatures discussed above, this thesis employs a revised Fraud Triangle as its primary model to help explore and identify factors leading to the commission of brokerage fraud and regulatory violations by securities brokers in the context of Thai securities markets. Semi-structured interview questions were carefully designed to gain information on fraud risk factors perceived by securities brokers, officers, and investors under each side of the Fraud Triangle. Local societal factors and industry business practices are also explored and taken into account in the model as well as in the subsequent analysis. The exploratory model is shown in the figure below:

569 See details in Chapter 5 and Appendix 4: Interview Questions.
For the pressure variable, different categories of pressure/motivation factors influencing brokerage fraud are explored, not only non-shareable financial problems as proposed in the original model. Based on the extensive literature reviewed above, the categories include financial personal pressure, non-financial personal pressure, financial employment pressure, non-financial employment pressure, financial external pressure, and non-financial external pressure. Nevertheless, since this research is exploratory and qualitative in nature, it is foreseeable that interviewees might focus on pressure/motivation factors in certain categories and fail to discuss others.

The opportunity variable employed in this study is revised to include an element of *capability* from the Fraud Diamond Model proposed by Wolf and Hermanson.\(^570\) The reason for such inclusion is that stock-brokerage practice is

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\(^{570}\) Wolfe and Hermanson, above n 495.
often considered highly technical and that the capability of individual brokers to successfully engage in such fraudulent transactions for their own benefit or for third parties benefit is central to the commission of brokerage fraud. Therefore the capability element is considered alongside relevant opportunity factors allowing securities brokers to commit fraud against clients and/or regulatory violations for their own benefit.

Rationalisation, the third lateral of the triangle, holds its significance in the revised fraud model of this research and is not replaced by personal integrity as suggested by researchers in the area of financial and accounting fraud. Unlike fraud studies in the auditing area focusing on analyses of records and observation of individual decision-making behaviour in organisational settings, this research focuses on factors and potential situations that lend themselves to commission of brokerage fraud in the eyes of active Thai securities brokers. Therefore, rationalisation statements extracted from in-depth interviews of participants are crucial for further analysis.

The fourth and most substantial part of this study is the incorporation into the revised model of societal factors, as proposed by Cieslewicz. As this research focuses on brokerage fraud in Thailand, local societal factors and business practices could play a key role in shaping perceptions of pressure, opportunity, and rationalisation of Thai brokers in relation to commission of fraud and relating regulatory violations. The sources of societal factors and business practice to be included in the model and the subsequent analysis are derived from interviews of the participants as well as from relevant literature.

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571 Cieslewicz, above n 24, 219.
In conclusion, the revised Fraud Triangle Model employed in this study incorporates important features from prior, revised and extended models of the Fraud Triangle. Starting from the pressure variables, the researcher believes that there are multiple sources of pressure that can induce or motivate individuals to commit fraud, from personal pressure, employment pressure, to external pressure, not just pressure from non-shareable financial problem as originally proposed by Cressey. In relation to opportunity factors, the researcher agrees with Wolf and Hermanson that the capability of the fraudsters is an important element, especially in the complex area of brokerage frauds and relating violations. Capability is therefore included in the model as the modifier of opportunity factors. In the area of rationalisation, the researcher does not concur with the ACFE’s position, which opines that ‘rationalisation may not be observable’. On the contrary, the researcher considers that rationalisation can be subtly inferred and extracted from the participants’ statements, which would provide significant insights into the causes of fraud in this context. Finally, following the pioneering research of Cieslewiz, the researcher similarly believes that societal and industrial factors can play key roles in the perception and the occurrence of fraud in international settings, meaning that societal factors and business practices are included as important variables. At the following stage, a list of main interview questions together with optional follow-up questions are carefully devised to reflect and inquire into these variables. Nevertheless, it is important to note that since this study is essentially an exploratory qualitative study, the participants might give more attention to certain variables than others, based on their interests and personal experiences, as well as the dynamic of the interviews.

In addition to the revised Fraud Triangle model discussed above, the secondary model of Predatory Fraudster might be further employed for analytical purposes, depending on findings of the empirical research. This study sets out with assumptions that brokers who commit fraud and/or regulatory violations are

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573 The Association of Certified Fraud Examiners, *Consideration of Fraud in a Financial Statement Audit*, 2002, Sec. 316.35.
574 Cieslewicz, above n 24, 214.
575 See details in Chapter 5.
individuals who attempt to perform their professional roles but are caught in situations that pressurise them and provide them with opportunities to commit fraudulent acts that relieve them from such pressure or situations. Brokers who have committed the brokerage offences are often first-time offenders who would not re-commit similar acts after they have served punishment. However, if these underlying assumptions are proven to be incorrect and brokers’ predatory behaviour is distinctively present, the revised Predatory Fraudster model shown in the figure below is employed as a secondary analytical model. Under the Predatory Fraudster model, pressure and rationalisation factors are replaced by perpetrators’ arrogance and criminal mindsets. As a result, only opportunity factors are to be focused upon in the further analysis. It should be noted that similar to the revised Fraud Triangle, local societal factors and business practices are also present in the revised Predatory Fraudster model.

![Figure 14: The Revised Predatory Fraudster Model](image)

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576 Dorminey et al, above n 23.
Chapter 5

The Empirical Research on the Thai Brokers’ Perceptions of the Causes of Brokerage Frauds and of the Current Thai-Anti Brokerage Fraud Regime

I Research Methodology

This chapter’s first section discusses the methodology used in this empirical study, starting with a wide-ranging literature review on qualitative research methodology and existing legal-qualitative research. The research design is then described in detail: (1) structure of the study, (2) interview phases and participants, (3) ethical considerations, (4) pilot study, (5) interview questions, and (6) validity and reliability. The section ends by discussing the researcher’s experience during the main interview stage, and limitations of the research.

A Literature Review

1 Qualitative Empirical Research

Empirical research relies on gathering evidence not available in the public domain as a way of creating knowledge. The usual means of collecting empirical evidence is by direct and indirect observation or interviewing via conversations or surveys. Researchers then analyse evidence to answer research questions defined by the researchers before or during the research. There are two modes of analysis in empirical research: quantitative and qualitative. Quantitative research is usually concerned with measurement, aiming to accurately capture aspects of the social world using numbers as units of analysis: percentages, probability values, variance ratios, causal relationships between variables, etc. On the other hand, qualitative research focuses on the social-constructed nature of reality. Qualitative researchers attempt to create knowledge by interpreting

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Nigel King and Christine Horrocks, *Interviews in qualitative research* (Sage, 2010).
participants’ experience and the participants’ reflections on those experiences. In results of qualitative research are presented in a narrative fashion, rich with descriptive data and insights into participants’ experience in specific settings, processes, or relationships. In relation to theoretical considerations, qualitative research is generally based on the interpretivist perspective. Interpretivist approaches focus on how the social world is experienced and understood by the participants. It assumes that social reality has a meaning for human beings and human action is meaningful. Interpretivist researchers, therefore, inquire into individuals’ experience and attempt to develop an understanding of how individuals make sense of experience in particular social settings. As a result, qualitative research always has an interpretive character because a researcher uses contextual data obtained through different data-collection methods to reconstruct the meaning of events and/or human actions through the researcher’s interpretation.

Methods of data collection for qualitative research are classified into four broad categories: observation, participation, interview, and review of documents. Each method has its advantages, limitations, and further sub-methods that researchers must carefully consider in designing their qualitative research. In this study, in-depth interview is chosen as the method of data collection and three stages of interview were conducted. Interview is the most common method of data collection in qualitative studies. The method can be conceptualised as ‘a conversation with a purpose’ and ‘a guided conversation’. The emphasis is

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578 Ronald I. Jackson, Darlene K Drummond and Sakile Camara, 'What is qualitative research?' (2007) 8(1) Qualitative Research Reports in Communication 21.
579 King and Horrocks, above n 577.
580 Jennifer C. Greene, 'Qualitative program evaluation' (1994) 530 Handbook of qualitative research 544.
584 Robert L. Kahn and Charles F. Cannell, 'The dynamics of interviewing: theory, technique, and cases' (1957).
585 Steinar Kvale, Doing interviews (Sage, 2008).
on researchers asking questions and listening, and participants answering. Skillful researchers listen carefully to answers, and take notes of nuances in conversations, the better to hear the meaning being conveyed. The strengths of interview are that, first, the method quickly yields data in quantity, especially when compared to observation and participation. Second, the method enables participants to share views, experiences, beliefs, motivations, and/or understandings on specific matters using their own words, providing rich data for analysis. Third, it allows researchers to probe for more details and ensure that participants understand interview questions the way they are intended. Last, when conducting interviews, researchers have flexibility to use knowledge, expertise, and interpersonal skills to further explore unexpected ideas or themes raised by participants.

Nevertheless, interviewing has limitations and weaknesses. First, it requires significant cooperation from interviewees. Researchers may not be able to get hold of individuals they want to interview. Even when they do, interviewees may be unwilling or uncomfortable sharing stories, experiences, or opinions that the interviewer hopes to explore. In certain situations, interviewees may also have reason not to be truthful. Second, successful interviewing requires various skills in the interviewer. Those include (1) question-framing skill, (2) interpersonal skills to build trust and rapport with interviewees, (3) active listening skills, (4) conversational skills and language proficiency, and (5) decision-making skills regarding what to ask and how, which answers to follow-up, and which to report and interpret. Third, voluminous data obtained through interviews are time-consuming to analyse. Last and most important, there are intrinsic issues of validity and reliability of qualitative research as

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587 Ibid.
588 Marshall & Rossman, above n 582.
589 Ibid.
590 Ibid.
591 Ibid.
593 Kvale, above n 585.
researchers subjectively interpret interview data.\textsuperscript{594} To increase the validity and reliability of studies, different strategies, such as use of random sampling, triangulation, and peer scrutiny, are carefully considered in the research design.\textsuperscript{595}

Interview formats vary in structure and in how interviewers respond to answers from interviewees. Three general categories of qualitative interview are structured, semi-structured, and unstructured.\textsuperscript{596} In a structured interview, interviewees have a list of predetermined questions to be asked in specific order. There is little or no variation of the questions, and no further probing questions responding to interviewees’ answers. Strengths of this format include ease of interview administration, and answers can be readily compared. Nevertheless, data collected by this method usually lack the depth required for most qualitative studies.

In complete contrast, an unstructured interview has no predetermined questions. Questions are developed during the interview, and based primarily on interviewees’ responses. Unstructured interviews are much like an everyday conversation, yet differentiated by the use of probing as crucial to the research process.\textsuperscript{597} This method of interview is usually associated with grounded theory research where theories are developed from an analysis of interview data.\textsuperscript{598} Disadvantages of this interview format are that the quality of data relies heavily on conversational skills of both interviewers and interviewees, and interviews are usually time-consuming.\textsuperscript{599} Also, data obtained are usually less systematic, making it difficult for researchers to analyse and make comparisons across the dataset.

\textsuperscript{594} Ibid.
\textsuperscript{595} See details below.
\textsuperscript{596} Marshall & Rossman, above n 582.
\textsuperscript{597} Ibid.
\textsuperscript{598} Anselm Strauss and Juliet Corbin, \textit{Basics of qualitative research: Techniques and procedures for developing grounded theory} (Sage Publications, 1998).
\textsuperscript{599} Kvale, above n 585.
Positioned between structured and unstructured interviews are semi-structured ones, also known as an interview guide approach. In this format, interviewers have an outline of discussion topics or a set of key questions to use as an interview guide, but are free to ask further probing questions, and to pursue new ideas, based on interviewees’ answers. Wording and sequencing of questions can also vary according to the interview’s circumstances and progress. Major advantages of this format are in encouraging interviewees to convey experiences and opinions in detail; data obtained are still somewhat systematic, easing data analysis and comparison.

2. Elite Interview

Having reviewed general characteristics of qualitative interview in the previous section, one specialised type of interview is further discussed in this section, due to its methodological differences and its importance to this study. An elite interview is of interviewees who are either elite members of the society or people who hold prominent positions and see themselves better informed on the interview issues than the interviewer. These interviewees often assume that they are giving interviews as a favour to an interviewer, and that the interviewer must be courteous and deferential to them. Common examples of elite interview are interviews of diplomats, politicians, government officers and chief executive officers of multinational companies. In the Second Interview Phase of this study, the researcher interviewed six senior officers of the SEC Office on their respective roles in relation to the focus brokerage fraud and relating violations. As these officers were considered ‘elite’ in relation to this study, literatures on the elite interview methodology were carefully consulted and strategies suggested were incorporated into the research design.

Based on relevant literatures, the elite interview differs from standardised interviews in three stages: the preparation stage, the interview stage, and the

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600 Ibid.
601 King and Horrocks, above n 577.
603 Ibid 32.
data analysis stage. At the preparation stage, the elite interview often required more preparation. First, it is usually harder for the interviewer to get access to the interviewees.\(^604\) This can be due to various reasons including difficulty of scheduling, an over-protective secretary, or suspicion about the objectives of the project. Strategies suggested include an emphasis on the credentials of the interviewer, a detailed explanation of the project, and the use of gatekeepers or intermediaries to arrange interviews. Second, the issue of confidentiality is different from standardised interviews due to the reason that these elites may not need rigorous protection by the interviewer and may, instead, prefer that their identities be revealed. Moreover, their identities as much as their positions within institutions or organisations might be crucial to the validity of the data. In other words, agreements on confidentiality should always be negotiated before the interview begins.\(^605\) Third, elites – in common with many highly educated people – often dislike the strict-sense of close-ended questions. They prefer to articulate their views and explain what they think.\(^606\) Semi-structured, open-ended questions are, therefore, the preferred format of interview. Last, it is most important that the interviewer does his or her homework and has a good understanding of the issues to be canvassed at interview since it is often the case that interviewees challenge the interviewer on the topics of interview and its relevance.\(^607\)

At the interview stage, the most important issue is the power relation between the interviewer and the elite interviewees. Unlike other types of qualitative interview where the interviewer plays a leading role in setting up the interview stage and defining the interview questions, the power relation in the elite interview often shifts to the interviewees who hold important positions and believe that they are better informed than the interviewer. The interviewees may also view that the interviewer is intellectually inferior and may not take the session seriously, or take control of the session themselves altogether, resulting

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\(^604\) Ibid 36.
in the interviewer’s failure to obtain important data. The strategies to mitigate this power relation issue are manifold. First, as mentioned, good preparation is required and the interview questions must be very carefully thought out. Second, the interviewer needs to first and foremost build a relationship and gain the trust of interviewees in order to collect high quality data. This can be done partly with the interviewer’s effective self-introduction. It is helpful for the interviewer to clearly mention their organisations and sponsorship, if any, followed by a detailed description of the project. Some researchers further suggest the use of inconsequential conversations at the start of the session to break the ice between the interviewer and interviewees, and to set up the interview stage. Third and most important, elite interviewees may view the issue differently and not answer interview questions. Suggested strategies are to turn an interview into a discussion rather than a one-sided question-and-answer session. It is also useful to encourage interviewees to structure their accounts of the research issue as well as letting them introduce other issues they believe relevant to the topic of discussion. Such deviation could provide insightful data that lead to a revision, a reinterpretation, an extension, or a new approach of the research.

Last, at the data-analysis stage, the interviewer must carefully determine validity (how appropriate is the measuring instrument?) and reliability (how consistent are the results of repeated tests?) of data obtained from elite interviews. Some interviewees may have their own agendas and subtly pass them during the interview, or they may be boastful or may intentionally falsify data or personal opinions. Strategies to enhance the validity and the reliability of elite

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609 Ibid.
611 Dexter, above n 602, 50.
612 William S Harvey, 'Strategies for conducting elite interviews’ (2011) 11(4) Qualitative Research 431.
613 Dexter, above n 602, 50.
614 Ibid 55.
615 Ibid 19.
616 Berry, above n 608.
617 Richard L Hall, Participation in congress (Yale Univ Pr, 1998) 201.
interviewing include (1) the use of multiple sources, (2) doing prior research on the interviewees, and (3) the use of scripted probe-notes to attain consistent probing in the important areas of the interview.\textsuperscript{618}

3 Legal Empirical Research

Although qualitative research methods are often identified more with social sciences and humanities than with the discipline of law, most law practitioners and researchers unknowingly undertake qualitative research on a regular basis, in the form of methods of establishing the law through analysis of cases.\textsuperscript{619} What is sometimes lacking in legal research compared to those other disciplines are studies collecting primary data for qualitative analysis, either via interview, observation, or participation. Nevertheless, there are growing numbers of empirical studies in many areas of law, such as studying crime rates and criminal justice responses in criminal law, studying the impact of sanctions in international trade law, contracts, company law, the law of financial markets, consumer protection, bankruptcy and insolvency, regulation of professions, family law, labour law, environmental law, alternative dispute resolution, and administrative law.\textsuperscript{620} As this study concerns brokerage fraud and relating violations in securities markets, some relevant empirical studies are in related areas of property crime, impact of penal sanctions, financial markets, and the regulation of professions.

(a) Property Crime

In the research area of property crime, an empirical study on fraud based on interviews of two hundred fifty inmates by Donald R. Cressey established that for criminal violation of trust to occur, the factors which must be present are: (1) pressure/motivation, (2) opportunity, and (3) rationalisation.\textsuperscript{621} The present

\textsuperscript{618} Berry, above n 608.
\textsuperscript{620} See also, Peter Cane and Herbert Kritzer, \textit{The Oxford Handbook of Empirical Legal Research} (OUP Oxford, 2010).
\textsuperscript{621} Cressey, above n 421.
study aims to retest and elaborate as needed the Fraud Triangle Theory that is employed as a theoretical background for this study. A number of studies subsequent to Cressey’s earlier work have extended the Fraud Triangle Theory. Nevertheless, most of these empirical studies are conducted under the disciplines of accounting and auditing, rather than that of law or criminology. Other notable empirical studies on property crime suggest that property-crime offenders are more responsive to changes in incarceration rates and levels of policing than are violent crime offenders. Part of the explanation is that offenders in property crimes are more rational calculators than offenders in ‘crimes of passion’ and violence fueled by alcohol. It should be noted that empirical studies in this area have a direct relevance to this thesis, as Cressy’s Fraud Triangle and subsequent extended and revised models are the theoretical background of this research on causes of fraud and how to enhance deterrence of anti-fraud measure in Thai securities law.

(b) Impact of Penal Section

In research of impacts of penal sanctions, well-established empirical research literature assesses issues of effectiveness of general deterrence, incapacitation, and rehabilitation. Most of these studies are, however, conducted using a quantitative research method. For example, association studies on general deterrence examine changes in enforcement or punishment levels in a single jurisdiction at different times or variations across different jurisdictions, then assess how such differences correlate with variation in the crime rate. In

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622 See details in Chapter 4.
addition to these individual studies, a meta-analysis\textsuperscript{626} of deterrence-study results was conducted by Travis C. Platt and his team in 2006.\textsuperscript{627} The findings from the meta-analysis show statistically significant negative correlations between punishment certainty and crime rates. On the other hand, a small number of researchers have employed quasi-experimental designs to study the deterrence effect of particular punishments by constructing a controlled situation. One example of this kind of research is a study of fare avoidance in Zurich’s public transport.\textsuperscript{628} The study found that the violation rate decreased substantially as the probability of detection rose due to the increase in number of train attendants over time. Similarly, in the research areas of rehabilitation and incapacitation, most studies are statistically based. Few studies are conducted using qualitative methods. A notable example is a study by Stephen Farrall on the use of probation in reducing offending behaviour in United Kingdom,\textsuperscript{629} which employ interview as the data collection method. The study finds that there is little evidence to suggest that interventions by probation officers play a direct role in desistance. When desistance occurs, it is largely attributed to the probationers themselves and from the changes in the social context.

In conclusion, the qualitative empirical research in this area greatly contributes to the understanding of correlations between penal sanctions and behaviour of individuals, notably the refutation of the common notion that the increase in the magnitude of sanctions and that the increase in the probability of detection would produce a better result. Such findings directly influence recommendations proposed in latter chapters of the thesis, which are essentially for relevant government agencies to focus on providing better information to brokers and

\textsuperscript{626} A meta-analysis is pooling of similar data sets and use of statistical methods to evaluate effect size of effects found across all the pooled data.


\textsuperscript{628} Martin Killias, David Scheidgger and Peter Nordenson, ‘The Effects of Increasing the Certainty of Punishment A Field Experiment on Public Transportation’ (2009) 6(5) European Journal of Criminology 387.

\textsuperscript{629} Stephen Farrall, \textit{Rethinking what works with offenders: Probation, social context and desistance from crime} (Willan Cullompton, 2002).
investors, as well as improving their detection capabilities, rather than increasing the current sanctions imposed on offending brokers.

(c) Financial Market Regulation

Many empirical studies exist in the area of financial market regulation. It is interesting to note that these studies are not exclusively conducted by academics, but also by various stakeholders in the market, such as lawyers, financial economists, and regulatory agencies, under different agendas. According to Julia Black, current empirical studies are loosely centered around six areas of issue or debate, which are: (1) the efficient markets hypothesis and mandatory disclosure rules, (2) investor behaviouralism and their impact on investor protection, (3) the impact of rules relating to market misconduct, (4) the relationship between legal rules and securities market development, (5) the unintended impact of regulation, and (6) the dynamics of financial market regulatory regimes. Two areas that are more relevant to this study are investor behaviouralism and its impact on investor protection and the impact of rules relating to market misconduct. Two notable qualitative studies on investor behaviouralism are a study of the behaviour of online investors in Australia by Dimity Kingford-Smith and Kirsty Williamson in 2004 and research into victims of frauds commissioned by the British Columbia Securities Commission in 2006. The first study finds that investors employ a wide range of sources of information, yet the views of peers are the most significant factors motivating investment decisions. Furthermore, the study reports that some investors trade for the fun or excitement of trading, similarly to gamblers. This group of investors is particularly vulnerable to risks inherent in online trading. The second study, interestingly, reported that the two most vulnerable groups of mortgage scams are pre-retirement investors approaching retirement without

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630 Julia Black, 'Financial markets' in Peter Cane and Herbert M. Kritzer (eds), The Oxford handbook of empirical legal research (Oxford University Press, 2010) 151.
631 Ibid.
633 Julia Black, Involving consumers in securities regulation (Citeseer, 2006).
634 Kingsford-Smith and C Williamson, above n 632.
adequate funds, and the affluent middle-aged male who assumes himself to be knowledgeable about investments. As for empirical studies in the topic of market misconduct, two separate studies on insider trading by Uptal Bhattacharya and Hazem Daouk in 2002,635 and Laura Beny in 2006636 similarly indicate that the mere presence of insider trading prohibitions does not affect market operations. Nevertheless, the enforcement of insider trading regulation has a positive effect on price formation and liquidity of securities.

The impact of these empirical studies on this piece of research is predominantly on the research design and the interview question formulation stages. A number of interview questions together with follow-up questions are formulated to explore investors’ relationship with their brokers in connection to their different investment patterns and motivations, notably in the cases of elder investors and day traders.

(d) Regulation of Profession

Similar to the research area of financial market regulation, that of regulation of professions is rich with empirical studies. Two key issues that receive much attention from researchers are tension between the interests of the profession and the public, and the most effective methods of regulating professions.637 On tension between the interests of professionals and the public, a notable qualitative study on self-regulation shows that contrary to popular belief that self-regulation is always self-serving, there is no linear relationship between professionals’ intentions and regulatory outcomes. Self-regulation sometimes simultaneously serves the interests of both the profession and the public.638 Studies on service quality provided by professionals find that in certain, less lucrative areas of practice, including legal aid and tribunal work, there was little

637 Linda Haller, 'Regulating the professions' in Peter Cane and Herbert Kritzer (eds), The Oxford handbook of empirical legal research (2010) 216.
difference in service quality provided by the professionals and the unregulated service providers. Regarding effective methods of regulating professions, researchers attempt to answer the key question of what regulatory techniques or which mix of such techniques can provide optimal outcome. A key study was conducted by John Braithwaite and colleagues in 1992, resulting in design of a regulatory pyramid. They found that regulators, at the earliest enforcement stage, often engaged in dialogue with regulatees and employed incentives and encouragement to induce compliance. However, effective regulators ensure that more forceful sanctions, known as ‘big stick’, are available, while making soft demands for compliance from regulatees. Regulators then respond to failures to comply by escalating sanctions up the regulatory pyramid through more severe intervention measures to secure compliance. At the top of the pyramid lies formal prosecution for regulatory breach, which effective regulators only use in last resort. It is to be noted that Braithwaite’s theory of the regulatory pyramid, based on his qualitative empirical studies over the years, forms the basis for the recommendations suggested in this thesis. Further details on the use of regulatory pyramid to regulate brokerage fraud and relating violations can be found in Chapter 6 of this thesis.

B Research Design

1 Structure

After the laws and regulations as well as cases on brokerage fraud in the Thai securities market had been chosen for further investigation, it was decided that primary interview data were required to enhance the understanding of factors leading to the commission of offences, especially from the perspective of securities brokers. The research approach of the empirical part of this study is deductive, in which the researcher develops a theory and hypotheses then

640 Ayres and Braithwaite, above n 25.
641 Keith Hawkins, Law as last resort: Prosecution decision-making in a regulatory agency (Oxford University Press on Demand, 2002).
designs a research strategy to test such theory and hypotheses accordingly. The theory of Fraud Triangle was selected as the main theoretical background and eight hypotheses relating to brokerage fraud in Thailand based on the theory were subsequently developed. The empirical programme discussed in this chapter was designed to test the application the Fraud Triangle Theory in explaining such phenomena in the context of the Thai securities market, and to address the hypotheses set forth.

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**Figure 15: The Structure of the Empirical Part of the Study**

642 The opposite of the deductive approach is an *inductive* approach, in which a researcher draws generalisation out of observation and develops a theory from the analysis of the data collected. See, Alan Bryman, ‘Encyclopedia of Social Science Research Methods’ (2004).

643 See details in Chapter 1.
At the early design stage, qualitative research was chosen for its strength in examining understanding of subjects’ experiences of phenomena. The researcher then chose to employ a semi-structured interview as the main data-gathering tool due to the exploratory nature of this study. A set of main questions was carefully prepared in advance. Also, based on interviewee’s answers, probing questions were allowed to be asked to clarify answers or to explore new issues raised by interviewees.

Interviews were conducted with three main objectives. The first was to gain views and perceptions held by relevant personnel in the Thai capital market relating to the factors on the three sides of the triangle (*pressure, opportunity, rationalisation*) that together are said to lead to the commission of fraud and relevant regulatory violations.

![Figure 16: The Revised Fraud Triangle Model](image)

Figure 16: The Revised Fraud Triangle Model
The second objective was to gain the interviewees’ opinions on different components of the current anti-brokerage fraud regime and how to improve their efficiency, such as licensing examinations, compulsory training, legal proceedings, the imposition of sanctions, etc. The third and last objective was to gain other information on the securities brokerage industry and the securities brokerage profession that may assist in the subsequent analysis. Examples of such information are income satisfaction, occupational mobility, interviewees’ level of knowledge of the law and its enforcement, effect of the recent liberalisation of brokerage fees on the brokers’ welfare, etc.

Structuring interviews involved three phases. Phase One interviewed securities brokers. Phase Two interviews were of regulators, staff of the Office of the Securities and Exchange Commission. Phase Three interviewed investors, who in this study are representatives of the Thai Investor Association. Note that only the first and second phases were planned at the initial design stage. The third interview phase was added after first and second interview phases were completed and the fieldwork report was presented at seminar. It was suggested by panel members that an interview of investors should be additionally conducted to complement the interview of securities brokers and the interview of regulators in the first and the second phases, respectively.

Since most interviewees’ English proficiency was under-fluent, all interviews were conducted in Thai. Conversations were recorded digitally, and later transcribed and translated into English. Transcripts of the first phase (securities brokers) were fully translated for a detailed thematic analysis using NVivo qualitative-research software. Because of time and resource constraints, the transcripts of the second (regulators) and the third (investors) interview phases were only partially translated.

After decisions on data gathering were made, relevant ethical research issues were considered and strategies to address them were included in the research.

design. Next, interview questions were carefully developed and tested in the pilot interview stage. Information and experience gained from pilot interviews were used to revise interview questions. Potential participants were then contacted with assistance of gatekeepers of each interview phases. Finally, three phases of the interview were conducted in Thailand from October 2013 to August 2014. Details of each stage are discussed in detail in the following sections.

2 Interview Phases and Participants

(a) Phase One: Interview of Securities Brokers

The first phase, or the core component of this study, was an interview of retail securities brokers. Interviews focused on brokers’ perception of causes, opportunities, and rationalisation in the commission of brokerage fraud and related regulatory violations together with their views of current anti-fraud regulations. Also, the interview encouraged brokers to express their views and opinions about their job descriptions, working culture, remuneration structures, relationships with clients, internal control mechanisms, and other work-related issues that help the researcher identify the potential causes of fraud.

Participants in Phase One were eighteen retail securities brokers from nine securities brokerage companies in three different categories. For the purpose of this study, the researcher divided securities brokerage companies in Thailand into three categories based on shareholding structures and business relations, which are (1) commercial-bank related securities companies, (2) local securities companies, and (3) foreign securities companies, respectively. Commercial-bank related companies are securities companies having commercial banks as major shareholders and/or having a direct business partnership with the banks, such as client-database sharing. Local companies are securities companies whose majority shareholders are Thai nationals or Thai legal persons. Last, foreign companies are securities companies whose majority shareholders are foreign

645 Approved Research Protocol No. 2013/498.
nationals, or foreign legal persons, and/or are securities companies operating business in Thailand as subsidiaries of foreign securities companies. The underlying reason for such division of securities companies is that differences in their internal structure and working culture are hypothesised to have varying impacts on pressure, opportunity, and rationalisation as perceived by their employee brokers during the commission of fraud and related violations. Eighteen participants are therefore divided equally into three groups of six participants, with each group made up of two people from each of the three companies.

Recruitment of participants in this phase was conducted in two rounds. The first round was carried out using purposive sampling to identify and select nine information-rich participants, who were knowledgeable, available, and willing to participate in the study. The second round of recruitment was carried out using snowball sampling to gain access to a further nine participants working at the same securities companies with the participants in the first group. The use of such snowball sampling technique is central to the design of the research since interview data derived from two brokers working in the same company would be compared and cross-checked to increase the reliability and validity of the research.

In preparation, nine targeted securities companies in the required categories were first identified. One potential participant from each targeted company was

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646 See details in Chapter 3.

647 Purposive sampling or nonprobability sampling is a technique widely used in qualitative research for the identification and the selection of individual or groups of individual that are especially knowledgeable about the research issue or the phenomenon of interest. This method of sampling emphasises the availability of the participants and their willingness to participate in the research, as well as their ability to communicate their experiences and opinions in an articulate and reflective manner: Lawrence A Palinkas et al, 'Purposeful sampling for qualitative data collection and analysis in mixed method implementation research' (2015) 42(5) Administration and Policy in Mental Health and Mental Health Services Research, 533-534.

648 Snowball sampling or referral sampling is a sub-type of a purposive sampling technique. This technique uses initial participants to nominate additional participants who meet the eligibility criteria set by the researcher and could contribute to the study. The term 'snowball sampling' is an analogy to a snowball increasing in size as it rolls downhill. The technique is a particularly useful tool for building networks and increasing the number of participants in the area where gaining access is difficult: David Morgan, 'Snowball sampling' (2008) 2 The SAGE encyclopedia of qualitative research methods, 816.
then contacted with the help of Miss Nitivadee Tasuwanin, a licenced securities broker, who agreed to be a gatekeeper and a local contact for this interview phase. In choosing the first nine participants, with the consultation of the gatekeeper, securities brokers holding different positions and having various level of experience were chosen. Among the first group of potential participants were team leaders, experienced brokers, and a novice broker. When contact was made, the information sheet was sent to the potential participants for their consideration. It is striking to note that the acceptance rate was 100 per cent and many participants later expressed that they were eager to talk about the research issue. At the conclusion of each interview session, using the snowball sampling technique, the researcher asked each participant to recommend one of his or her colleagues working in a different team within the same company to be the second participant. The researcher then made contact with the recommended persons and nine further interview sessions were scheduled shortly thereafter. Underlying reasons for the inclusion of the second participant from the same company was to enrich data being obtained and to increase the validity and reliability of the research, as data between the two participants from the same company can be cross- gathered, classified, and studied checked for consistency.

Due to ethical concerns, identities of the participants and their employing companies are not revealed in the reporting of data from this phase. Participant codes comprise letters and numbers systematically employed to represent each participant. Some demographic details of the participating brokers are shown in the table below.

\[649\]

\[649\] Although it would be beneficial to readers, it is impossible to include the genders and age of the interviewees in the demographic table. Doing so would be a breach of research ethics, posing significant risks to the participants. Since the Thai Brokerage community is small, specifying the genders and age of the interviewees would make it possible for readers to trace and identify participants. It was made clear in the ethics application that such demographics and personal information of the participants would not be revealed in the text.
Table 24: The Demographics of the Participants in the First Interview Phase

<table>
<thead>
<tr>
<th>Participant</th>
<th>Type of Securities Companies</th>
<th>Securities Company</th>
<th>Position</th>
<th>Income Scheme</th>
<th>Experience / Years</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1A</td>
<td>Commercial-Bank Related</td>
<td>B1</td>
<td>Team Leader</td>
<td>Incentive Scheme</td>
<td>10</td>
<td>18/11/2013</td>
</tr>
<tr>
<td>B1B</td>
<td>Commercial-Bank Related</td>
<td>B1</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>9</td>
<td>22/11/2013</td>
</tr>
<tr>
<td>B2B</td>
<td>Commercial-Bank Related</td>
<td>B2</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>5</td>
<td>2/12/2013</td>
</tr>
<tr>
<td>B3A</td>
<td>Commercial-Bank Related</td>
<td>B3</td>
<td>Team Leader</td>
<td>Incentive Scheme</td>
<td>10</td>
<td>3/12/2013</td>
</tr>
<tr>
<td>B3B</td>
<td>Commercial-Bank Related</td>
<td>B3</td>
<td>Team Leader</td>
<td>Incentive Scheme</td>
<td>22</td>
<td>11/12/2013</td>
</tr>
<tr>
<td>F1A</td>
<td>Foreign</td>
<td>F1</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>3</td>
<td>20/11/2013</td>
</tr>
<tr>
<td>F1B</td>
<td>Foreign</td>
<td>F1</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>2</td>
<td>20/11/2013</td>
</tr>
<tr>
<td>F2A</td>
<td>Foreign</td>
<td>F2</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>4</td>
<td>25/11/2013</td>
</tr>
<tr>
<td>F2B</td>
<td>Foreign</td>
<td>F2</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>8</td>
<td>6/12/2013</td>
</tr>
<tr>
<td>F3A</td>
<td>Foreign</td>
<td>F3</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>13</td>
<td>26/11/2013</td>
</tr>
<tr>
<td>F3B</td>
<td>Foreign</td>
<td>F3</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>10</td>
<td>18/12/2013</td>
</tr>
<tr>
<td>L1A</td>
<td>Local</td>
<td>L1</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>8</td>
<td>15/11/2013</td>
</tr>
<tr>
<td>L1B</td>
<td>Local</td>
<td>L1</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>8</td>
<td>19/11/2013</td>
</tr>
<tr>
<td>L2A</td>
<td>Local</td>
<td>L2</td>
<td>Team Leader</td>
<td>Fixed Scheme</td>
<td>11</td>
<td>27/11/2014</td>
</tr>
<tr>
<td>L2B</td>
<td>Local</td>
<td>L2</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>8</td>
<td>4/12/2014</td>
</tr>
<tr>
<td>L3A</td>
<td>Local</td>
<td>L3</td>
<td>Team Leader</td>
<td>Incentive Scheme</td>
<td>8</td>
<td>12/12/2014</td>
</tr>
<tr>
<td>Participant</td>
<td>Type of Securities Companies</td>
<td>Securities Company</td>
<td>Position</td>
<td>Income Scheme</td>
<td>Experience / Years</td>
<td>Date of Interview</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------</td>
<td>--------------------</td>
<td>----------</td>
<td>---------------</td>
<td>--------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>L3B</td>
<td>Local</td>
<td>L3</td>
<td>Broker</td>
<td>Incentive Scheme</td>
<td>10</td>
<td>19/12/2014</td>
</tr>
</tbody>
</table>

From the table, five team leaders, 12 brokers, and one novice broker participated in interview Phase One. Second, 16 participants were in the incentive remuneration scheme. Only two participants were in the fixed scheme. The longest period of work experience was 22 years whereas the shortest was eight months. The average work experience of the participants was 8.3 years.

(b) Phase Two: Interview of Regulators

The second phase involved interview of regulators in the area of brokerage fraud, officers from the Office of the Securities and Exchange Commission. Interviewing in this phase focuses on the regulator’s perception of causes, opportunities, and rationalisation in the commission of brokerage fraud and related regulatory violations. The interview also focused on officers’ perception of the effectiveness of the current anti-brokerage fraud regime and on working policies and regulatory enforcement procedures that the officers are allowed to share with the researcher.

Contact with the Office of the Securities and Exchange Commission for potential interviewees was made by Dr Prasong Vinaiphat, thesis panel member and former Deputy Secretary-General of the SEC, who kindly agreed to be a gatekeeper and a local contact for this second interview phase. The initial research plan was to interview five officers in five interview sessions. However, at the start of the final session, an interviewee asked for one of her colleagues to also be present in the interview. As a result, six were interviewed in five sessions. A similar set of main interview questions used in interview Phase One was deemed applicable in this phase, the better to compare perceptions of the brokers and regulators on the research issues.
Unlike the participating securities brokers in interview Phase One, participating officers in this second phase were given a choice whether they would like their names to be disclosed. All officers chose to have their names and positions directly quoted in the research. The details of the participating officers in this phase are shown in the table below.

Table 25: The Demographics of the Participants in the Second Interview Phase

<table>
<thead>
<tr>
<th>Interview Session</th>
<th>Participant</th>
<th>Position</th>
<th>Department</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Duangporn Vibulsilp</td>
<td>Senior Executive Officer</td>
<td>Licensing</td>
<td>28/1/2014</td>
</tr>
<tr>
<td>2</td>
<td>Kanchana Soralum</td>
<td>Senior Executive Officer</td>
<td>Licensing</td>
<td>28/1/2014</td>
</tr>
<tr>
<td>3</td>
<td>Sumeth Vichienchai</td>
<td>Senior Executive Officer</td>
<td>Prosecuting</td>
<td>31/1/2014</td>
</tr>
<tr>
<td>4</td>
<td>Ratana Niensawang</td>
<td>Senior Executive Officer</td>
<td>Brokerage Business Audit</td>
<td>31/1/2014</td>
</tr>
<tr>
<td>5</td>
<td>Oratai Nimthaworn, Supatham Chanveeratham</td>
<td>Senior Executive Officer, Senior Executive Officer</td>
<td>Brokerage Business Audit</td>
<td>31/1/2014</td>
</tr>
</tbody>
</table>

(c) Phase Three: Interview of Investors

Interview Phase Three involved investors in the Thai securities market on the issue of brokerage fraud. As mentioned in the research design section above, only the first and second phases were planned from the outset, this third phase being added after the first and second phases were concluded and data obtained from these interviews presented in a fieldwork seminar in May 2014. The research panel members suggested to the researcher that views and opinions of investors on the research topic should also be obtained to complement data already gathered from securities brokers and regulators.
In designing the investor interview phase, the main issue was selection of potential participants so that they represented retail investors in the Thai securities markets. Since there are many types of market investors, such as day-traders, short-term investors, long-term investors, volume-stock traders, low-volume investors, high-volume investors, etc., in which experience and exposure to brokerage fraud and related violations can differ greatly, identifying the right participants who could provide reliable and valid data was a complicated matter. Studies on investors are usually conducted via quantitative research using questionnaires due to strength in collecting data from a large number of diverse participants. Nevertheless, employing triangulation and including a broadly administered survey was undesirable because of limited time and resources. Facing such an issue, the researcher consulted the research panel members and was advised that an interview of representatives from investor associations or organisations was an adequate alternative for the purpose of this study.

With the assistance of Dr Prasong Vinaiphat, panel member and gatekeeper of the first interview phase, the researcher was introduced to Dr Kanate Wangpaichitr, the Vice-President of the Thai Investors Association, who agreed to be the gatekeeper and the main contact of the third interview phase. Dr Wangpaichitr kindly facilitated a contact with three representatives of the Thai Investors Associations and three interview sessions were scheduled in three sessions over two days in August 2014 at the Stock Exchange of Thailand. The same set of main interview questions used in the first and the second phases was employed in this phase, to compare the attitudes of the investors to brokers and regulators.

Similar to the first interview phase, identities of the representatives from the Thai Investors Association are not revealed. Codes comprise letters and numbers and are employed to represent each participant. The demographics of participating investors are tabled below.

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Table 26: The Demographics of the Participants in the Third Interview Phase

<table>
<thead>
<tr>
<th>Interview Session</th>
<th>Participant</th>
<th>Type of Trading Account Use</th>
<th>Investment Experience/ Years</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IR1</td>
<td>Traditional and Internet</td>
<td>7</td>
<td>4/8/2014</td>
</tr>
<tr>
<td>2</td>
<td>IR2</td>
<td>Traditional and Internet</td>
<td>12</td>
<td>4/8/2014</td>
</tr>
<tr>
<td>3</td>
<td>IR3</td>
<td>Traditional and Internet</td>
<td>20</td>
<td>5/8/2014</td>
</tr>
</tbody>
</table>

3 Ethical Issues

This study is conducted under the National Statement on Ethical Conduct in Human Research (2007) and is approved by the Human Research Ethics Committee (HREC) under Full Ethical Review (Approved Research Protocol No. 2013/498). At the research design stage, ethical considerations relating to the study were carefully considered, being (1) risks involved, (2) consent, and (3) confidentiality and data storage. Strategies to minimise risks and uphold research integrity were developed and embedded in the design of the empirical study from the earliest stage.

The first ethical consideration entailed risks associated with the study. Due to this study's nature, which is research on fraud and related violations in the Thai Securities Market, the most significant risk involved was a legal risk faced by the researcher and participants. In interview, there was possibility that participants might reveal wrongdoing committed by themselves or any third party, which may subject both researchers and participants to disclose that information to the authorities. To address this, research on relevant law and regulations was conducted. It was found that under Thai law and the regulations of the SEC, the researcher and the participants have no obligation to report such information to the authorities, provided that the wrongdoing is in the scope of the four focus offences of this study.

Although there is no obligation, the researcher took further steps to protect and minimise legal and other risks for participants. Firstly, minimal personal details
of participants were recorded and only when necessary. Codes were given to represent participants and companies. Similarly, in the third interview stage, names of the representative investors were not reported and their personal details are recorded at minimum. Contrastingly, in the second interview phase where officers of the Office of Securities and Exchange Commission were interviewed, participants were given a choice to disclose their names and positions. All officers chose to reveal their identities and asked the researcher to directly quote their names and positions in the research. Secondly, the participants were asked to be careful when giving examples or mentioned any action or wrongdoing of any third party. The participants were asked to refrain from mentioning the offender’s name or the names of his or her employer, unless such incident had already been reported and publicly recorded by the relevant authority. Last, if the participants felt at any time during the interview that any interview question was personally sensitive or made them reluctant to discuss any issue due to concerns, they were told that they might choose not to answer any question and could ask for the interview to cease at any time.

The second ethical consideration is consent of the participants. At the interview session outset, each participant was given an information sheet to read. The information sheet contains details of the project, risks involved, confidentiality and data-storage mechanisms, participants’ rights to withdraw from the project at any time before the publication of the study, and contact persons if the participants later had any queries or concerns. The researcher then read the oral consent statement to the interviewee and asked him or her to confirm his or her informed voluntary consent to participate in interview and their permission for the conversation to be digitally recorded for further analysis.

The third and last consideration was confidentiality and data storage. Due to the sensitive nature of the project, only minimal personal details of participants were recorded and only when necessary. All information given in interview was kept confidential as far as the law allows. Only the researcher and one assistant, who together transcribed the recordings and translated the transcripts from Thai to English, had access to the voice recordings. All digital data was stored on
the researcher’s password-protected computer and hard copies of the transcripts were stored in a locked filing cabinet.

4 Pilot Study

Twenty-six preliminary interview questions were first developed based on components of the current anti-brokerage fraud regime (preventive measures, internal control mechanisms, and sanctions) and on components of the revised Fraud Triangle models employed here (pressure, opportunity, rationalisation, and societal factors). After the ethics committee approved the ethical review in September 2013, the researcher travelled to Thailand to conduct three sessions of pilot interviews with securities brokers the researcher knew personally. Pilot interviews were conducted with these purposes: (1) to extend the researcher’s knowledge of the current anti-brokerage fraud regulations and of the securities brokerage industry, (2) to improve the interview questions for the main interview phases, and (3) to increase the researcher’s proficiency and experience in conducting qualitative interviews. Based on information and experience obtained in the pilot interview stage, the interview questions were revised for clarity and accuracy of wording. Preliminary questions were dropped and new questions were added. In addition, a list of potential probing questions for each main question was also prepared during this stage.

5 Interview Questions

The final list of revised interview questions consisted of twenty-eight main questions organised under five headings. Details and objectives of each question together with example of probing questions can be found in Appendix 4.

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651 The three securities brokers who participated in the pilot interview were not recruited as participants in the main interview stage.
6 Reliability and Validity of the Research

In any research, quantitative or qualitative, it is important that researchers can demonstrate that their studies are credible. Such credibility determines the quality of research findings and leads to the research being accepted as truthful.\textsuperscript{652} In quantitative research, such credibility is widely known as ‘reliability’ and ‘validity’. Reliability is emphasised with the idea of replicability or repeatability of result or observation.\textsuperscript{653} Three types of reliability referred in quantitative research relate to (1) the degree to which a measurement, given repeatedly, remains the same, (2) the stability of a measurement over time, and (3) the similarity of measurements within a given time period.\textsuperscript{654} Reliability, on the other hand, determines whether the research truly measures what is intended to be measured and whether means of measurement are accurate.\textsuperscript{655}

As for qualitative research, concepts of reliability and validity are viewed differently as the research seeks to understand phenomena in context-specific settings, rather than manipulating and measuring phenomena of interest.\textsuperscript{656} While quantitative researchers seek casual determination, prediction, and generalisation of findings, qualitative researchers seek illumination, understanding, and extrapolation to similar situations.\textsuperscript{657} Due to such differences, many researchers argue that the term ‘reliability’ and ‘validity’ as defined for quantitative research should not be applied to the qualitative paradigm, meaning that different evaluative criteria are required.\textsuperscript{658} Lincoln and Guba, in their widely accepted work, suggest ‘trustworthiness’ as a key term in

\textsuperscript{652} Nahid Golafshani, 'Understanding reliability and validity in qualitative research' (2003) 8(4) The qualitative report 597; Krippendorff, Klaus, Content analysis: An introduction to its methodology (Sage, 2004).
\textsuperscript{653} Golafshani, above n 652, 598.
\textsuperscript{654} Jerome Kirk and Marc L Miller, Reliability and validity in qualitative research (Sage, 1986).
\textsuperscript{655} Golafshani, above n 652, 598.
\textsuperscript{656} Patton, above n 582.
\textsuperscript{657} Marie C Hoepfl, 'Choosing qualitative research: A primer for technology education researchers' (1997)
\textsuperscript{658} Marilyn Healy and Chad Perry, 'Comprehensive criteria to judge validity and reliability of qualitative research within the realism paradigm' (2000) 3(3) Qualitative market research: An international journal 118; Caroline Stenbacka, 'Qualitative research requires quality concepts of its own' (2001) 39(7) Management decision 551; Yvonna S Lincoln and Egon G Guba, Naturalistic inquiry (Sage, 1985).
evaluating quality of qualitative research. To achieve trustworthiness in research, four criteria must be established, namely ‘credibility’, ‘transferability’, ‘dependability’, and ‘confirmability’, respectively.

(a) Credibility

The first criterion ‘credibility’ is confidence in the truth of findings, which is equivalent to ‘internal validity’ in quantitative research criteria. According to Lincoln and Guba, qualitative researchers seek to ensure that ‘the data speak to the findings’. Lincoln and Guba further note that ensuring credibility is one of the most important factors in establishing trustworthiness. Several strategies are suggested by researchers to promote credibility in qualitative research, including (1) the development of a familiarity with the culture of participants, (2) the use of random sampling, (3) triangulation, (4) peer scrutiny of the research project, and (5) thick description of the phenomenon under scrutiny.

In this study, the researcher has employed the six strategies above to bolster the credibility of the research. First, familiarity with the culture of the Thai securities brokerage industry had been developed long before interviews took place, as the researcher has also been an investor in the Thai securities market. The researcher also gathered, classified, and studied in detail over three hundred administrative cases relating to brokerage fraud and related violations during early stages of this study. Also, pilot interviews with three securities brokers

659 Lincoln and Guba, above n 658.
660 Ibid.
661 Ibid.
662 Ibid.
664 Roy A Preece, Starting research: an introduction to academic research and dissertation writing (Pinter Pub Limited, 1994).
667 Ibid.
668 See details in Appendix 3.
were conducted before the main interviews took place. Second, the random sampling strategy is partly employed in this study at the first interview phase through the use of snowball sampling technique in the recruitment of second participants from each securities company.

Third, various forms of triangulation are used in the research design of this study. Triangulation is adopted in this study with the use of documentary analysis of regulations and cases in the first part added to semi-structured interviews of the second part. Moreover, triangulation of data sources or informants is also employed. Viewpoints and experiences of securities brokers, regulators, and investors are explored and comparable or verifiable against others. Fourth, peer scrutiny of the project is undertaken throughout the project with the consultation of the research supervisor, the panel members, and the gatekeepers of each interview stage. The researcher also presented the fieldwork report in the mid-term review presentation where questions and observations were made, helping the researcher refine research methods and strengthening analysis and arguments in light of such questions and comments.

Lastly, it is important that thick description regarding settings, procedures, and interaction is provided as it helps to convey the actual issues and situations under investigation, helping readers to determine whether the overall findings accurately reflect the data gathered. Detailed descriptions of this study are provided throughout this chapter.

(b) Transferability

The second criterion, ‘transferability‘ refers to the generalisability or the extent to which the findings of one study have applicability in other contexts, which is equivalent to ‘external validity‘ in quantitative research criteria.\textsuperscript{669} Since the findings of qualitative research are usually specific to a small number of particular of environments and participating individuals, it is harder to

\textsuperscript{669} Sharan B Merriam, \textit{Qualitative research and case study applications in education. Revised and expanded from} (ERIC, 1998).
demonstrate that findings and conclusions are applicable to other situations and populations. Nevertheless, Lincoln and Guba point out that researchers still have responsibility to ensure that sufficient contextual information about the project is provided to enable the readers to make judgments about the possible transferability of findings to other settings. Here the researcher has provided contextual information about the project together with detailed description of law and relevant institutions, enabling readers or other researchers to determine transferability of the findings to similar or further studies on securities offences in the Thai securities market.

(c) Dependability

The third criterion, ‘dependability’ refers to the quality that the findings are consistent and could be repeated if the work were to be conducted again in the same context, with the same methods, and with the same participants, which is equivalent to the ‘reliability’ of quantitative research. Nevertheless, the changing nature of the phenomena scrutinised by the qualitative researchers often renders such repeatability problematic. Lincoln and Guba argue that due to close linkage between ‘credibility’ and ‘dependability’, a demonstration of the former partly ensures the latter. In addition, the research procedure should be reported in detail, enabling future researchers to repeat the work, if not necessarily to achieve the same results. Detailed reporting also allows readers to develop an understanding of the methods and their effectiveness. In this study of brokerage fraud and related violations, the researcher has provided detailed report in this chapter.

670 Bryman, above n 642.
671 Lincoln and Guba, above n 658.
672 Shenton, above n 666.
673 Marshall & Rossman, above n 582.
674 Lincoln and Guba, above n 658.
675 Shenton, above n 666.
(d) Confirmability

‘Confirmability’ refers to a degree of neutrality or the extent to which the findings of a study are shaped by the participants rather than researcher bias, motivation, or interest. This is equivalent to ‘objectivity’ of quantitative research. Strategies to increase ‘confirmability’ of qualitative research include member-checking and participants’ validation, of which both have been employed in this study. Some participants have asked to review interview transcripts and have confirmed their correctness. In addition, initial analysis of the findings was discussed with key participants, gatekeepers, and research panel members. This process confirmed that the analysis was accurate and sound.

C. The Main Interview Stage

The main interview stage of this research consisted of three phases of interviews conducted from October 2013 to August 2014. This section describes the researcher’s strategies and experience during the main interview stages.

1 Phase One: Interview of Securities Brokers

The first phase, an interview of 18 securities brokers from nine securities companies in three categories: commercial bank related, local, and foreign securities companies. After the research ethics application was approved by the university, the researcher travelled to Thailand to prepare for the interviews in October 2013. At the preparation stage, the researcher first identified targeted securities companies and made contact with nine potential participants with assistance of the gatekeeper. Nine interview sessions were scheduled in November 2013 at times and locations convenient to interviewees. At the conclusion of each interview, using the snowballing technique, the researcher asked the interviewees to recommend his or her colleagues to be invited to be

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\[676\] Ibid.
the second participants from the same company. Nine further interview sessions were scheduled in December 2013.

Most interview sessions (12 from 18) were scheduled during lunch-breaks at restaurants of each interviewee’s choice. Sessions lasted approximately one hour and 15 minutes. Other interviews were conducted during the afternoon trading period (three sessions) and in the evening after trading hours had ended (three sessions) at the interviewees’ offices. These sessions lasted around approximately one hour and 45 minutes. Of the 18 sessions, 14 sessions were fully completed as all main interview questions were asked. The other four sessions were completed partially due to lack of time. Note that all participants were enthusiastic and gave positive feedback on interviews.

2 Phase Two: Interview of Regulators

The second phase consisted of an interview of senior officers from different departments of The Office of the Securities and Exchange. Five interview sessions were scheduled over two days at the Securities and Exchange Commission building at the end of January 2014. Note that interviews in this phase were conducted amidst the 2013-2014 Thai political crisis. On the first day of the interview, three sessions were originally scheduled. However, only two sessions were completed before the researcher and participating officers had to evacuate the building due to the news that protesters were marching to shut down the building. As a result, the third session was postponed and three sessions were conducted on the second day. Each interview session lasted approximately one hour 15 minutes with several interruptions due to concerns about the political situation.

Interview questions employed in the first phase were used again in the second to compare views and opinions of regulators and brokers on similar issues. Nevertheless, participating officers found some questions irrelevant and refused

to give opinions on some matters, such as the internal work environment and corporate structure of securities companies. In addition, officers were reluctant to give answers to questions not directly within their specific departments’ responsibility and referred the questions to other participants. The researcher further noted that, unlike participating brokers in the first interview phase, the officers often introduced and discussed issues outside the scope of the interview questions. This is consistent with literature on interviewing elites where the power-relation in the interview is shifted from the interviewer to the interviewees holding prominent positions and seeing themselves better informed on the issues than the interviewer.678

Facing such a situation the researcher adopted strategies suggested in the literature such as (1) preparation on interview issues and emphasis on the interviewer credentials, (2) using inconsequential conversation at the start of the session to break the ice between the interviewer and interviewees and to set up the interview stage, (3) turning an interview into a discussion rather than a one-sided question-and-answer session, (4) encouraging interviewees to structure their own account of the interview situation and issues, and (5) letting the interviewee introduce his or her notions of what he or she regards as relevant to the discussion, instead of presuppositions set by the interviewer.679

As a result, a number of main questions not directly relevant to these interviewees were omitted in the subsequent sessions, as well as rearranging the order of the remaining questions based on the dynamic of the discussion. The researcher also let the interviewees lead the discussion and allowed them to freely talk and express viewpoints on any issue they thought relevant and beneficial to the study.

3 Phase Three: Interview of Investors

The third interview phase was added to the study after the fieldwork report was presented at the May 2014 seminar. After potential participants were identified,

678 Dexter, above n 602, 50.
679 Ibid 19.
the researcher traveled to Thailand to make contact with the representatives of the Thai Investors Association with the assistance of Dr Kanate Wangpaichitr, gatekeeper and main contact for this phase. Interview sessions with three representatives from the Thai Investors Association were scheduled over two days in August 2014 at the Stock Exchange of Thailand. Each session lasted approximately one hour 15 minutes.

A similar set of interview questions, with additional questions on the interviewees’ investing experience, was employed again here to compare the perception of investors against those of the brokers and the regulators. The dynamic of the interview was mostly similar to the interview of securities brokers, in which the researcher led the session by asking one main question following by several probing questions. Nevertheless, the researcher noted during interview that, unlike participating brokers and officers, participating investors clearly showed lack of interest in the interview topic. With the use of probing questions, the researcher found that the participants’ main concern was not the legal issue of brokerage fraud and related violations, but rather the inequality of trading information available to major investors and minor investors and the bad market situation at the time of the interview.

D Research Limitations

This section discusses limitations of this study. The most obvious limitation is the time constraint. Without the time limitation, the numbers of the interviewees could be greater and the length of the conversation could be longer, thus increasing depth, and strengthening validity and reliability of the study. The period in which this study was conducted also posed another limitation. Firstly, the interview of regulators in the second phase was conducted in the middle of the Thai political crisis in which the SEC Office was one of the main targets of the protestors. This greatly affected the interview settings. The conversation between the researcher and the officers was often interrupted and more than often turned to the topic of the ongoing crisis. One interview session also had to be re-scheduled due to the SEC Office’s immediate evacuation order as the
protestors were marching to occupy the building. Secondly, as the liberalisation of the Thai brokerage industry took effect in January 2012, changes in the Thai brokerage industry were still taking shape at the time the first and the second phases of interviews were conducted (November 2013 to January 2014). Both the participating brokers and regulators expressed their uncertainty on the effect of such liberalisation on the industry. Therefore the hypothesis that the liberalisation of the brokerage industry has affected the securities brokers’ working behaviour and the occurrence of brokerage fraud may have been somewhat premature to test.

Another limitation lies in the research design itself. Since there is no prior research employing the theory of the Fraud Triangle to directly examine low-level brokerage fraud, as well as the fact that there are few studies on fraud factors in Thai organisations with none focusing on securities brokerage companies, this research is ground-breaking and exploratory in nature. As a result, pressure, opportunity and rationalisation factors leading to the commission of brokerage fraud identified from the limited number of interviews are unlikely to be conclusive. Beyond this pioneering initial study, further research, particularly quantitative research, is welcome to further identify additional factors and to test for their influence.

The next limitation lies in selection of participants for this study. Since the researcher wants to obtain a wide range of qualitative data, securities brokers in different positions (novice brokers, experienced brokers, and team leaders) and remuneration schemes (fixed and incentive) were chosen as participants in interview Phase One. Further studies focusing on brokers in specific positions, and/or in a remuneration scheme, could provide more in-depth data and may identify additional and more specific fraud factors associated with specific groups of brokers. Also, selection of participants in the additional investor interview in Phase Three was made with time, resource, and expertise constraints. Due to the diverse body of investors in the Thai securities market, quantitative research using questionnaires could also supplement the in-depth
interview employed here. Without such constraints, triangulation research can be conducted to obtain more complete data from the investors’ perspective.

A final limitation to mention lies in the language barrier associated with the translation of the interview transcripts. Since all interviewees are Thai, and their English proficiency was not fluent, all interviews were conducted in Thai and transcripts were later translated into English. Although the researcher and the translating assistant made every effort to retain the tone and meaning of the conversation, translations may not capture the whole meaning of data obtained from interviewees.

II Findings from the Empirical Research

The second part of this chapter is a discussion on the findings from the empirical research. The data analysis technique employed in this study is first reviewed followed by detailed findings from the three interview stages. The section concludes with a comparison of findings and a brief discussion on their regulatory implications.

A Data Analysis Technique

The qualitative data analysis method of this study is a thematic analysis, conducted with assistance of NVivo qualitative analysis computer software. Thematic analysis is defined as ‘a process of encoding qualitative information’. The method emphasises identifying, examining, and recording patterns within the data, which describe a phenomenon and/or associated with a specific question. These patterns or themes thus become the categories for analysis. The analysis is usually performed through coding, which involves identifying and recording passages of text that exemplify similar theoretical or descriptive ideas.

680 Richard E Boyatzis, Transforming qualitative information: Thematic analysis and code development (Sage, 1998).
681 Virginia Braun and Victoria Clarke, ‘Using thematic analysis in psychology’ (2006) 3(2) Qualitative research in psychology 77.
The passages with similar ideas are then put in groups and a name is given to each group, known as a code. The use of codes enables two forms of analysis. Firstly, it establishes a method of managing qualitative data, thus enables the researcher to examine the data in a structured way. Secondly, the lists of codes, especially when developed into a hierarchy, can be systematically employed to examine further analytic questions such as relationships between the themes and to conduct case-by-case comparisons. The accepted process of thematic analysis consists six phases which are (1) familiarisation with data, (2) generating initial codes, (3) searching for themes among codes, (4) reviewing themes, (5) defining and naming themes, and (6) producing the final report.

In this study, the researcher started the analysis process by creating initial codes based on core components of the revised Fraud Triangle Model such as pressure, opportunity, rationalisation, and societal factors. Codes in response to certain predetermined interview questions were also created at this early stage, such as reprimand, suspension of licence, and revocation of licence. The researcher next read through the interview transcripts several times then, using NVivo software, coded passages of text that exemplified information and/or ideas relating to the initial codes. During the first round of coding, a number of additional codes were developed based on new themes that appeared in transcripts. Examples of these codes are sources of income and occupational mobility. Coding and re-coding of the transcripts were conducted several times to ensure the completeness and the reliability of the data. At the middle stage, codes and datasets were further refined and categorised into a hierarchy. A number of smaller codes were created to divide large datasets into smaller units for analytical purpose. Lastly, the researcher attempted to connect and/or compare groups of codes in various hierarchies to create overarching themes that explained studied phenomena and/or provided answers to questions of this research.

682 Graham R Gibbs, Analysing qualitative data (Sage, 2008).
683 Ibid.
684 Braun and Clarke, above n 681.
B Findings from the First Interview Phase: Securities Brokers

1 General Data

(a) Job Descriptions

Thirteen participating brokers reported their main job description involving: (1) finding new clients, (2) looking after the interests of existing clients, and (3) putting in trading orders for clients who hold traditional accounts and solving any problem in the Internet trading system for clients who hold Internet accounts. In finding new clients, the usual methods are (1) recruiting friends or family members to open new trading accounts, (2) recruiting investors attending investment fairs or seminars, and (3) getting new clients on recommendation of existing clients. Note that participants working for commercial bank-related
securities companies exclusively reported they could also find new clients by engaging in cold-calling potential clients from client databases provided by parent or related commercial banks.

Among five participating team leaders, four reported having their own personal clients, and their main tasks were similar to other brokers with additional responsibilities in managing the team. One team leader, on the other hand, reported that she did not have her own clients. Her only tasks were to find new clients for the team and to manage the team. In managing the team of brokers, the team leaders have various roles including: (1) making sure that the team reaches monthly trading targets set by the company and earns enough to cover all working expenses, (2) finding new clients for the team, (3) providing training and giving advice to new team members on both trading technicalities and client service standards, (4) co-signing important documents, (5) approving new trading accounts, (6) making sure that team members follow company rules and regulations, (7) monitoring team members' conduct, (8) attending meetings with executives, and (9) fixing any problem with the trading system.

Note that team leaders have different styles in managing teams and regulating team members' conduct. Some are hands-on by taking their monitoring role seriously, whereas others have taken an arm’s-length approach and leave regulatory responsibility to the compliance department:

‘I would look closely how he works, monitoring him closely. I might need to check all his activities during the days. How many clients have he called? Has he recorded all trading orders? I might ask him to give me a report at the end of the day every day for a while.’
(L2A, Team Leader, Local Securities Company)

(b) Team Structures and Relationships

All participating brokers reported similar working structures, although names of positions are somewhat different among firms. Under current regulation, a retail team at head office must have at least five brokers including the team leader, whereas a team at a branch office must have at least three members. Thus, Thai
securities brokers always work together as a team. Six participants reported that their teams actually worked together as a team with information sharing and divisions of labour based on experience and expertise, whereas the other twelve participants reported that the team structure was just a formality, as each broker worked alone and only took care of his or her own clients:

‘It is quite ironic that although we say it is a ‘team’, we rarely work as one. It is more like an individual job. Everything is based on trading volume and commission fees we generate for the company. If we have special news or information, we rarely share that with each other since we need to save that for our own clients. Yes, the team system can be better. There could be more group tasks or activities but I do not think my team leader cares much about that.’ (F3B, Broker, Foreign Securities Company)

On issues of work atmosphere, all but one participant reported being happy with the work atmosphere in their current teams. Five participants mentioned that they had been in a bad working environment before and ultimately decided to leave to a new company. The bad atmosphere they mentioned was in the form of competitive colleagues, very ambitious team leaders, being taken advantage of by team leaders, and experiencing a lack of support from the back office.

As for the relationship within the team, all but one participant reported that they had a good relationship with their colleagues. They contended that colleagues in the same team were always helpful and stuck together. They did not see their colleagues as competitors since each had their own clients and strictly refrained from interfering with each other’s clients unless they were requested to do so, such as when one was sick or was on a holiday. Four participants went so far as to say that they saw their colleagues as their family since they were very close and had been working together for a long time. For example:

‘We have been together since the day we started 8 years ago and moved through 3 companies together. So I would say we know each other very well and help each other in the course of work. I have no need to fear that my colleagues would take my clients away, unlike from what I have heard from my friends in other teams. We are like family actually.’ (L1A, Broker, Local Securities Company)
As for the relationship between team members and the team leader, all participating brokers and team leaders stated that, unlike a normal corporate structure, team leaders did not have power to issue any order. Team leaders in securities companies were viewed more as mentors or advisors to less experienced team members. From thirteen participating brokers, eight had a close and informal relationship with their team leader whereas the other five participants had an arm’s-length and formal relationship with their team leader. Many participants contended that the character of the team leader was the most important factor dictating the team’s working culture. Understanding and fair team leaders helped to create a good work atmosphere where team members felt secured and were happy with their work. On the other hand, risk-taking and ambitious team leaders put pressure on team members to reach high trading-volume targets, which in turn led to the teams’ competitive working methods and atmosphere. It should be noted that one participant reported that he was having a bad relationship with his team leader. He claimed that his team leader was tricky and had been taking advantage of him by assigning the team leader’s clients with the broker to manage but still asked for a share of commission fees from trades made by those clients. The perceived injustice was described in this way:

‘Well, in principle, he has a duty to support all team members. But in reality, my team leader has his own clients so he gets both salary and his share of commission fees. He earns twofold. He is also taking advantage of us by putting some of his clients with us and demands us to share with him large percentages of a share of commission fees we get.’

(F3B, Broker, Foreign Securities Company)

(c) Earnings

An early section of the interview inquired into the remuneration structure and earnings satisfaction of participating brokers. The participants confirmed that, in the current system, there were two remuneration schemes for brokers and team leaders: fixed salary and incentive schemes. As for team leaders, the participants asserted that most were in the incentive scheme in which they managed their teams as well as taking care of their own personal clients. The incentive-scheme
leaders, therefore, earned threefold: a fixed salary, a share of commission fees, and a team management fee. On the other hand, a small number of fixed-salary team leaders did not have their own clients. They only earn their salary and team management fees. Nevertheless, the amount of salary for fixed-salary team leaders was higher than the incentive-scheme team leaders.

Other than the fixed salary, the share of commission fees and the team management fees, brokers may also earn income from two other sources. The first source of additional income is from the sale of mutual fund units to clients where sellers get a certain amount of fees. Nevertheless, many participants reported that they preferred not to do so, unless forced by the companies. The second source of income is the profit gained from stock trading for themselves, which can be legal or illegal depending on whether the brokers have complied with all regulations relating to the matter. One broker reflected:

'My income is from a fixed salary plus a share of commission fees that clients paid to securities companies. So it is very much based on the market condition. If the market is good and many clients engage in trade, we will have high income. Our clients are the one giving us our trading volume. Whether or not we would earn enough money for a living is exclusive due to them.' (L1A, Broker, Local Securities Company)

When discussing the earning theme, two further probing questions were asked: income satisfaction based on current lifestyle and future plans, and income satisfaction based on current responsibility. On the first question, from thirteen participating brokers, eight participants reported to be satisfied with their current level of income relative to their current lifestyle and future plans. Reasons given by the participants included: (1) he or she was good at personal financial planning, (2) he or she thought that receiving 15,000 baht/month when the market was very bad was not so bad, (3) he or she knew that one had to save when the market was good and spend the savings when the market was bad. On the other hand, five participating brokers reported to be dissatisfied relative to desired lifestyle and future plans. Reasons given included: (1) he or she believed that the ceiling rate for fixed salary was too low (15,000 baht/month), (2) he or

685 See details in Chapter 3.
she thought that income depended too much on the market condition, and luck on the part of clients, (3) he or she was worried that income fluctuated widely and found that it was hard to do long-term financial planning.

From five participating team leaders, all reported to be satisfied with their income based on the current lifestyle and future plan, reasons given included (1) he or she was having stable income due to large numbers of personal clients, (2) he or she was realistic with personal goals and knew own limitations, and (3) he or she earned on average much more than his or her friends who were doing other jobs and received only fixed salary.

On the second question about the income satisfaction relative to level of responsibility, from thirteen participating team members, eleven participants reported to be satisfied. Reasons given included: (1) he or she had to work from 10am to 4.30pm only, (2) he or she could manage his or her own work routine, (3) he or she had only few major clients and, thus, had a lot of free time, (4) he or she loved making clients gain profits and be happy, (5) he or she had lighter workload than friends working in other industries. Two unsatisfied participants gave reasons that: (1) they thought the risks involved were too high, (2) there were too many rules and regulations to comply with, and, (3) there were too many tricky clients. From five participating team leaders, four participants were satisfied with income based on the level of responsibility. Reasons given were similar to those of the team members. The only team leader that was not satisfied with her income was also the only one that was on a fixed-salary scheme. She complained that she had to pay for marketing and promotional expenses from her own pocket, and would like to have more support from the company.

(d) Occupational Mobility

On the issue of occupational mobility, two probing interview questions were asked. The first inquired into difficulty of brokers and team leaders in moving from one securities company to another. From 13 participating brokers, two
reported that it was easy for them. One stated that he or she had only two main clients and both were certain to move with him. Another participant stated that he or she had moved twice already and could always guarantee the number of clients and trading volume that would accompany her. One participant rated that it is moderately hard to move to another securities company. She stated that Thai clients tended to stick to their brokers and she had moved a few times already. Nevertheless, she has lost a number of clients in the moving process, resulting in unnecessary losses of income. Ten participants expressed that it is hard for them to move to another company and would like to refrain from doing so if possible. The reasons given include: (1) they did not think they could persuade their clients to move with them, (2) they did not want to start over and have to find new clients again, (3) they believed that clients were attached to the brands of the companies more than to individual brokers, (4) they needed to pay damages to the existing companies for the breach of their employment contracts, and (5) they contended that brokers normally moved as a team, not as individuals:

'It's difficult to move to another company. The most difficult part is to get your clients to switch to the new company with you. Also, brokers normally move to a new company as a team, not individually.' (B2B, Broker, Commercial Bank Related Securities Company)

Five team leaders were given the same questions. One stated that it was easy for them to move since they could guarantee that their team and clients would move with them. Two participants responded that it was moderately hard for them to do so. Both said that it was easy for them to move alone but hard to move the whole team with them. The last two team leaders reflected that it was hard for them to move since they did not think the majority of their team members and clients would move with them.

The second probing question inquired into the difficulty faced by participating brokers and team leaders in leaving the brokerage industry and starting a new career. From all eighteen participants, only two participants claimed that it was easy for them to start a new career. On the opposite side, sixteen participants
responded that it was difficult for them to leave the industry due to a combination of these reasons: (1) they believed they were too old to start a new career, (2) they believed that the experience gained as brokers was not useful and valuable to other industries, (3) they did not have enough capital to be full-time investors, (4) they did not have knowledge and capital to start their own business, (5) they loved the free time and the lifestyle of a securities broker, and (6) they felt guilty to leave existing clients to other brokers. Guilt felt at the thought of leaving clients was expressed this way:

‘I have taken care of my clients for a long time. I feel I have my duty to them. I want to be with them as long as I can and especially with those who move with me. To quit and leave them with other brokers, I would feel very guilty. It’s not only about me. It’s about my clients too. It would be very hard for me to quit this job.’ (L2B, Broker, Local Securities Company)

2 General Pressure Factors

Throughout the interview, main and probing questions were asked to inquire into different types of pressure borne by securities brokers, which may lead to the commission of brokerage fraud and related violations. The types of general pressure identified from the interviews were: income pressure, colleague pressure, team leader pressure, corporate pressure, client pressure, income fluctuation pressure, and pressure from the liberalisation of brokerage fees.

(a) Income Pressure

All 18 participating brokers agreed that income was the primary source of pressure in the securities brokerage industry. The participants commented the current rates of base salary and share of commission fees employed in the industry were acceptable. Nevertheless, some expressed that they would be happier if the rates were to be increased, given that most securities company offices were in the city centre resulting in high living expenses. The participants expressed that since their income and working performance is closely tied to the stock trading volume made by their clients each month, they were under
pressure to convince their clients to conduct as many trades with as high volume as possible while still gaining profits from the transactions. The participants further explained that there was less pressure when the market was good since shares prices generally went up and investors would invest more resulting in large numbers of trade being made. On the other hand, bad market situations put enormous pressure on securities brokers. During such periods, clients would turn their shares into cash and refrain from engaging in any trade until the market situation is improved. It is very hard for securities brokers to achieve any trading volume during such periods even though they still have the need to earn enough to cover their base salary.

Drawing from different parts of the interviews, fifteen participants identified their large income fluctuation as the core element of income pressure. Six participants reported to feel under great pressure while nine stated that they had ways to cope with it. Those who were under pressure stated that due to the vast difference in their income when the market was good and the market was bad, it was hard for them to make long-term financial plans for long-term investments such as buying a house or a car since they may not be able to pay installments every month. When such situations happened, they needed to find a loan to pay for the expenses. The pressure was reported to greatly increase when the bad periods continued for a long time. Accordingly, some participants expressed their views that income fluctuation was one of the causes of regulatory violations due to the brokers’ need to increase their trading volume to maintain the level of their income especially when the market was bad. As for those who could cope with the income fluctuation, their main reason was that they could manage to save some money when the market was good and spent that amount when the market was bad. The challenge of fluctuating income was described this way by one broker:

‘I will have to adjust my lifestyle all the time to reflect the fluctuating income. For example, last month I might receive the total income of 50,000 baht, but this month I may only receive the income of 20,000 baht. Thus, it is very difficult to plan my spending. The fluctuating income and the fact that I have to adjust my spending all the time always make me worried.’ (B1B, Broker, Commercial Bank Related Securities Company)
(b) *Self Pressure*

Eleven participants mentioned self-pressure in interview. They expressed that due to the nature of the job where each broker exclusively took care of his or her own clients and earned his or her income from the clients' stock trading, it naturally imposed self-pressure upon brokers. They pressured themselves to find ways and means to at least meet monthly trading targets and, if possible, persuade their clients to trade more so they could earn more commission fees. Many participants stated that they set their personal goals and tried to compete with themselves by working harder in order to give better recommendations to their clients.

(c) *Colleague Pressure*

One probing question inquired into pressure colleagues in the same team or in different teams put on each other. Of 18 participants, 17 reported that they had not felt any pressure from their colleagues in the same team at all. They explained that a securities broker is a very individual job. Each broker had his or her own clients so there was no team activity or direct competition between colleagues. Most companies also had a policy not to disclose brokers' trading volume or income to others. Thus colleagues in the same team rarely compared oneself against others. The participants further maintained that in good teams, team members always helped each other out and provided support to novice members. Many participants stated that they saw team members as their friends whom they also hung out with after work. One participant who felt pressure from colleagues added that he was in a situation where another team member tried to steal his clients. He was very angry and upset. However, he agreed that it was an abnormal situation that rarely happened.

(d) *Team Leader Pressure*

Team-leader pressure was a theme constantly raised in interview. Several participants mentioned hearing of many incidents where team leaders were not
satisfied with team performance and put pressure on team members to achieve higher trading volumes. Nevertheless, from 13 participating team members, 12 maintained that they were happy with current team leaders and had not been excessively pressured to increase their volume:

‘My team leader is very nice. She will ask from time to time whether I meet my monthly target yet, but won’t put pressure on me. She knows I have tried my best already. For other teams, I have heard that some team leaders are very strict and always put pressure on their team members to perform better.’ (B2B, Broker, Commercial Bank Related Securities Company)

From the conversations with five team leaders, all of them claimed that when the market was bad and the team’s trading volume was low, they would rather put pressure on themselves to work harder and find more new clients, rather than imposing more pressure on their team members.

(e) Corporate Pressure

One probing question inquired into the level of pressure that securities companies impose upon securities brokers. All thirteen team members agreed that they had not faced direct and excessive pressure from their employing companies since they only had to achieve adequate volume to cover their monthly salary. It was only when they could not cover the salary for a certain period that the companies would start putting pressure on them.

On the contrary, the five participating team leaders answered that their companies did pressure them to achieve higher team trading volumes from time to time. It was up to them whether to follow such instructions and how to reach the new targets. Nevertheless, all team leaders claimed that, if they believed that their team members had already done their best, they would not put more pressure on the members, but rather on themselves to find ways to meet the new targets set by the companies.
(f) Client Pressure

From 18 participating brokers, 17 mentioned throughout interview that they had experienced different forms of pressure imposed by their clients. Note that the only participant who did not mention client pressure was a novice broker who had less than one year of experience. The participants complained that today’s clients had very high bargaining power since they could easily ask for a change from one broker to another or open trading accounts with multiple securities companies. Thai securities brokers, therefore, had to do everything to please their existing clients in order to retain them and persuade them to engage in larger volume of trade. Examples given by the participants included executing trades in the ways that did not fully comply with the regulations and/or giving extra services outside the normal scope of brokerage service, such as booking concert tickets, picking the clients’ children from schools, doing reports for their studies, etc. For example, one broker lamented:

‘It is impossible to change. If my clients don’t want to change the way they communicate with me, how can I? Customer is God. Clients can always switch to a new broker if they are unhappy with the existing ones. If I don’t communicate with them the way they want to, or if I have too many requirements, they can easily switch to a new broker and I will lose my clients.’ (B1A, Team Leader, Commercial Bank Related Securities Company)

The majority of participants also complained that they had suffered from tricky clients who tried to take advantage of them. The most frequent incidents mentioned during the interviews were where clients insisted on making trading orders via the brokers’ mobile phones. Since the orders were not properly recorded, if the trades resulted in losses, the clients would say that they did not make such orders and that the brokers had engaged in the trades on their own. Several participants further explained that they had tried to ask their clients to call the office lines instead so that the orders could be properly recorded. However, their clients refused to do so and they did not have other choices but to accept the risky practice since they did not want to lose the clients to other brokers or other securities companies.
3 Societal Factors

As the Fraud Triangle model was originally developed in the United States context and later studies have identified that the model may not offer the best explanation of the causes of fraud in different cultural settings, one of the main objectives of the empirical part of this study was, therefore, to identify society-level cultural factors specific to Thailand and/or the Thai brokerage industry that could have an impact on the perception and the commission of the focus brokerage offences by Thai securities brokers. From the interviews with eighteen securities brokers, two societal-level factors, which vastly differ from those present in the United States, were distinctly identified. Theses are: (1) a close personal relationship between brokers and clients and (2) brokers’ goodwill toward their clients.

As for relationships between brokers and clients, it could be gleaned from the interviews that Thai securities brokers usually have a very close relationship with their clients and many brokers see their long-time clients as personal friends. This is in contrast to the relationship between brokers and clients in more developed markets, especially in the United States, where brokers usually have only basic knowledge of their clients and may have never met their clients in person. The US situation is clearly reflected by the Financial Industry Regulatory Authority (FINRA)’s recent emphasis on the Know Your Customer Rule (KYC), which required US securities firms and brokers to obtain clients’ essential facts and investment objectives in regard to opening and maintaining all trading accounts; a problem or deficit rarely seen in Thailand.

According to participants, Thai securities brokers have close relationships with clients and such relationships often extend beyond professional boundaries. Many participants stated that they considered their clients as their friends who

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686 Cieslewicz, above n 24.
687 Stoneman et al, above n 6.
688 The Financial Industry Regulatory Authority (FINRA) is a self-regulatory organisation that regulates all securities firms and brokers in the United States.
689 FINRA Rule 2090, effective July 9, 2012.
they could talk to and spend time with outside work. They also sent their clients gifts on birthdays and special occasions, as well as attended personal ceremonies such as weddings and funerals. Several participants added that they had a very special relationship with their major clients. They saw themselves as juniors and paid respect to the clients like they would do to their senior family members. At the same time, the clients kindly treated them as young members of the family, by giving advice, connections, and sometimes financial assistance. Based on such close personal relationships between brokers and clients, several participants further stated that they would go out of their way to find ways to generate profits and give better services for their clients, which sometimes include violating minor regulations for the clients’ benefit or for convenience. This relationship was discussed by a participant in this way:

‘I always take the best good care of my clients. Trust is the most important in this industry. I think you know. For Thai people, when we trust someone, they become our friends and things become more personal. I treat my clients who are of the same age or not much more than me as my friends. I sometimes call them to say hi or talk to them about something else outside trading. It’s good to know them well and make them feel comfortable. For those older than me and those who are major traders, I act like I am their young relatives who care about them and give them respect. It’s important to remember their birthdays. I always have birthday gifts for my clients as well as gifts for special occasions like New Year and Thai New Year.’ (B3A, Team Leader, Commercial Bank Related Securities Company)

The nature of the relationship between Thai securities brokers and clients stated above is consistent with the general character of Thai society postulated by sociologists as ‘an affiliate society in which people greatly depend upon each other and thus find security in dependence and patronage rather than individualism’.690 Barton Sensenig also conceptualised the basic drive of Thais as the need to establish extensive networks of personal relationships based on friendship, love, warmth, and social acceptance.691 Due to such needs, feelings are generally more important than reasons, which tend to result in low self-discipline among the

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691 Mulder, above n 690.
The influential cross-cultural studies conducted by Geert Hofstede, where six dimensions of national culture are identified and scored relative to other countries, further confirmed the collectivist nature of the Thai society. On the dimension of Individualism vs. Collectivism (IDV), Thailand obtains a score of 20, compared to 91 for the United States. The low score of 20 reflects that Thailand has more of a collectivist culture where loyalty to the members of the in-group is paramount, and overrides most other societal rules and regulations. The study also points out that personal relationships are key to conducting business in Thailand and it often takes time and patience to build successful business relationships.

In a more specific study of work-related values in Thailand, Suntaree Komin identified nine value orientations of the Thais based on two nationwide surveys conducted in the 1980’s. The two orientations most related to the personal rather the professional relationship between Thai securities brokers and their clients found in this study are (1) the grateful relationship orientation and (2) the flexibility and adjustment orientation, respectively. The grateful relationship orientation is characterised by the high presence of grateful feeling or ‘bunkhun’ between two persons: one who renders the help out of kindness and the other who receives such help. The latter would always remember and be ready to reciprocate the kindness given whenever he or she can. Secondly, the flexibility and adjustment orientation refers to the general character of the Thais who are more situation-oriented rather than principle-oriented or system-oriented. As the Thais are situation-oriented, decision-shifting behavior is

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692 Ibid.
693 Six dimensions of national cultural proposed by Geert Hofstede are (1) power distance index (PDI), (2) individualism vs. collectivism (IDV), (3) uncertainty avoidance index (UAI), (4) masculinity vs. femininity (MAS), (5) long-term orientation vs. short-term orientation (LTO), and (6) indulgence vs. restraint (IND). – See, Geert Hofstede, 'Dimensionalizing cultures: The Hofstede model in context' (2011) 2(1) Online readings in psychology and culture 8.
695 Nine value orientations identified and ranked according to their relative importance from high to low are (1) ego orientation, (2) grateful relationship orientation, (3) smooth interpersonal relationship orientation, (4) flexibility and Adjustment orientation, (5) religio-psychical orientation, (6) education and competence orientation, (7) interdependence orientation, (8) fun-pleasure orientation, and (9) achievement-task orientation: Komin, above n 572.
696 Ibid.
697 Ibid.
common and the motivating factor is more than often the personal relationship and the situation over the principle and the system. In the context of the relationship between the Thai brokers and their clients, it can be inferred from the interviews that it is not unusual for the brokers to feel grateful towards their clients, especially towards the major ones, and many would voluntarily take risks in violating certain rules for clients’ benefit.

The other societal factor particular to Thailand and/or the Thai brokerage industry that appears frequently during the interviews with the participating brokers is the goodwill that the brokers have for their clients. A number of participants reported that they often felt personally responsible for their clients’ interests and would like to see their clients obtaining as many profits as possible. They stated that they sometimes did trade beyond or contrary to the clients’ instructions since they believed they could do better for their clients. A number of participants stated that they voluntarily violated the rule prohibiting brokers from making trading decision for their clients with good intentions. They explained that they knew their clients’ trading patterns well so they often put in trading orders based on such patterns even without the clients’ instruction. They asserted that they knew that it was against the rule but they would feel guilty if they let the opportunities pass and if they missed the opportunity to provide the best service to their clients. The presence of this goodwill towards others among the Thais is well documented in the cross-cultural management literature.698 The value characterised by a genuine kindness and generosity without expecting anything in return is known in Thai as ‘nam-jai’ and is one of the most admired values in Thai culture.699 Nevertheless, the strong presence of this local value may lead to conflicts with other values such as compliance and professionalism, as in the context of the relationship between Thai brokers and their clients found in this study. For example, a broker referred to ‘nam-jai’ in this way:

‘I think it is a special characteristic of Thai brokers. I used to work in a foreign securities company. Foreign brokers will not make trading decisions on behalf of their clients. They

698 Holmes et al, above n 572; Sriussadaporn, above n 572; Atmiyanandana and Lawler, above n 572; Kitiyadisai, above n 572.
699 Holmes et al, above n 572.
always respect their clients’ instructions and will not do anything without the clients’ instructions, even though they know that the clients will benefit if they had made certain decisions on behalf of the clients. On the other hand, Thai brokers are used to the ‘nam-jai’ way of thinking. Sometimes clients have already made their own trading decisions. However, if the brokers disagree or think that such decisions could be detrimental, Thai brokers are likely to keep asking their clients to change their decisions. I think this is a special characteristic of Thai people. They want the clients to get the best, even if such decisions are against the clients’ instructions. Thus, some brokers decide to make trading decisions on behalf of their clients, and are found to commit this offence.’ (B3A, Team Leader, Commercial Bank Related Securities Company)

4 Specific Factors Contributing to the Commission of Focus Offences

The participants were asked for their views and opinions on pressure, opportunity, and rationalisation factors of the four focus offences. Other important information relating to each offence provided by the participants was also coded and shown in this section.

(a) The Offence of Failing to Properly Record Trading Orders

Difficulty in complying with the voice orders recording regulation was a recurring theme throughout the interview, and more so than other focus offences included in the study. Although all eighteen participants agreed that it was a good rule to protect both brokers and clients, since the records could be used as evidence when there were disputes, seventeen agreed that it was one of the hardest regulations to fully comply with. The first explanation, mentioned by sixteen of the eighteen participants, was that clients nowadays prefer to call the brokers’ mobile phones to make trading orders instead of calling the securities companies’ lines where conversations were properly recorded. Ten participants stated that they had asked their clients to stop calling their mobile phones without much success as the clients refused to do so.

In order to protect themselves and to comply with the regulation, the participating brokers stated that when the clients called their mobiles to give trading instructions, if possible, they would use the office lines to call back to
record the voice orders before executing such orders. However, the participants expressed that they were not able to do so, in most cases, since they usually had to take care of many clients at the same time and also stock prices usually moved too fast. If they waited to call back to record the orders, they would not be able to buy or sell the stocks at the prices the clients instructed. As a result, they had to execute the orders first, then at the end of the day, they called the clients to confirm and record that they had correctly executed the trading orders. Ten participants commented further that they were frustrated that the SEC Office did not recognise voice records of order confirmation as the ‘proper records’ under the current regulation. They expressed that they would like the SEC to take the current industrial practices into accounts and be more flexible with the interpretation of the regulation.

The second explanation given by five participants was that they found the regulation outdated. They claimed that the regulation should be updated to reflect current technologies and practices where people preferred calling mobile phones than landline telephones as well as sending orders via text messages, emails, or other messaging applications. They suggested that the SEC should additionally recognise voice orders recorded from their mobile devices as well as text messages the clients sent to them per trading instructions:

‘This is one of the main problems for a lot of brokers. I think the law was drafted long before everyone has a mobile phone. For trading orders to be recorded, clients will have to call brokers on a landline’s work number. However, nowadays clients always call their brokers on the brokers’ mobile phones. Nobody calls each other on their landlines anymore. 90% of my clients always call me on my mobile phone.’ (B1A, Team Leader, Commercial Bank Related Securities Company)

The third explanation given by three participants for the lack of proper voice record was that, in many cases, clients had never given actual trading instructions to brokers. The orders were put in the system by the brokers who manage investment portfolios for their clients or by those who employed the clients’ accounts to trade for themselves. As a result, there could be no genuine voice record of conversation between the clients and the brokers:
'It’s all about the income and trading volume. If a broker makes decisions for clients or uses a client’s account for their own trades, there cannot be a legit record. Or there might be something between the broker and the client that cannot be recorded, such as inside information or agreements to engage in share price manipulation.’ (F3B, Broker, Foreign Securities Company)

After the participants had expressed their general views and opinions on the offence, they were asked about pressure or motivation factors, opportunity factors, and rationalisation that together may lead to the violation according to the Fraud Triangle theory. Starting with pressure factors, factors mentioned by the participants, from most to least frequency, were (1) client pressure, (2) market pressure, (3) income pressure, and (4) ideology.

Client pressure were reported by seventeen participants as the main pressure leading to the violation of the regulation as clients insisted on calling brokers’ mobiles or sending text messages to give trading instructions. They further commented that although they knew that taking orders without having proper voice records was against the rule, they had no choice since most clients refused to cooperate and they feared that they would lose the clients if they refused to take such orders:

‘Clients always call us via mobile phones and we can’t deny servicing them right away. This is especially true to major clients. If we don’t do as they ask and they feel happy, they can easily move their accounts to other brokers. That would have a very bad affect on my income and also the company would not be happy with me.’ (F1A, Broker, Foreign Securities Company)

Secondly, thirteen participants identified market pressure as another pressure factor leading to violation. They suggested that when the market was good or when certain stocks were volatile, they would need to execute orders quickly for the benefit of their clients. They did not have enough time to make certain that the voice orders were properly recorded or not.
The third pressure factor mentioned by seven participants was income pressure. The participant stated that when trading volume was low, brokers would feel the pressure to find ways to increase the volume in order to maintain their status and income level. Two prevalent practices were to unlawfully manage investment portfolios for clients and to employ client’s accounts to trade for themselves. When engaging in such unlawful practices, the brokers could easily raise their trading volume by engaging in larger numbers of transactions than they would normally get. Nevertheless, since the brokers were the ones who make such decisions, there could be no genuine voice records between the clients and the brokers:

‘The only reason is that brokers need to gain as much volume as possible so that we can earn more commission fees. As I said before, the current market is not very active and brokers need to work harder to maintain their level of income. Thus, sometimes we need to make decisions for our clients and then call them back to confirm the orders. I know that this practice is risky and against the law, but we have no choice. Most brokers are doing the same thing to maintain their level of income.’ (F3A, Broker, Foreign Securities Company)

The last factor reported by four participants was an ideology factor. The participants admitted that they found the regulation outdated and did not well reflect the current societal practice. As a result, they were less than willing to fully comply with the rule and stated that the rule should be updated to keep up with the changes.

The interview then asked the participants’ views and opinions on the opportunity factors in committing the offence of failing to properly record trading orders. All eighteen participants reported that it was easy for them to commit this offence with or without intention. When further asked whether the violation happened often or not, sixteen gave their opinions that the violation happened often. The participants further commented that the violation happened more often lately as more clients insisted on calling or sending text messages to the brokers’ mobile phones to make trading orders due to the growing popularity of smartphones and messaging applications.
The last side of the Fraud Triangle is rationalisation by the offenders to reduce their cognitive dissonance. Rationalisations that the participants employed, or believed that other brokers employed, when committing the violation was extracted from the interview conversations. It was found that three groups of verbalisation came up frequently during the interview. The first group was a claim that the regulation was obsolete and could not catch up with technological advancement and changing industrial practices. The examples of these rationalisations included: ‘The law needs to be updated to keep up with technology and to reflect the reality’ and ‘Brokers are not at fault. The law needs to be amended to reflect current practice.’ The second group of rationalisation suggested a denial of responsibility, in which the participants claimed that pressure the circumstances left them no choice but to commit the violation. The majority of the participants also shifted blame to their clients, for example: ‘My clients send me orders to execute via text and say that they are in meetings. How can I call them back?’ and ‘I need to place orders immediately. It’s too late to use an office line to call the client back.’ The third and last group of rationalisation was an appeal to higher loyalties. Many participants claimed that they violated the regulations for the benefit of their clients. The examples are: ‘I don’t get anything from not recording. I don’t have any bad intention. I just have to do what my clients ask me to and have to make them happy.’ and ‘If I wait to call them back and miss the price my clients want, they will be very unhappy.’

Table 27: Factors Leading to the Commission of the Offence of Failing to Properly Record Trading Orders (Securities Brokers)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Client pressure</th>
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<tr>
<td></td>
<td>- Market pressure</td>
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<tr>
<td></td>
<td>- Income pressure</td>
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<tr>
<td></td>
<td>- Ideology</td>
</tr>
<tr>
<td>Opportunity Factors</td>
<td>- Technically easy to commit</td>
</tr>
<tr>
<td></td>
<td>- Frequently happens</td>
</tr>
<tr>
<td></td>
<td>- Easy to detect by the SEC officers</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- Claim that the regulation is obsolete</td>
</tr>
<tr>
<td></td>
<td>- Denial of responsibility: shifting blame to clients</td>
</tr>
<tr>
<td></td>
<td>- Appeal to higher loyalties: for the benefit of clients</td>
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</table>
When asked about the current regulation forbidding securities brokers from making trading decisions for their clients, sixteen of eighteen participants agreed that it was a proper rule. They stated concordantly that since the fund belonged to clients, the clients themselves should be the one who made final decisions and the brokers should only provide information and suggestions. The participants explained that clients asked their brokers to make trading decisions for them due to various reasons including: (1) clients had been with their brokers for a very long time and trust them fully, (2) clients did not have time to follow the market, (3) clients felt that they did not have adequate knowledge to make trading decisions, and (4) clients believed that brokers could make better trading decisions than they could. The brokers commented that they were in a difficult position when their clients asked them to make trading decisions, as there was a high risk involved. They further explained that when the decisions resulted in profits, the clients would gladly accept the transactions the brokers made. However, if such decisions resulted in losses, disputes could easily occur. Many clients attempted to avoid being responsible for losses by rejecting the transactions made by the brokers and bringing the disputes to the securities companies and/or the SEC Office on the grounds that they did not give such trading instructions and that the brokers made decisions on their own, which were in breach of the regulation:

'It should be as the rule says. Brokers should only give advice and let clients make decisions themselves. However, some clients really trust their brokers and asking them to make trading decisions on their behalf. It is indeed a risky thing. If the decisions are right and create profits, the clients will be very happy. However if it results in losses, there will always be big disputes between the brokers and the clients.' (L3B, Broker, Local Securities Company)

Nevertheless, the brokers contended that, even though the risk involved was taken into account, they found it hard to refuse their clients’ requests. The reason given was that making trading decisions for clients had now become a common industrial practice. The participants feared that, if they refused, the
clients would be unhappy and would decide to take their business to other brokers who agree to make such decisions on behalf of their clients as a part of their normal service. On the other hand, two participating brokers who did not agree with the rule commented that securities brokers should be able to make trading decisions for their clients if the clients gave prior consent and later confirmed such transactions. It should be noted that seven from eighteen participating brokers admitted to making trading decisions for their clients from time to time whereas five admitted to make such decisions on the regular basis.

The participants were then asked to identify pressure/motivation factors that lead to the violation of the regulation. Income pressure, client pressure, goodwill, market pressure, and company pressure were identified, from highest to lowest frequency, respectively. Fourteen participants reported income pressure as the main source of pressure leading to the violation. They stated that, since securities brokers’ income relied heavily on the trading volume they had each month, when they had low volume they need to find ways to increase the volume to maintain their level of income. Making trading decisions for their clients was the easiest way for them to raise the volume since they could engage in higher numbers of transactions than the clients would make. Nevertheless, eleven participants claimed conceretedly that although the brokers might decide to engage in transactions to increase their monthly volume, they usually did so in good faith and with great care for the benefit of their clients. They stated that they had to be very careful and only engaged in transactions that were most likely result in profit, since if the transactions resulted in losses, the clients would be unhappy and could easily move their trading accounts to other securities companies:

‘I think these brokers want to earn more commission fees. If they make trading decisions for their clients, they will be able to buy and sell shares as often as they wish. These brokers will be able to generate more volume and meet their monthly target as a result. However, it is not as easy as it seems. The brokers who choose to make trading decisions on behalf of clients will need to make sure that they are making profits for the clients. Otherwise, the clients will complain and the brokers will get into trouble.’ (F1B, Broker, Foreign Securities Company)
The second source of pressure mentioned by twelve brokers was client pressure. They stated that, during the course of their work, their clients often asked them as brokers to make all trading decisions and they found that it was hard for them to reject the requests since they were afraid of losing the clients to other brokers who agreed to do so. The third source of pressure or motivation factor mentioned by ten brokers was goodwill that brokers had for their clients. They explained that brokers usually knew their clients' trading patterns. If the brokers saw a chance to make a profit, they might decide to put in trading orders based on the clients' usual trading patterns even though the clients did not ask them to do so. Several participating brokers further commented that they considered such practice as a part of good service they gave to their clients.

The fourth source of pressure identified was market pressure. Five participants believed that making trading decisions for clients was now a common industry practice, and those who refused to do so would be at a disadvantage against their colleagues who agreed to provide the service to their clients. The last source of pressure was company pressure identified by one participant. One broker provided that since the market was bad and most brokers in the company had low trading volume, his company put pressure on the brokers by threatening to reduce their salaries if they could not increase the volume. As a result, his colleagues and he had to convince the clients to let them make trading decisions so as to engage in larger numbers and volume of transactions.

When asked about the opportunity factors relating to committing this violation, all participants agreed that it was technically easy for securities brokers to make trading decisions for clients as they could either log into the Internet trading system using the IDs and passwords provided by the clients or log into the system as themselves and had the clients called them to record the trading instructions. In addition, the participants expressed that it was hard for the officers to detect that the clients themselves did not make the decisions, unless voice orders were not properly recorded. When further asked whether the violation happened frequently or not, thirteen believed that the violation
happened very frequently and throughout the industry, whereas five believed that the violation occurred intermittently and only in certain circumstances. The first group stated that clients always asked their brokers to make trading decisions and most brokers had to comply with such requests, either voluntarily due to the need to increase trading volume, or involuntarily due to overwhelming pressure. The second group of participants, on the other hand, believed that the violation only occur from time to time and only in specific conditions where the relationship between the brokers and the clients were very close and the brokers agreed to take substantive risks. It was noted that all five participants in this second group also maintained that they had not made any trading decisions for their clients at the time of the interview.

As for rationalisation that the participants employed, or believed that other brokers employed when making unlawful trading decisions, four groups of rationalisation were identified from the interviews. The first three groups were similar to those employed in the offence of failing to properly record trading orders, which are: (1) a claim that the regulation was obsolete and needs to be changed, (2) a denial of responsibility where the brokers shifted the blame to the clients, and (3) an appeal to higher loyalties where the brokers claimed that they violated the regulations for the clients’ benefit and not for themselves. The fourth and the addition group of rationalisation was a claim that everyone else in the business was committing the violation so they had to do the same in order to compete with the others. The examples are: ‘It’s a normal customer service, everyone in the industry provide it.’ and ‘It would be hard for any broker to survive in the industry if he refused to do it.’

Table 28: Factors Leading to the Commission of the Offence of Making Trading Decisions on Behalf of Clients (Securities Brokers)

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<thead>
<tr>
<th>Pressure Factors</th>
<th>- Income pressure</th>
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<tbody>
<tr>
<td></td>
<td>- Client pressure</td>
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<tr>
<td></td>
<td>- Goodwill</td>
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<tr>
<td></td>
<td>- Market pressure</td>
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<tr>
<td></td>
<td>- Company pressure</td>
</tr>
</tbody>
</table>
Opportunity Factors
- Technically easy to commit
- Frequently happens (13)/ Intermittently happens and only in specific circumstances (5)
- Difficult to detect by the SEC officers

Rationalisation
- Claim that the regulation is obsolete
- Denial of responsibility: shifting blame to clients
- Appeal to higher loyalties: for the benefit of clients
- Claim that everyone in the industry is committing the violation

(c) The Offence of Using a Client's Account for the Broker's Own Benefit

The brokers were next asked for their views and opinions on the SEC regulation prohibiting securities brokers from using clients’ accounts for their own benefit. The participant in the very first interview pointed out that there were two different illegal practices that fall under the same regulation. The first was the use of clients’ accounts without the clients’ permission, and the second was the use of such accounts with permission. The participant stated that although both practices were similarly prohibited, in the eyes of securities brokers, they were very different. As a result, interview questions were slightly altered and the two practices were separately investigated in the latter interview sessions.

The participants were first asked for their views on the illegal use of clients' trading accounts without the clients’ permission. All participants agreed that it was wrongful conduct that no brokers should commit. When asked how securities brokers might employ their clients’ accounts for their own benefit, the participants explained that brokers could technically log into their clients’ accounts to engage in transactions without the clients’ knowledge. In doing so, the broker would obtain higher trading volume similarly to where they made trading decisions on behalf of their clients. Nevertheless, many participants pointed out that they did not think the wrongdoing was worth the risk since the brokers would only obtain higher volume figures but not the actual profit from the trade, whereas the likelihood that the clients would detect irregular items in
monthly statements provided by the companies was high. As a result, in relation to opportunity factors, all participants reported that it was hard to use the clients’ accounts in such manner and that the violation rarely occurred.

When asked for potential pressure factors that could induce brokers to engage in such risky practice, the participants identified income pressure as the only potential factor. It was noted that no rationalisation for this unlawful practice was offered by interviewees since all participants stated that the offence should not be committed in any case and no participant admitted to having used their clients’ accounts without the account owners’ knowledge.

Table 29: Factors leading to the Commission of the Offence of Using a Client’s Account for the Broker’s Own Benefit without the Account Owner’s Permission (Securities Brokers)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Income pressure</th>
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<tbody>
<tr>
<td>Opportunity Factors</td>
<td>- Technically difficult to commit</td>
</tr>
<tr>
<td></td>
<td>- Rarely happens</td>
</tr>
<tr>
<td></td>
<td>- Easy to detect by the clients</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
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</tbody>
</table>

The researcher next asked the participants about the practice of using the clients’ accounts with the account owners’ permission. The participants explained that if securities brokers would like to trade stocks for themselves, they had to follow specific rules and get prior approval from the SEC before they could engage in certain transactions. As a result, it was not convenient for the brokers to use their own accounts, especially if they would like to buy or sell volatile stocks where prices moved quickly. Many brokers, therefore, asked their clients for permission to use the clients’ accounts to trade, in order to circumvent the regulations. The participants further explained that there were two methods of doing so. The first was known as profit sharing where brokers put funds into the clients’ accounts to trade. If there were profits from such transactions, the brokers would share the profits with the clients. The second was the use of nominee accounts where securities brokers asked their friends or their family
members to open trading accounts, traditional or Internet accounts, with securities companies. The clients then gave login IDs and passwords, along with ATM cards that linked to the trading accounts, to the brokers. The brokers would be able to use such nominee accounts to trade for themselves via the Internet trading system:

‘I think it is the case of brokers using their clients’ ports to trade and divide the profits between the brokers and the clients. Alternatively, some brokers may open accounts under their friends’ names, but use the brokers’ money to trade. I used to do the latter, but there were a lot of problems. It was very difficult to look after clients and manage my own port at the same time. So, I stopped trading for myself.’ (B1B, Broker, Commercial Bank Related Securities Company)

It should be noted that as many as eight from eighteen participating brokers had a misunderstanding on the SEC regulation concerning the use of securities brokers’ trading accounts. They stated during the interview that the current SEC regulation strictly forbade them from having their own trading accounts and that they could not legally engage in trade for own profits. However, the other ten participants correctly explained that they were allowed to have their own trading accounts but there were steps that they had to follow before they could engage in stock trading.

The participants were next asked for their views and opinions on the SEC regulations prohibiting such practice. Fourteen participants agreed with it was wrong for the brokers to use their clients’ accounts for their own benefit while four showed hesitation and asserted that brokers should be able to use their clients’ accounts if the account owners gave permission. The participants who agreed with the rule stated that it was wrong for securities brokers to use nominee accounts or share trading profit arrangement with their clients. They pointed out that it was right for the SEC to require brokers who would like to trade for themselves to obtain prior approval from the SEC since doing so would create a conflict of interest between brokers and clients. The brokers who trade for themselves were more likely to pay more attention to their own trading than to give good services to their clients:
'I think this is a good rule. If brokers have trading accounts, they are more likely to focus on their own accounts and fail to take good care of their clients. Most brokers that trade for themselves are more likely to trade volatile stocks to get quick profits. So they have to watch the trading screen at all time. It would be easy to make trading volume for oneself, but they cannot look after their clients. They cannot be good brokers. If they would like to trade for themselves, it would be better for them to quit and be full time investors.’ (L2A, Team Leader, Local Securities Company)

In relation to pressure or motivation factors leading to the commission of the violation, the participants identified, from the highest to the lowest frequency, greed and jealousy, income pressure, ideology, and company pressure as the potential factors. Thirteen participants identify greed and jealousy as the main motivating factor. They expressed that when they saw their clients earning large profits from trading, based on their advice and recommendations, they felt jealous and would like to earn such profits too. Three participants agreed that they felt increasingly bitter when the market was bad and they were struggling to get any trading volume, yet the clients could make some profits due to the brokers’ advice. As a result, they felt entitled to trade for themselves even though it was against the SEC regulation:

‘In the case where the clients give permission, it’s the greed that the brokers would like to gain profits similar to their clients. Yes, this is a strong one. When we see our clients gain good profits at the same time when we have our own financial issues. It is such a bad feeling. We want to get that profits so we need to find accounts to trade.’ (L1A, Broker, Local Securities Company)

The second factor was income pressure as mentioned by seven participants. The participants explained that when they traded for themselves using the clients’ accounts, they also obtained higher trading volume that would be used to calculate their shares of commission fees at the end on the month. The third motivating factor mentioned by three participants was an ideology factor. The participants asserted that they disagreed with the current regulations requiring securities brokers to obtain prior approval before they could put in trading orders for themselves. They believed that it was not wrong to trade for themselves and that they should not have inferior rights to their clients. The last
factor was company pressure mentioned by one participant. The participant stated that his company had pressured him to quickly increase his monthly trading volume. One of the methods he employed was to engage in large numbers of transactions using a nominee account he had.

In terms of opportunity factors, all participants reported that it was technically easy for securities brokers to set up and use nominee accounts to trade for themselves, whereas it was slightly harder to engage in a profit sharing scheme with the clients. They also believed that most Thai securities brokers had nominee accounts and the violation happened very often. It was noted that nine participants admitted to have and use nominee accounts to trade for themselves at the time of the interview, whereas four stated that they had the accounts but no longer used them:

‘I believe every broker has nominee accounts. It is easy to open ones. Just find friends or relatives to open trading accounts and bank accounts and ask for ATM cards that come with such bank accounts. It is so easy now given that we can use online banking and do not have to get into the branch. It is very easy to avoid detection and circumvent the rules.’
(F3B, Broker, Foreign Securities Company)

Only five participants claimed that they had never had a nominee account throughout their career. Lastly, the participants agreed that the violation was very hard to detect by both securities companies and the SEC Office since the brokers could use their smartphones to put in trading orders via the Internet system at any place and at any time they would like to. Three participants stated concertedly that the only circumstance where the securities companies and the SEC Office would find out about the violation was when the trade resulted in losses and the brokers failed to put adequate funds into the trading accounts. In such cases, the actual account owners, who were called to pay for the deficits, usually reported disputes they had with the brokers to securities companies and the SEC Office.

Rationalisation employed, or believed that other securities brokers employed, when using their clients’ accounts for their own benefit could be extracted and
classified into three groups which were a claim to entitlement, a denial of injury, a claim that everyone is committing the violation. A claim of entitlement was most frequently mentioned during the interviews. Many participants stated that they wanted to earn profits from trading too and should be allowed to do so. Examples of these rationalisations included: ‘Brokers help my clients earn profits all the time, it’s normal that they want to earn for themselves too.’ and ‘We need to make money too’. The second type of rationalisation was a denial of injury. Three participants claimed that they did not think their clients would be negatively affected if they engaged in trade for themselves too. Examples of these rationalisations were: ‘I don’t think it is that damaging for us to trade for ourselves too.’ and ‘I don’t see anything wrong with using nominee accounts to trade.’ The third and last group of rationalisation was a claim that everyone was committing the violation. An example was: ‘It’s a normal practice now. Everyone has and uses nominee accounts.’

Table 30: Factors leading to the Commission of the Offence of Using a Client’s Account for the Broker’s Own Benefit with the Account Owner’s Permission (Securities Brokers)

<table>
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<th>Pressure Factors</th>
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<td>Personal greed</td>
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<td></td>
<td>Income pressure</td>
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<td></td>
<td>Ideology</td>
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<td>Company Pressure</td>
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<tr>
<th>Opportunity Factors</th>
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<tbody>
<tr>
<td></td>
<td>Technically easy to commit</td>
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<td></td>
<td>Frequently happens</td>
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<td></td>
<td>Difficult to detect by securities companies and the SEC Office</td>
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<table>
<thead>
<tr>
<th>Rationalisation</th>
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<tr>
<td></td>
<td>Claim to entitlement</td>
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<td></td>
<td>Denial of injury</td>
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<tr>
<td></td>
<td>Claim that everyone is committing the violation</td>
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(d) The Offences of Deception and Misappropriation

The participants were last asked for their views and opinions on the offences of fraud and misappropriation where securities brokers dishonestly deceive their
clients for monetary benefit and/or misappropriate the clients’ funds or shares. All participants agreed that the offences were very serious and damaging, and that no broker should commit such offences. Five participants commented that the offending brokers should be punished as severely as possible and should not be allowed to work in the industry again:

‘Fraud and appropriation of clients’ asset are so wrong, no different from thieving. Brokers who commit them should be punished very severely. It’s a shame to all of us in the industry.’ (F1A, Broker, Foreign Securities Company)

The researcher then asked the participants to explain how securities brokers might commit these offences against their clients. It was noted that the majority of participants stated that they could not answer for certain since they had never committed or even thought to commit such offences. The participants, nevertheless, agreed to share what they had known from their colleagues and from cases published in the SEC Newsletter. Eleven participants reported similarly that they had heard of cases where brokers fabricated documents and/or forged clients’ signatures to withdraw or transfer funds to their own or third parties’ accounts. Seven participants reported cases where brokers deceived clients to transfer funds to the third parties’ or brokers’ personal accounts instead of the securities companies’ accounts, and ran away with the funds. Six participants mentioned cases where clients overly trusted their brokers by signing blank withdrawal and/or share transfer forms, or let the brokers hold their ATM cards for convenience. Five participants reported that they knew of cases where offending brokers forged signatures to change clients’ postal addresses and fabricated monthly statements issued by securities companies to conceal the wrongdoing. One broker described it this way:

‘From what I read, they forge signatures and addresses of clients. The addresses of clients are very important since trading confirmation documents will be posted there. So the clients will know whether there is anything wrong with their accounts. The offenders would have to somehow change the addresses of the clients. They might have to also forge cash withdrawal documents. I don’t know how they do it so this is all I can say.’ (L1A, Broker, Local Securities Company)
In relation to pressure or motivating factors that lead to the commission of the offences, seventeen participants identified greed as the only factor:

‘Greed, personal greed alone. To me they are different type of human being from normal brokers like us.’ (F1A, Broker, Foreign Securities Company)

However, one participant gave three further factors that were: (1) urgent need for funds to settle a failed investment, (2) gambling debts, and (3) family members’ illness. Three participants further commented it was easy for brokers to be greedy since they knew the amount of funds their clients had in the accounts.

When asked about opportunity factors, all participants commented that the offence happened very rarely and it was very hard to commit the offences since securities companies nowadays offer good security systems to their clients, including: (1) a separation of front and back offices, (2) regular account inspections and audits by the back office and the compliance department, (3) confirmation calls to clients when the back office received fund withdrawal requests, and (4) monthly statements itemizing every transaction. Several participants also added that most clients nowadays checked their trading accounts via the Internet including on their smartphones regularly. If clients were careful and did not overly trust their brokers, it would be very hard for brokers to commit fraud and/or misappropriation:

‘It is difficult to commit this offence. At the moment, clients are able to quickly access their trading records. For examples, clients can check their transactions and trading accounts online. They also have an option to transfer money directly to the securities company instead of transferring it to their broker, which is a safer option. Thus, it is very hard for brokers to misappropriate their clients’ funds.’ (B3A, Team Leader, Commercial Bank Related Securities Company)

Six participants agreed that they did not think the offences could be committed opportunistically or by impulse since careful planning and preparation were required to successfully commit the offences, especially in order to hide the
wrongdoing from the clients and the securities companies. In addition, three among the six further commented that brokers who could commit fraud and/or misappropriation against their own clients must be very different from ordinary brokers. To them, brokers usually had a close and lengthy relationship with clients, which made it mentally difficult for brokers to commit serious wrongdoing against those they knew well and had been with them for a long time. One went so far to say that brokers who committed fraud and/or misappropriation against their clients must have an intention to do so before they enter into the industry.

Similar to the findings in the offence of unauthorised use of clients’ accounts without the account owners’ knowledge in the previous section, no rationalisation could be identified from the interviews since all participants stated that the offences should not be committed in any case and that no participants had previously committed fraud or misappropriation against their clients.

Table 31: Factors leading to the Commission of the Offences of Deception and Misappropriation (Securities Brokers)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Personal Greed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunity Factors</td>
<td>- Technically hard to commit</td>
</tr>
<tr>
<td></td>
<td>- Rarely happens</td>
</tr>
<tr>
<td></td>
<td>- Easy to detect by clients and securities companies</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
</tr>
</tbody>
</table>

(e) Linkages Between the Focus Offences

The last question in this section was whether the participating brokers could see any linkages between the four focus offences being studied. All eighteen participants reported that they could see links between the offence of failing to properly record trading orders, the offence of making trading decisions on behalf of clients, and the offence of unauthorised use of a client's account with
permission from the client. They stated that one of the main reasons for the lack of proper records was that brokers had made trading decisions for clients and/or used nominee accounts to trade for themselves. When the SEC officers conducted on-site inspections, if the brokers failed to provide the records, the inspection could reveal that the other two offences had been committed. Five participants further commented that, in their opinion, these three offences were prevalent in the industry and that most, if not all, securities brokers would have committed them at one point during the course of their careers.

Only two participants identified the connection between the three offences above to the more severe offence of the use of a client’s account without the account owner’s permission and the offences of fraud and misappropriation. They suggested that brokers who had serious financial problems and had successfully made decisions for clients and/or used nominee accounts to increase their income might be further tempted to commit fraud and/or misappropriation to obtain more money. Three participants, on the other hand, strongly commented that brokers who could commit serious wrongdoing against their own clients were very different from normal brokers as discussed above:

‘As for cheating clients or taking their money, those who have bad financial problems might want to do it. I don’t know. I guess if they keep breaking the rules and have never been caught. Some might want to go for something big. But I will not do it myself no matter what. I don’t think it’s worth the risk.’ (B3B, Team Leader, Commercial Bank Related Securities Company)

5 Differences in Contributing Factors Between the Three Types of Securities Brokerage Companies

One of the main research questions of this study is whether the differences between the three types of securities companies (commercial-bank related, foreign, and local) lead to different explanatory factors in relation to the brokerage fraud and related violations. One main question and several probing questions were asked to gain the participants’ views on the issue. Several main differences between different types of securities companies were constantly
mentioned during the interviews. These differences included working procedures, internal relationships and culture, new client recruiting methods, and the level of back office and IT support. However, only the difference in method of recruiting new clients was agreed by all participants to be a clear difference attaching to the type of security companies. Other factors, such as banana of firms, market reputation, or working culture of an individual team were thought not to discriminate between types of company.

To be more specific, fourteen participants mentioned that they had experienced different working methods in different securities companies they had been with, such as the aggressiveness of trading strategies, the rigor with which the companies enforced their internal rules, and the flexibility in documentary assessment. Nine participants gave opinions that such differences could be attributed to specific characteristics of a single company or other factors such as the unique style of each team, the banana of the companies, or the companies’ market reputation, but not the types of securities companies based on shareholding structure as hypothesised by the researcher. Nevertheless, five participants observed that commercial-bank related securities companies usually had clearer methods and guidelines and were more strict in enforcing their internal rules. They further gave opinions that this could be due to the securities companies’ close ties to their parent commercial bank from which they inherited working culture. Two participants made a comment that they believed foreign securities companies were most aggressive in their trading strategies and local companies tended to be most lenient with internal rules. However, no other participants confirmed such statements.

As for internal relationship and working culture within the firms, five participants mentioned that they had experienced different working cultures during their employment with different types of company. Nevertheless, only one attributed such differences to the types of company. The other four participants, on the contrary, attributed such differences to the style of the team leaders and the strategies they imposed on their team members. Two brokers also made a comment that securities brokers in the same team usually stuck
together for a long time and when they moved, they usually moved as a team and not as an individual. Therefore, the team culture was more important than the corporate culture:

‘When brokers move from one company to another, we move as a big group. Thus, even if we move to a new firm, we still work together and the culture is the same. It doesn’t matter whether the new firm is the same type of firm as the previous firm that we have moved from. I have worked with this set of colleagues for almost 10 years already, so I know them very well. The work environment is quite relaxed with not much pressure.’
(L3A, Team Leader, Local Securities Company)

Four participants mentioned that the level of back office and IT support was another main difference they experienced from their time with different types of company. However, all attributed such difference to the banana rather than the type of the companies.

The method of recruiting new clients was the only major difference among firms that all eighteen interviewees attributed to the type of securities companies during the interview. The participants explained that it was easier for brokers working for commercial bank-related securities companies to find new clients since they have an exclusive access to client databases of the parent banks. Securities brokers working for local and foreign companies, on the other hand, had to rely on recommendations of existing clients and the recruitment of the general public at financial events or at seminars were the main methods in recruiting new clients.

In practice, the bank would refer or send lists of clients with good deposits to its related securities company, which then gave the lists to their employing brokers to do cold calling to persuade the clients to open trading accounts. As a result, brokers working for bank-related companies usually have a larger number of clients and have less pressure in finding new clients than brokers in local and foreign companies. In other words, they can easily tap into new investors whereas brokers working for local and foreign securities firms have to fiercely compete for existing investors in the market.
In conclusion, differences between the three types of securities companies categorised by the researcher for the purpose of this study were limited to the available methods in recruiting new clients and, to a certain extent, to the internal working procedures. It is possible that such differences may contribute to the differences in contributing factors leading to the commission of fraud and related violations since brokers working for commercial bank-related securities companies may have lesser pressure in finding new clients and retaining new clients, as well as have lesser opportunity in committing the violations due to the stricter rules enforced by the companies.

6 The Impact of the Liberalisation of Brokerage Fees upon the Commission of Fraud and Regulatory Violations

One of the main research questions of this study is the effect of the 2012 liberalisation of brokerage fees upon Thai securities brokers. From seventeen participants who were asked about their experience with liberalisation, thirteen interviewees reported that they were not affected and felt no pressure from liberalisation. The main reason given was that they did not have high volume clients who could negotiate for a reduction of brokerage fees with the securities companies. On the other hand, four participants reported to be affected and felt the pressure as their major clients had already asked for a reduction of fees and their companies had to yield. One participant expressed that they thought the new system was unfair since she had to work harder to retain the clients while getting lesser income due to the discounted rates given. The other participant reported being hit hard by liberalisation since other companies constantly tried to take her major clients away and that she had to keep increasing the discounts to retain her clients:

'I, myself, have two big clients who asked for a reduction in commission fees. As I said before, when the company agreed to give them such reduction, my share is lower. I had to involuntarily yield to this or else they would ask to move their trading accounts to another

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700 One participating broker was a novice broker at the time of the interview. Since he started working in the industry after the liberalisation had already been in effect, the questions were not asked.
broker or another company. Deep down, I think this is grossly unfair. I work as hard as I used to yet my income is getting lower and lower.’ (F3B, Broker, Foreign Securities Company)

7 Securities Brokers’ Knowledge of Law and Enforcement

A series of probing questions revealed the level of brokers’ knowledge of law and enforcement. On the subject of the knowledge of law and regulation, six of thirteen interviewees maintained that they had good knowledge and understanding of the current law. Among them, two participants stated that they had tried to keep up to date with the rules as much as possible to protect themselves. Three other brokers said that they had recently received a detailed briefing from compliance officers from their companies. Six participants stated that they had adequate understanding of the law to do their work as a broker but were unsure of certain regulations or found the law hard to comply with in practice. They claimed that certain rules were too hard to comply with due to client pressure and/or market volatility, such as the SEC’s requirement to fully record all voice orders:

‘I think every broker has adequate knowledge on the rules and regulations. But whether they will comply with such rules is actually based on certain situations. We know that we need to closely follow clients’ orders, fully record such orders, and do not interfere with clients’ assets. However, in certain situations, we have to do otherwise.’ (F3B, Broker, Foreign Securities Company)

Five team leaders were also asked questions about to their level of knowledge of law and regulations. Four team leaders maintained that they had good knowledge of the law to the level allowing them to confidently teach their team members. However, one team leader stated that they only had adequate knowledge of the law since there were many new regulations and they found them unclear in many areas. This team leader gave an example of engaging in trade in certain ways in which they believed were right. However, she was later informed by the compliance officers that it was wrong for her to do so.
On the issue of the knowledge of enforcement, all eighteen participants reportedly received the enforcement information sent by the SEC Office to securities companies, which was then forwarded to the brokers. Nevertheless, the attention given to such information varied among the participants. Seven from thirteen brokers reported to give a lot of attention to the information since they wanted to know who the offenders were and why they were punished. They went on to say that such information led them to review what they were doing and tried to protect themselves more. On the other hand, the other six team members reported to only skim through the news, as they found these cases repetitive and only wanted to know whether the offenders were someone they knew. These six participants further stated that reading such news did not actually lead them to change their working methods because: (1) they already complied with the rules, (2) they believed they knew what they were doing, and (3) they did not think they could change their working methods anyhow since their clients would not cooperate.

From five team leaders, four stated that they had paid much attention to the enforcement information. It was interesting to note that only two team leaders said that they had changed their working methods based on the news of punishments. The other three team leaders maintained that they could not change their working methods even if they would like to since their clients had resisted the changes and they were feared of losing their clients from doing so.

8 Securities Brokers’ Attitude Towards Licence Examination and Training

As all participating brokers have to pass the licence examinations in order to obtain their securities brokerage licences, they were asked to express their views and opinions on the rigor and usefulness of the ethics part of the test. Nine of eighteen interviewees commented that the ethics section of the test was adequately rigorous, whereas the other nine brokers believed that the ethics part was too easy and was not as important to the test-takers as the technical part. The participants were further asked whether the content of the ethics test such as theories and examples were applicable to the actual practice. Only one
participant commented that the content of test was extensively useful in the course of work. The other seventeen participants, however, agreed that the usefulness of the content of the test was limited. Reasons given included: (1) actual working environments were different from those in theory, (2) many rules were not sensible in actual practice, (3) many rules were not straightforward and not easy to comply with, (4) many more factors needed to be taken into accounts when making decisions in real life than those example situations in the books, and (5) they were pressured by clients to make decisions against the rules.

The next question asked for participants’ views on the ethics training they received after they started working as securities brokers. All eighteen participants stated that they had to attend compulsory training sessions held by the SEC Office every two years in order to renew their licences. Nevertheless, many participants commented that most training sessions focused on technical knowledge rather than on regulations and ethics. Probing questions then inquired whether their securities companies had provided additional training. Six participants reported that their companies had provided them with training on both the technical and regulatory knowledge, whereas twelve participants maintained that their companies did not do so. It was notable that among the six participants who reported to receive further training, four brokers worked in two commercial bank-related securities companies and the other two participants worked for foreign securities companies. Finally, all participants were asked whether the regulatory training provided by the SEC Office and/or the securities companies were beneficial to them. Seven participants reported that such training was useful since they had obtained updated information on important rules and cases. They also stated that the training helped remind them about what they should do and should not do. On the other hand, eleven participants reported that they did not find the regulatory training beneficial. Reasons given were that: (1) they found the training boring and repetitive, (2) they already knew what they were doing, (3) even when they knew what was right or wrong, they could not fully comply with the rules due to income and client pressure, (4) they believed that training on technical knowledge was more
important, and (5) they believed that if certain brokers had poor morals, no training would stop those people from violating the regulations.

9 Securities Brokers’ Attitude Towards Internal Monitoring and Sanctions

The participants were asked whether their employing securities companies had provided them with ethical manuals or codes of conduct that they may consult when necessary. Ten participants reported that their companies provided them with a manual, either in paper or in electronic form, whereas eight interviewees reported that their companies did not do so. However, the feedback on the manual was mixed. Eight participants stated that the manual they had were a general one for every employee in the company, which was not useful to them in relation to their brokerage work. Seven participants mentioned that they did not think the manual was useful since they had no time to consult it, as they had to act and make decisions quickly. It was notable that five participants mentioned that cautioning emails from the compliance department were more useful to them than the ethics manual.

The next probing question was on the efficiency of the compliance department in monitoring and regulating conduct of securities brokers. Fourteen participants believed that their companies’ compliance departments had worked adequately, efficiently and rigorously, whereas the other four interviewees viewed that their departments did not work well enough. Asked to elaborate the measures that the compliance departments had employed to monitor the brokers’ conduct, the participants explained that the monitoring and regulatory activities of their compliance officers included: (1) conducting regular inspections of voice and trading records, (2) providing notifications, and guidelines on new laws and regulations, (3) notifying relevant employees to prepare required documents before SEC officers conducted onsite inspections, (4) giving advice to brokers where there were legal issues or disputes between brokers and clients, and (5) acting as intermediaries between brokers and the regulators. The satisfied participants stated that they found the compliance officers to be strict but helpful as well as performing their duty seriously. On the contrary, the participants who
were not happy with their compliance officers complained that their officers were not attentive and kept distance. Two interviewees also suggested that their companies had too few compliance officers, leading to the lack of efficiency in monitoring brokers’ conduct.

They are doing a good job in providing clarifications on the rules when issues arise. However, I don’t think they are doing well enough to protect brokers from potential misconducts. In other firms that I used to work with, the compliance departments were more attentive and had a closer relationship with brokers. In those companies, I could just visit the department and consulted them when I faced risky situations. However, at my current company, the compliance department keeps distance from brokers. They will monitor and review brokers’ conduct to see whether we have complied with the rules, but we don’t feel comfortable to consult them about potential misconducts.’ (B3A, Team Leader, Commercial Bank Related Securities Company)

10 Securities Brokers’ Attitude Towards Administrative Sanctions

One of main objectives of the interview in this first phase was to obtain brokers’ views and perceptions of the different sanctions imposed upon the offenders. The first series of questions related to the three forms of administrative sanction, which are reprimand, a suspension of licence, and a revocation of licence.

Seventeen participants were asked for their opinions on the administrative sanctions of reprimand.701 All of them agreed that a reprimand was an excellent initial sanction. Several participants added that a reprimand served as a good warning to first-time offenders and made those subject to the sanction become more careful during the course of their work. The sanction also sent a strong signal to potential offenders, and those working around them, that the behaviours in question were not acceptable and must not be committed. The participants were then asked whether they saw being reprimanded as a sanction to be feared. Five participants replied that a reprimand caused fear. These participants said that if they were to be reprimanded, they would be likely to: (1) feel bad and ashamed, (2) lose their clients and team leaders’ trust, and (3) be

701 One participant was not asked the question due to the lack of interview time.
closely monitored by the compliance department and the SEC Office. On the other hand, twelve participants replied that the administrative sanction of reprimand did not make them fearful. They gave reasons that: (1) a reprimand had no actual effect upon their course of work and their income, and (2) usually there was no further sanction imposed by the employing companies.

The next question revealed securities brokers’ attitudes towards the administrative sanction of a suspension of licence. Only one of eighteen brokers disagreed that the use of a suspension of licence deterred brokers from committing brokerage frauds and related violations. On the other hand, seventeen interviewees agreed with the use of a suspension of licence as the main sanction to deter brokers from committing brokerage frauds and related violations. Nevertheless, many participants stated that the suspension of licence should only be applied to the offenders who intentionally committed serious offences, not to those who made mistakes or repeated minor offences. When asked whether a suspension of licence was a sanction which they feared, sixteen participants agreed that they feared the sanction very much, whereas two participants interestingly contended that it was not as fearful as one might think. Those who stated that the suspension was feared further expressed that a suspension of licence was a very serious sanction. If a broker were to be suspended, he or she would not be able to work legally and would not receive any income during the suspension period. The suspended brokers would also have bad records and lose credibility in the eyes of clients and employing companies. In addition, a number of participants added that the thing they most feared in relation to a suspension was whether they could maintain the relationship with their clients, as they could not serve the clients and had to transfer the clients to their colleagues. They speculated that many clients may decide to leave them for other brokers. Thus, it would be very hard for them to resume working after the suspension period had ended.

On the other hand, two experienced brokers asserted that a suspension of licence was not to be feared, if the suspension period was not very long. Their reasons were that: (1) the suspended brokers would still be able to trade stocks and earn
some profits as investors, (2) they could still give advice and recommendations to their clients via mobile phones when they were suspended, (3) they had trusted colleagues who would be happy to put in their clients’ trading orders for them, (4) they believed that their companies would find ways to help them, and (5) they believed that they would be able to retain most of their existing clients due to their good relationships with the clients, meaning they would be able to resume work without too many problems.

Other than the main themes above, other interesting data were gathered in regard to suspension of licence. Firstly, another eight brokers also asserted that they knew how to circumvent the suspension, in the similar fashion explained by the two brokers. The second interesting point was that many securities companies helped their suspended brokers by transferring them to work in other departments that did not require a brokerage licence during the suspension period, so that the brokers could still gain some income. The third and last point was that different securities companies had different policies regarding the return of suspended brokers. A few companies had a strict policy of not taking suspended brokers back after the suspension period had expired, whereas others would let suspended brokers resume their work as normal, provided that they could still retain some clients. For example, one broker described:

‘It’s not that scary. Well, as I said, the company recently suspended me. I was suspended for one month. As soon as I knew, I transferred all my clients to my friend. My friend then transferred all commission fees from my clients back to me. If the suspension is for a month or two, we can easily manage. I can use my mobile phone to call my clients and give my recommendations as normal. They just need to call my friend to place their orders. But if the suspension is longer than that, it could be troublesome. My clients wouldn’t be happy because it was inconvenient to them.’ (F2B, Broker, Foreign Securities Company)

The participants were then asked for their attitudes towards a revocation of licence, which is the most severe administrative punishment. All sixteen participants agreed with the use of the revocation as the main sanction for

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702 The researcher had to skip the questions on two sessions due to the lack of interview time.
serious offences. Many added that those whose licences were revoked should not be allowed to come back to the industry and should also be subject to criminal punishments. When asked whether they feared this sanction, all participants agreed that a revocation of licence was a very scary sanction since they would have to leave the industry and might not be able to find new jobs easily due to bad records. Nevertheless, many participants stated that, unlike a reprimand or a suspension of licence, they did not really take into account a revocation of licence as a potential sanction that they might be subject to, since they did not think they would ever commit serious brokerage offences.

The last probing question asked during this section of the interview was whether their clients would know if the participants had been administratively sanctioned by the SEC Office. All twelve participants who were asked the question suggested that if the punishment in question were reprimand, the clients would not know of the sanction, since it was unlikely that any client would pay attention to the enforcement information. If the punishment was a suspension of licence, seven participants thought that their clients would naturally know since they had to transfer the clients to their colleagues and had to explain to the clients what had happened. Five participants, on the other hand, believed that, if the suspension period was not longer than one to two months, the clients might not know that their brokers had been suspended since the brokers could give some excuses for their prolonged absences.

When further asked whether the SEC Office should inform clients directly that their brokers had been reprimanded or suspended, ten out of twelve participants suggested that clients should not be informed directly and that the brokers should be given chances to redeem themselves. They said that if the clients knew that their brokers were reprimanded or suspended, most clients would be overly worried and might decide to leave the brokers, making it very hard for the brokers to continue working in the industry. On the other hand, two interviewees would like the SEC Office to inform clients directly so that the clients could make an informed decision whether they would still want to be with those brokers or not.
One of the themes the participating brokers constantly mentioned throughout the course of interview was a civil dispute with their clients. They stated that such disputes could range from typos in placing trading orders to an accusation of fraud. All participants agreed that clients had the right to pursue compensation and damages, but they also asserted that, from their experiences, many clients had tried to take advantage of brokers and securities companies too. They explained that when transactions resulted in losses, tricky clients always tried to find ways to put blame on brokers and/or securities companies so that they did not have to be liable for the losses. Common tricks reported by the participants were: (1) clients insisting on calling brokers via mobile phone so that the voice orders were not properly recorded and then claiming that they did not make such orders if the trade resulted in losses, and (2) encouraging brokers to make trading decisions on their behalf and refusing to acknowledge the arrangement when the trade resulted in losses.

When asked whether civil disputes and sanctions were to be feared, sixteen participants reported that they found civil disputes and sanctions were more frightening than administrative and criminal sanctions. They gave reasons that civil disputes could occur because of simple unintentional mistakes, but might result in high compensation and damages. They further stated that due to the existence of manipulative clients who tried to take advantage of brokers, they have to be very careful and protect themselves as much possible.

Several participants were further asked about what would happen when clients brought disputes to the knowledge of securities companies. They explained that most of the time, the companies via the compliance officers, would try to settle civil disputes as soon as possible and before the matters were brought to the attention of the SEC Office. Most disputes were therefore settled through negotiation and were not brought to the attention of the SEC Office for further administrative proceedings. In paying restitution and damages to the clients, securities companies may or may not help their brokers depending on several
factors including: (1) types of offences or disputes, (2) blameworthiness, (3) value of damages, and (4) the relationship between the disputed brokers and the executives of the companies.

12 Securities Brokers’ Attitude Towards Criminal Sanctions

Fifteen participants were asked for their views on the use of criminal sanctions to deter brokerage frauds and related violations. All participants agreed that, in addition to administrative sanctions, criminal sanctions should be imposed upon offenders in serious offences such as misappropriation of clients’ funds. The participants were then asked whether they had considered the possibility that they might be subject to criminal sanctions during the course of their work. Nine participants reported that they had taken such possibility into account since they were aware that securities brokerage was a risky job and they had to regularly deal with tricky clients. As a result, they tried to protect themselves as much as possible. Three participants in this group made similar comments that what they really feared was not the sanctions. Rather, it was the threats made by their clients that they would file criminal complaints against the participants, if the participants did not comply with the clients’ requested:

‘I think about this all the time. If I recommend certain shares to a client and he loses money. He might be so angry and claim that I cheat him against the police. Whether it is right or wrong, subjecting oneself to a criminal complaint is troublesome. So I am always very careful when I deal with my clients.’ (B2B, Broker, Commercial Bank Related Securities Company)

On the other hand, six participants reported that they had not taken such possibility into account since criminal cases were very rare and they believed that they would never commit such serious offences. They gave reasons that it was much easier to commit small offences than serious offences. Any honest broker might be subject to administrative and/or civil sanctions due to their unintentional mistakes. However, they believed that to be subject to criminal

703 The questions were not asked in three sessions due to the lack of interview time.
sanctions, one had to have a malicious intent to commit serious offences, in which he or she claimed he or she never would.

13 Securities Brokers’ Attitude Towards the SEC Regulatory and Enforcement Functions

The last theme explored was the participating brokers’ attitude towards the SEC Office’s regulatory and enforcement function. From eighteen participants, six brokers reported a positive perception, whereas four reported a mixed perception and eight reported a negative perception. Those who reported positive views expressed that they thought the SEC Office had done a good job in issuing regulations, conducting inspections, and giving out sanctions. One participant stated that the SEC officers had done a very thorough on-site inspection at their workplace and another participant complimented that the SEC office had done a good job in protecting both the clients and the brokers.

Four participants provided mixed reviews and explained that they were satisfied with certain functions of the SEC Office but not others. One participant suggested that he was satisfied with how the SEC imposed administrative sanctions upon offenders, but questioned the agency’s application and interpretation of the regulations. Another participant maintained that she was satisfied in general but thought that the SEC’s inspection procedure was unclear and relied too much on particular officers’ discretions:

‘I believe that the sanctions are applied appropriately, but I don’t believe that the SEC’s interpretation and application of the law and regulations are always appropriate. As I’ve said before, some law or regulations of the SEC are unclear or not sensible in the first place. I don’t think it is fair to punish brokers for a breach of these regulations.’ (B1A, Team Leader, Team Leader Securities Company)

The third participant stated that he thought the SEC had done a good job in catching wrongful brokers but failed to catch misbehaving investors. The last participant in this group stated that he or she thought the SEC had insufficient officers and much wrongful conduct was overlooked as a result.
Eight participants, on the other hand, were dissatisfied with the SEC's regulatory and enforcement function. One participating broker commented they had little faith in the SEC Office since they saw much wrongdoing going undetected and the offenders did not receive any punishments. Three participants similarly said that the SEC Office overly protected investors and did not adequately protect securities brokers from being taken advantage of by securities companies and manipulative clients. In their view, whenever brokers were in dispute with clients, the SEC rarely listened to brokers’ viewpoints and explanations. One participant mentioned that the SEC Office seemed to do things very randomly and was not effective in targeting offending brokers and companies. This broker also stated that the level of sanctions imposed was not severe enough. Another participant suggested that the SEC should have clearer inspection guidelines and should make such guidelines widely known to securities companies and brokers so that they know what to do when inspected. Lastly, one participant questioned the SEC’s inconsistent treatment of different firms that were known to conduct similar regulatory violations.

C. Findings from the Second Interview Phase: Regulators

1 General Pressure Factors

Due to the shifting dynamics of the interviews in this phase, in which the participating officers led the direction of the conversation, the interview questions on general pressure factors that securities brokers had to cope with during the course of work were not asked of the regulators. Nevertheless, two themes relating to general pressure factors were mentioned by regulators during their interviews. The first theme was income pressure, which was mentioned frequently throughout the interviews with regulators. It was worth noting that income pressure was attributed as the main pressure factor contributing to the commission of three from the four focus offences: the offence of failing to properly record trading orders, the offence of making trading decisions on behalf of clients, and the offence of unauthorised use of a client's account. The second theme relating to the general pressure factors was client pressure. The client
pressure factor, however, was rarely mentioned by regulators and was only mentioned in connection to the offence of failing to properly record trading orders.

2 Specific Factors Contributing to the Commission of Focus Offences

(a) The Offence of Failing to Properly Record Trading Orders

All officers commented that it was important that trading instructions and phone conversations between brokers and clients were properly recorded. The underlying reasons were that voice records were the main type of evidence used for solving disputes between brokers and clients, as well as being a starting point for the SEC officers to detect and investigate more severe violations, such as brokers making trading decisions for their clients, the use of nominee accounts, market manipulation, and insider trading. As Duangporn Vibulsilp from the Licensing Department reflected:

'It is a very important rule. Voice recordings are hard evidence we use to determine all wrongdoing. When a large number of recordings are missing, there must be something fishy and we start our investigation from that. We often discover more severe violations such as illegal portfolio managing, illegal use of nominee accounts, insider trading, and collusion to manipulate prices of shares, for instance. (Duangporn Vibulsilp, Senior Officer, Licensing Department)

Sumeth Vichienchai from the Prosecuting Department further stated that securities brokers often failed to properly record voice orders and that was the most prevalent violation at the time of the interview. That regulator further explained that there were two main circumstances in which the SEC Office will typically discover the violation. The first is when there are disputes between clients and brokers and the clients bring the matters to the attention of the SEC Office. The second circumstance is when the SEC Office conducts routine inspections of securities companies and discovers that a number of voice records are missing. In relation to the inspection of securities companies, Oratai Nimthaworn and Supatham Chanveeratham from the Brokerage Business Audit
Department explained that the department employs a risk-based approach and ranks securities companies based on their regulatory risk profiles. Companies that pose a high level of risk are inspected and audited annually, whereas companies that pose low risk are inspected and audited every two to three years.

When the SEC officers conduct an on-site inspection, they first check the lists of records prepared by the companies for their completeness, then systematically select a number of voice records, based on an internal inspection guideline, and listen for anomalies. Mr Chanveeratham stated that since the internal guideline is classified, he could not disclose it to the researcher for the purpose of this study. Nevertheless, he explained that the inspecting officers are usually instructed to focus on brokers whose clients have a very high trading volume, as well as on transactions involving stocks whose prices rose and fell sharply over a short period of time.

Based on the earlier interviews where many brokers had questioned the scope and exercise of the discretion of regulatory officers regarding the standard of acceptable voice records, the researcher asked the participating officers to clarify the matter. All participating regulators stated firmly that proper voice records must be made before trading orders are put into the trading system and must clearly contain the name, the amount, and the price of shares that clients would like to buy or sell. The regulators explained further that voice records that were made after the trade had been made, could be used as evidence where there were disputes between brokers and their clients, but did not satisfy the requirements of the SEC regulation.

The regulators were then asked for their opinions on the pressure and/or motivation factors causing securities brokers to fail to properly record trading orders. The interviewees identified two main factors: income pressure and client pressure. The regulators agreed that the main reason the many brokers did not properly record trading orders was that they attempted to conceal other violations that they committed with an intention to increase their income, such as making trading decisions for clients, using nominee accounts to trade for
themselves, and insider trading. In relation to client pressure, the officers commented that they were aware that nowadays many clients preferred to call or send texts to their brokers’ mobile phones to make trading orders. Nevertheless, the regulators asserted that such client wishes to use more convenient mobile and chat communications were not a valid ground for the brokers to evade their responsibility in complying with the regulation. Ratana Niensawang from the Brokerage Business Audit Department stated that brokers had legal duties to tell their clients to call companies’ landlines to make trading orders and if the clients insisted on calling brokers’ mobile phones, they had to refuse to take the orders.

The regulators were further asked whether the SEC Office intended to amend the regulation to accept other forms of record as evidence of valid trading instructions, such as emails, text messages, and voice records from brokers’ mobile phones. Ms Vibulsilp replied that the SEC Office once told securities companies that they were willing to consider additional forms of record of trading orders and welcomed a commitment by the companies that they would pay for any additional cost incurred. The officer stated that no company had yet to make a suggestion at the time of the interview.

In terms of opportunity factors, the regulators commented that the violation was easy to commit and happened frequently. They also added that the likelihood of detection was moderate to low since inspecting officers could only check and listen to small percentages of voice records. In relation to identifying the likely rationalisations that the officers believed that offending brokers employed when they committed the violation, only one of them could be identified, which is a denial of responsibility or the shifting of blame. The regulators mentioned that during the investigations, offending brokers often complain to them that they did not intend to breach the regulation, but their clients refused to call the companies’ lines and kept calling their mobile phones to make orders.
Table 32: Factors Leading to the Commission of the Offence of Failing to Properly Record Trading Orders (Regulators)

| Pressure Factors                  | - Income pressure  
|                                  | - Client pressure  
| Opportunity Factors              | - Technically easy to commit  
|                                  | - Frequently happens  
|                                  | - Moderately difficult to detect  
| Rationalisation                  | - Denial of responsibility: shifting blame to clients  

(b) The Offence of Making Trading Decisions on Behalf of Clients

Four regulators replied to the researcher's interview questions on the offence of making trading decisions on behalf of clients. All officers commented that it is one of the violations that happen most frequently and there were many cases that the SEC Office was investigating. Ms Nimthaworm and Mr Chanveeratham stated that when the market was good there would be few disputes between clients and brokers. On the other hand, when the market was bad, and trading decisions resulted in losses, a large number of clients would bring the disputes to the attention of the SEC Office, claiming that they did not make the trading decisions themselves so they should not be responsible for the losses, as well as asking the agency to punish the brokers for the violation. Kanchana Soralum from the Licence Department commented that it was important that clients made their own trading decisions and that securities brokers refrain from interfering with their clients' assets in any way, even when the clients assigned them to do so:

'I think it is a very good regulation. Brokers shall not interfere with clients' assets in any case and clients should always make their own decisions. It is wrongful for brokers to make decisions for the clients, even when the clients ask them to do so. They should explain to their clients that they are forbidden by the SEC regulation and that they will be punished if they violate the rule.' (Kanchana Soralum, Senior Officer, Licensing Department)
The regulators were next asked how they determined which orders were made by clients themselves and which orders were made by brokers for the clients. The officers replied that they had to carefully listen to conversations between brokers and clients to make a determination. Ms Solarum stated that when she listened to the conversations, if clients told their brokers to buy or to sell certain shares at any amount and/or at any price the brokers saw fit, she would deem such trading instructions incomplete. If the brokers further engaged in trade based on such incomplete instructions, she would consider that the brokers made trading decisions in violation of the SEC regulation. She further added that a complete instruction must clearly specify the name, the amount, and the price of the share that the clients would like to buy or sell. The other common situation was when clients gave vague instructions, such as asking their brokers to buy or sell certain shares when their prices were in certain ranges. She would listen to a series of voice records to identify the reasons for such vague instructions and the usual level of clients’ involvement in decision-making. If the clients often gave vague instructions and their involvement in decision-making was low, she would consider that the brokers had made trading decisions for their clients.

The officers were then asked for their views on the pressure and/or motivation factors leading securities brokers to make unlawful trading decisions for their clients. Four officers identified income pressure as the main motivating factor, saying that it was easy for brokers to increase their trading volume when they made trading decisions for their clients. Two officers further added that a number of brokers claimed that they had made such unlawful trading decisions with good intention to obtain more profits for and to provide better services to their clients. In relation to rationalisation, an appeal to higher loyalties could be derived from the interview data as the officers mentioned that a number of brokers had claimed to violate the SEC regulation for the benefit of their clients.
Table 33: Factors Leading to the Commission of the Offence of Making Trading Decisions on Behalf of Clients (Regulators)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Income pressure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Goodwill</td>
</tr>
<tr>
<td>Opportunity Factors</td>
<td>- ‘Technically easy to commit’</td>
</tr>
<tr>
<td></td>
<td>- Frequently happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- Appeal to higher loyalties: for the benefit of clients</td>
</tr>
</tbody>
</table>

(c) The Offence of Using a Client's Account for the Broker's Own Benefit

Three regulators provided their views on the offence of unauthorised use of a client's account. Deriving from the earlier interviews of securities brokers in the first phase, two different practices (the use of clients’ accounts with and without the account’ owners permission) were presented to the participating officers during the interviews. In the case of the practice of using clients’ accounts without permission, only Ms Vibulsilp provided her opinion on the matter. The officer commented that she had rarely heard of such cases and that it was neither easy nor worthwhile to do so since the offending brokers would only obtain higher trading volume but could not get the actual funds out of the trading accounts. The officer was then asked what were the reasons or motivating factors that lead certain brokers to use their clients’ account in such a fashion. The officer replied that she was not certain but speculated that it could be personal greed and income pressure.

Table 34: Factors leading to the Commission of the Offence of Using a Client's Account for the Broker's Own Benefit without the Account Owner’s Permission (Regulators)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Personal greed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Income pressure</td>
</tr>
<tr>
<td>Opportunity Factors</td>
<td>- ‘Technically difficult to commit’</td>
</tr>
<tr>
<td></td>
<td>- Rarely happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
</tr>
</tbody>
</table>
In relation to the practice of using clients’ accounts with the account owners’ permission, three participating regulatory officers similarly commented that they were aware that many brokers had and used nominee accounts to trade for themselves in order to circumvent the regulations. Nevertheless, the officers stated that it was not easy for the SEC Office to detect and punish these brokers for using the nominee accounts since it was not easy to find concrete evidence of violation. Ms Niensawang expressed that when she conducted on-site inspections she often came across accounts that she suspected were nominee accounts, however she had no evidence to prove beyond doubt that they were nominee accounts. The officer further added that no account owner would admit to the SEC officers that he or she gave his or her account to the broker to use if that broker was a friend or relative. Only where there was a dispute between them would the account owner bring the evidence to the SEC Office asking the agency to punish the broker.

Ms Soralum commented that when experienced officers conducted inspections and listened to voice records of conversations between brokers and clients, they could sometimes detect that the clients were actually friends or relatives of the brokers and that the trades were not made for the benefit of the clients. In such cases, the officers would conduct further investigation to prove that the brokers had wrongly employed the clients’ accounts to trade for themselves. The researcher further asked Ms Soralum that if the offending brokers employed their clients’ Internet trading accounts instead of traditional accounts to engage in trade, would it still be possible for the SEC Office to detect that such accounts were nominee accounts or that the trades were made for the benefit of the brokers? The officer admitted that when the Internet accounts were employed the likelihood of detection would be lower. Nevertheless, if there was a lead, the SEC Office could look up the IP address of devices that were employed to send in suspecting orders. If such devices belonged to securities companies, it could partly signal that it was the brokers who made such orders.

The officers were next asked for their opinions on the pressure and/or motivating factors that lead securities brokers to illegally employ their clients’
accounts to trade for themselves. The officers identified personal greed and income pressure as the potential motivating factors. In relation to rationalisation, a claim to entitlement could be extracted from the conversation with the officers. Mr Vibulsilp and Ms Solarum similarly commented that they could understand that securities brokers, similar to other personnel in the capital market, would like to engage in trade and obtain profits from stock trading. However, since the brokers’ interests often conflicted with the interests of their clients, the SEC Office had to limit the brokers’ right to trade for themselves.

Table 35: Factors leading to the Commission of the Offence of Using a Client's Account for the Broker's Own Benefit with the Account Owner's Permission (Regulators)

| Pressure Factors               | - Personal greed  
<table>
<thead>
<tr>
<th></th>
<th>- Income pressure</th>
</tr>
</thead>
</table>
| Opportunity Factors           | - Technically easy to commit  
|                               | - Frequently happens  
|                               | - Difficult to detect by the SEC Office |
| Rationalisation               | - Claim to entitlement |

(d) The Offences of Deception and Misappropriation

Three participating regulatory officers provided their views on the offences of fraud and misappropriation. The three officers agreed that the number of cases had significantly decreased due to the introduction the Automatic Transfer System (ATS) where funds were electronically transferred between the clients’ bank accounts and the trading accounts. Nevertheless, Ms Vibulsilp expressed that, from time to time, there had been cases where brokers forged clients’ signatures and/or fabricated withdrawal documents to misappropriate funds from the clients’ trading accounts. Ms Solarum further added that there had been a few number of cases where brokers deceived their clients that the ATS system was malfunctioning or that they could get IPO shares at discounted prices and
asked the clients to directly transfer funds to the broker’s personal accounts. The brokers then got away with the money, as the officer explained:

‘Yes, I have seen quite a number of cases in my time here. But I would say it is harder for brokers to misappropriate clients’ funds nowadays since we have the ATS system. Funds in trading accounts are automatically transferred from the clients’ bank accounts. Brokers no longer handle clients’ cash so they cannot just run away with the money. However, there are still cases where brokers tell their clients that the ATS system is malfunctioning or that they can get IPO shares at discounted price, and ask clients to transfer money to their personal accounts. I don’t know why those clients believe such things but there are many that do.’ (Kanchana Soralum, Senior Officer, Licensing Department)

In relation to the proceedings and sanctions, Ms Vichienchai explained that when the injured clients brought their cases to the SEC Office, the Licence Department would first gather evidence. If it was found that the brokers had defrauded their clients or misappropriated the clients’ funds, the SEC Office would impose severe administrative sanctions, usually a revocation of licence, upon the offenders. At the same time, the Prosecuting Department would investigate whether such misappropriation and/or fraudulent acts could be committed and/or concealed due to a weakness in internal control or a lack of coordination between the front and the back offices. If it was found that there was a weakness or a lack of coordination, the companies would also be criminally fined for the failure to establish and maintain credible internal control mechanisms as required by the regulations. Nevertheless, if the injured clients would like to initiate criminal proceedings against the offending brokers, the clients would have to file criminal complaints to the Royal Thai Police by themselves.

The officers were then asked for their opinions on the pressure and/or motivating factors that lead brokers to defraud their clients and/or to misappropriate the clients’ funds. The three regulatory officers all identified personal greed and income pressure as the motivating factors leading to the commission of the wrongdoing. As for rationalisation, no verbalisation could be extracted from the interview.

Table 36: Factors leading to the Commission of the Offences of Deception and Misappropriation (Regulators)

| Pressure Factors | - Personal Greed  
|                 | - Income Pressure  
| Opportunity Factors | - Technically difficult to commit  
|                  | - Rarely happens  
| Rationalisation | - None offered  

3 Differences in Contributing Factors Between the Three Types of Securities Brokerage Companies

The researcher asked the regulators for their opinions on the differences between the three types of securities companies and whether such differences lead to any differences in the type and rate of regulatory violations. Five officers provided answers to this question. Two officers, Ms Solarum and Ms Niensawang commented that although the three types of companies had generally distinct internal working cultures, they did not find that any type of companies monitored the conduct of their employees significantly stricter than any of the others, or that brokers from any type of the companies violated the regulations more frequently or more severely than the others.

Nevertheless, three officers similarly commented that there were notable differences in the regulatory compliance standards between the three types of brokerage firms: foreign and commercial bank related securities companies usually had better standards than local companies. Ms Vibulsilp commented that commercial bank related and foreign securities companies had higher internal working standards than local companies and were much stricter with the conduct of their employees than were local companies. Ms Nimthaworn stated that, under the risk assessment programme (prudential risk, operational/management risk, and customer relationship risk) conducted by her department, commercial bank related and foreign securities companies generally had better
scores and better risk management practices than did local companies. Mr Vichienchai commented that, in his opinion, commercial bank related companies had the highest compliance standard due to the inherited culture from their parent banks. Foreign securities companies also kept good records since most were subsidiaries of international leading companies with established systems and culture. Local securities companies, on the other hand, had the highest numbers of cases relating to any regulatory violation. This officer also observed that when the SEC Office conducted investigations, the commercial bank related and the foreign securities companies usually provided better cooperation with the authority as well as more promptly rectified the issues.

‘As for compliance standards, I think the best ones are those bank-related companies followed by foreign ones. Some foreign companies have very very high working standards while others are average. Local companies generally had the lowest standards. My assessment is, from the frequency of cases, that the types of violation in local firms, their level of cooperation with us, and their promptness in fixing the issues are things we are unhappy with. I think bank related and foreign companies have better standards and are more serious in complying with the law.’ (Sumeth Vichienchai, Senior Officer, the Prosecuting Department)

4. The Impact of the Liberalisation of Brokerage Fees upon the Commission of Fraud and Regulatory Violations

Four regulators provided their opinions when asking about the impact of liberalisation of brokerage fees on the commission of fraud and regulatory violations. All four regulators similarly commented that they had not yet seen significant changes in securities brokers’ conduct. Ms Niensawang commented that, after the liberalisation, securities companies now compete with each other more both in terms of the reduction of brokerage fees and the quality of services but she could not yet see their impact on the brokers’ conduct. Ms Solarum commented that, from when she last checked, the fees offered to brokers by each company were not vastly different, and that the type and frequency of cases

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705 Risk assessment reports of securities brokerage companies can be found at: The Securities and Exchange Commission, Intermediary Search Results <http://capital.sec.or.th/webapp/ers/ers_show.php>.
involving securities broker misconduct she dealt with now were not different from prior to liberalisation. Ms Vichienchai also confirmed these statements from Ms Solarum. Ms Vibulsilp, nevertheless, commented that it was possible that there might be changes in the nature of brokerage fraud but it was too early to establish the trend since it was only two years after the liberalisation had occurred.706

5 Regulators’ Attitude Towards Brokers’ Knowledge of Law and Enforcement

The participating regulators were asked for their views and opinions on brokers’ knowledge of law and enforcement. Three regulators provided answers to this question, in which they agreed, from their experience, that Thai brokers had moderate levels of knowledge. Ms Nimthaworn commented that she found some brokers had very good legal knowledge while others had very poor knowledge to the point that she could not understand how the latter passed the licence examinations. She further added that some companies provided more training than others and that securities brokers working for those firms received more frequent training generally and had better knowledge. Ms Solarum commented that securities brokers should have adequate knowledge of the law since the SEC Office had employed a number of channels to communicate new regulations and enforcement policies to securities companies and brokers. The officer explained that the most important channel was at quarterly and yearly seminars offered to compliance officers where new regulations, enforcement policies, and key cases were covered in detail. The compliance officers were then expected to communicate such information to brokers and other employees in their organisations. Similar to Ms Solarum, Ms Vibulsilp also emphasised the importance of the compliance officers’ seminars. She stated since there were over 50,000 registered securities brokers at the time of the interview (January 2014), it was impossible for the SEC Office to directly communicate to securities brokers and compliance officers played a key role in enhancing the brokers’ knowledge of the law and the SEC’s enforcement activities.

706 The interview was conducted in January 2014.
Three participating regulators provided answers to interview questions on the effectiveness of the current internal control system to regulate conduct of securities brokers. All three regulators similarly assessed that, on average, the internal control administered by securities companies is moderately effective. Ms Niensawang commented that compliance officers had made good efforts to regulate conduct of their companies’ employees. Nevertheless, she often found during inspections that the compliance officers did not have enough autonomy and support from management. Ms Solarum commented that the compliance departments had generally done a good job of monitoring their employees’ conduct, and had cooperated well with the SEC Office when misconduct was detected. Similar to Ms Niensawang, Ms Solarum further expressed that the compliance departments should be able to do a better job if they received more support from management, as well as more cooperation from other departments within the company. Lastly, Mr Chanveeratham pointed out that some companies had really good internal control systems whereas others had ineffective ones. The officer further stated that if the SEC Office conducted an inspection and found that a company or certain branches of a company had recurring violations of a specific regulation, it would normally mean that there was an internal control issue that needed to be addressed. The SEC Office would then have to raise the issue with the compliance departments and give out advice and/or sanctions, accordingly.

7 Regulators’ Attitude Towards Administrative Sanctions

Two officers from the Licence Department provided answers to interview questions on the administrative sanctions imposed by the SEC Office. It was noted that participating regulators from other departments intentionally deferred the questions to their colleagues from the Licence Department. Ms Vibulsiip stated that administrative sanctions had been the main sanctions that the SEC Office employed to punish securities brokers who failed to comply with the regulations. The officer further explained that, under the old system, there
were four sanctions that were, from least to most severe, a reprimand, a probationary order, a suspension of licence, and a revocation of licence. Under the current system, only a suspension and a revocation of licence remained, as a probationary order was abolished and a reprimand was reclassified as an administrative action rather than as a sanction. The researcher asked Ms Vibulsilp to clarify the difference between an administrative sanction and an administrative action. The officer explained that, as an administrative action, the SEC Office could issue a reprimand to any broker at any time without having to initiate formal proceedings. On the other hand, to impose administrative sanctions upon offending brokers, formal proceedings had to be initiated, as well as there must be clear evidence of wrongdoing. Lastly, the researcher asked Ms Vibulsilp to assess the effectiveness of the current administrative sanctions in deterring securities brokers from committing brokerage frauds and related violations. The officer briefly replied that she thought the sanctions were adequately severe, especially after the SEC Office had recently issued a new guideline to increase the length of suspension in many offences. In the interview with Mr Solarum, the officer similarly pointed out that, under the new system, a reprimand was reclassified to make it easier for the SEC Office to issue a reprimand to securities brokers who commit minor violations or to employ in cases where the evidence of wrongdoing was insufficient to warrant a more severe sanction.

In relation to a suspension of licence, Ms Solarum commented that it was the main tool that the SEC currently employed to punish offending brokers and that the length of the suspension determined the severity of the sanction, ranging from one month to two years. When asked how the length of the suspension was determined, the officer replied that the length was determined by the type of offence, the severity of the wrongdoing, the damage cost, and the previous record of offending brokers. In addition, Ms Solarum mentioned that the SEC Office also had an internal sanction guideline providing the suggested length of punishment in different cases. Nevertheless, the officer stated that such a guideline was classified for internal use only and could not be revealed to the researcher for the purpose of this study:
The length of a suspension was usually determined by the type of offence, the severity of wrongdoing, the damage cost, and the previous record of offending brokers. Well, I can tell you that we also have a sanction guideline. It is a long table showing suggested length of suspension in different cases. However, the guideline is for internal use only. I am sorry that I cannot let you see it as it is classified.' (Kanchana Soralum, Senior Officer, Licensing Department)

The officer was next asked whether a suspension of licence was an effective tool in deterring brokerage fraud and related violations. The officer replied that she was of the view that the sanction was moderately efficient since most brokers she had talked to told her that they were more afraid of the suspension imposed by the SEC Office. Deriving from the earlier interviews with securities brokers, the officer was then asked whether the SEC Office was aware that the suspended brokers could partly circumvent the suspension by transferring their clients to their trusted colleagues and had their colleagues transferred the shares of commission fees from those clients back to them. The officer answered that the agency did know of such practices yet it was not easy to stop the circumvention. Nevertheless, she commented that she did not think that it was a major problem since it was unlikely that such practices could be employed if the suspension was for longer than a couple of months as it caused a lot of inconvenience to clients and that most companies she knew of would not retain brokers who were suspended for a lengthy period of time. In addition, the officer was asked whether the SEC Office was aware that a number of securities companies helped their suspended brokers circumvented the sanction by transferring them to work in other departments that did not require the brokerage licence during the suspended period. Ms Solarum replied that the SEC Office was also aware of such a loophole but there was nothing the agency could do since the SEC Office did not have power to prohibit the suspended brokers from performing other tasks that did not require the licence for their employing companies. In relation to a revocation of licence, the officer commented that it was the most severe administrative sanction that the SEC Office could impose upon the offenders and the length of a prohibition on re-application was from two to ten years.
Only one regulator provided answers to interview questions on civil sanctions and compensation. Ms Solarum commented that it was important that clients, who suffered damage from brokers’ misconduct, were rightfully compensated by securities companies. Nevertheless, the officer stated that such civil matters were beyond the scope of the SEC Office’s legal function, as the SEC Office did not have any statutory power or resources to seek compensation on behalf of investors. The officer further commented that injured clients often misunderstood this point and brought their cases to the SEC Office asking the agency to help them seek compensation from securities companies. The SEC Office, thus, had to regularly inform the clients that the agency could only identify the wrongdoing and impose administrative sanctions upon the offending brokers, and that, in order to obtain compensation and further damages, they had to open negotiations with the companies or initiate civil claims in courts by themselves.

9 Regulators’ Attitude Towards Criminal Sanctions

Three officers provided their views on the use of criminal sanctions in relation to brokerage frauds and related violations. Nevertheless, it was noted that ‘criminal sanction’ that the participating officers referred to was dissimilar to ‘criminal sanction’ that the participating brokers referred to in their interviews. The criminal sanction that the officers focused on was a criminal fine that the SEC Office imposed on the securities companies for their failure to implement internal control mechanism, whereas the brokers focused on criminal sanctions, which could result when individual clients sought fines from or a period of imprisonment for the client.

Ms Niensawang commented that a corporate fine, together with an administrative sanction, was the main sanction package that the SEC Office employed to regulate the conduct of the securities companies and their

employees. Whenever the SEC Office received complaints from clients or carried out inspections and found that the wrongdoing was the result of the companies’ failure to establish and maintain credible internal control mechanisms as required by the regulations, the SEC Office would initiate criminal proceedings against the companies and impose a corporate fine. Ms Solarum and Mr Vichienchai similarly stated that a corporate fine was an important tool to regulate brokers’ conduct as well as to induce securities companies to invest in internal control systems to deter future misconducts. The officers were then asked whether they thought a corporate fine was an effective tool in deterring brokers from committing wrongdoing. The three officers agreed that, in their opinion, a corporate fine was moderately effective, as a number of companies had accordingly rectified and enhanced their internal control after they were fined. Nevertheless, the officers commented that the amount of maximum corporate fine was, in many cases, too low and should be reviewed.

The researcher next asked the officers for their views on the use of individual criminal sanctions to punish the brokers who committed fraud and/or misappropriation against their clients. The officers commented that offending brokers should be criminally punished for their wrongdoing, in addition to the administrative punishments that the SEC Office imposed upon them. Nevertheless, for the offences of fraud and misappropriation, the SEC Office did not have a policy to initiate criminal proceedings on behalf of the injured clients since the agency considered that they were private matters between the brokers and the clients. The injured client would have to initiate the proceeding themselves. The SEC Office would only initiate criminal proceedings in the offences where the general public or the market was affected as a whole, such as in the offence of insider trading and the offence of market manipulation.

708 See details in Chapter 3.
709 Section 282 of the of the Securities and Exchange Act B.E.2535 (1992) prescribes that any securities company which fail to comply with section 113 is liable to a fine not exceeding 300,000 baht and a further fine not exceeding 10,000 baht for every day during which the violation continues.
D  Findings from the Third Interview Phase: Investors

1  Clients Relationship with Securities Brokers

At the beginning of the interview session, the participating investors were first asked to describe their relationship with their brokers. All three participants similarly stated that they had several trading accounts with different securities companies, and had multiple brokers looking after their accounts. Their relationship with each broker therefore varies and depends on many factors. One participant explained that he was closer to the broker who looked after his traditional account since he had been with her for a long time and talked to her more often. He also mentioned that he considered her as a friend and valued her advice and recommendations. On the other hand, he said he was not close to brokers who were assigned to look after his Internet accounts since he barely had interaction with them. Another participant pointed out that she had two brokers that she trusted more than others. One of them was her actual friend who worked as a broker. She told that it was her friend who persuaded her to open trading accounts and make investment in the stock market. The other broker was randomly assigned to her, but they got along well and the broker gave her good advice so she decided to stick with him. The last participant mentioned that she used to have a very close and trustworthy broker looking after her trading accounts but the broker decided to quit the industry a few years ago. The securities company assigned her a new broker but she did not feel much connection. The participant also added that nowadays she mostly engaged in trade via the Internet trading system so the broker-client relationship was less important than it used to be.

The participants were then asked whether their relationship with their brokers had any effect on their trading decisions. All three participants reported that the level of relationship did affect their decisions to a certain extent. The first participant briefly commented that she usually gave trading orders to the broker who gave her the best service and she felt most comfortable with. The second participant stated that the more he trusted the broker, the higher the volume of
transaction he would dare to engage. He added that it took time for clients and brokers to really know each other and to develop trust among them. Lastly, the third participant provided that, as she had several brokers looking after her accounts, she usually gave most orders to the one she had the closest relationship with.

2 General Pressure Factors

The participating investors were next asked for their general opinions on pressure factors that securities brokers had to face in the course of their work, especially those that might lead to regulatory violations and the commission of fraudulent practices. Two participants identified income pressure and company pressure as the two main sources, whereas the other participant identified income pressure as the only source. In relation to the income pressure, the participants commented that they knew that the higher the trading volume securities brokers obtained from clients, the higher income the brokers would receive. So if the brokers did not obtain adequate income, they might have to resort to other means to gain more income, which to certain brokers including committing regulatory violations and/or fraudulent acts.

3 Investors’ Views on Specific Factors Contributing to the Commission of Focus Offences

(a) The Offence of Failing to Properly Record Trading Orders

The participating investors were asked for their views and opinions on the offence of failing to properly record trading orders. All three participants agreed with the rules and commented that all trading orders should be properly recorded to avoid future disputes between brokers and clients. The participants were further asked for their opinions on the reasons or pressure factors that lead to violation. Most interestingly, all participants replied that clients were the main factor. The participants admitted that it was much more convenient to call the brokers’ mobile phones than securities companies’ landlines. The first
participant stated that she did not know that calling her broker's mobile phone to make trading orders was against the SEC regulation and that her broker had never told her. The other participant stated that during the early trading hours, she found that the company's lines were always busy, since many clients called to make orders at the same time, so she would rather call her broker's mobile phone or sending texts to give trading instructions. The third participant mentioned that when he called the company's lines he had to dial several extensions and wait for a long time before he got to make orders, which was too late when he wanted to buy or sell volatile stocks. The participant further suggested that the SEC should allow securities brokers to record voice orders using their mobile phones for the convenience of both the brokers and the clients.

The participants were next asked to give their opinions on the difficulty and the frequency that the offence was committed. All participants commented that it was easy to violate the rule and speculated that the violation happened very frequently. In relation to rationalisation, it could be inferred from the conversation with the participating investors that the usual verbalisation was a denial of responsibility, which in this case was an admission of blame on the clients’ part.

Table 37: Factors Leading to the Commission of the Offence of Failing to Properly Record Trading Orders (Investors)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Client pressure</th>
</tr>
</thead>
</table>
| **Opportunity Factors** | - Technically easy to commit  
- Frequently happens |
| **Rationalisation** | - Denial of responsibility: admission of blame by clients |

(b) The Offence of Making Trading Decisions on Behalf of Clients

The participants were next asked for their views and opinions on the rule prohibiting securities from making trading decisions for their clients. All
participants agreed that it was a good rule and clients should always make decisions themselves. All participants asserted that they had never had their brokers make decisions for them. When asked why some clients let their brokers making such decisions, the participants answered that some clients might be too lazy to study the market or too busy to follow the trend, or genuinely believed that their brokers could make better trading decisions. One participant further commented that those clients must really trust their brokers, which he found nonsensical. The participants were further asked for their opinions on the reasons or pressure factors that lead brokers to make decisions for their clients even though it was against the rule. The participants pointed out two factors that were the client’s request and the broker’s goodwill. The other participant commented that typical investors usually focused on a small number of stocks. It was not uncommon for brokers to know clients’ trading patterns and, sometimes, with goodwill, they engaged in transactions on behalf of their clients according to such patterns.

The participants were then asked to provide their opinions on the difficulty of committing the offence and the frequency with which that the offence was committed. Two participants commented that it was easy for brokers to make decisions for their clients, whereas the other commented that it was not hard but not too easy for the broker to do so. He pointed out that clients must really trust their brokers and the brokers must be confident such transactions would result in profit. In relation to the frequency of the violation, the first two participants believed that the violation happened frequently. On the other hand, the other participant pointed out that the violation should happen less and less since the new generation of investors had much better technical knowledge than the old ones.

In relation to rationalisation, it could be inferred from the conversation that rationalisation that the participating investors believed that the offending brokers usually employed were a denial of responsibility (blame shifting) and an appeal to higher loyalties (for the benefit of clients).
Table 38: Factors Leading to the Commission of the Offence of Making Trading Decisions on Behalf of Clients (Investors)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Client pressure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Goodwill</td>
</tr>
<tr>
<td>Opportunity Factors</td>
<td>- Technically easy to commit</td>
</tr>
<tr>
<td></td>
<td>- Frequently happens (2)/ Intermittently happens (1)</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- Denial of responsibility: admission of blame by clients</td>
</tr>
<tr>
<td></td>
<td>- Appeal to higher loyalties: for the benefit of clients</td>
</tr>
</tbody>
</table>

(c) The Offence of Using a Client's Account for the Broker's Own Benefit

The participating investors were next asked for their views on the offence of unauthorised use of a client's account. Similarly to the interviews in the first and the second stages, two different practices were presented to the participants: the use of clients’ accounts with and without their permission. In relation to the practice of using clients’ accounts without the account owners’ permission, all participants agreed that it was totally wrong for securities brokers to do so and that the offenders should be severely punished. Nevertheless, two participants questioned why any securities broker would take such risk since he or she would only obtain higher trading volume but not the actual profit from the transactions since only the account owners could take the funds out of the accounts. In relation to pressure or motivating factors, the participants identified income pressure as the potential factor. The participants further commented that, in their opinion, the offence was not easy to commit and rarely happened. Lastly, no rationalisation or verbalisation could be extracted from the conversation with the participants.
Table 39: Factors leading to the Commission of the Offence of Using a Client’s Account for the Broker’s Own Benefit without the Account Owner’s Permission (Investors)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>Opportunity Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Income pressure</td>
<td>- Technically difficult to commit</td>
</tr>
<tr>
<td></td>
<td>- Rarely happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
</tr>
</tbody>
</table>

As for the use of clients’ accounts with the account owners’ permission or the use of nominee accounts, all participants stated that they had regularly heard of such practice. One participant commented that it was wrong and harmful for securities brokers to use nominee accounts to trade for themselves as their clients would be at a disadvantage since the brokers would likely focus on trading stocks for themselves than providing good services to clients. The other two participating investors, on the other hand, argued that the SEC Office should not limit brokers’ right to trade for themselves as they did not believe that the practice was that damaging. One participant commented that although the trade was done through nominee accounts, the funds actually belonged to the brokers and they stood to gain and lose profits similar to ordinary investors. She did not see the point in restricting the brokers’ right to trade for themselves. The other participant commented that most securities brokers, by the nature of their work, would also like to trade for themselves and there was no effective way to prohibit them from doing so.

The participating investors were next asked for their opinions on potential pressure or motivation factors that lead securities brokers to violate the regulation. For this offence, the participants identified greed and income pressure as the two main factors. In relation to opportunity factors, the participants commented that it should be easy for brokers to set up and use nominee accounts. The also commented that the offences should happen all the time and it was very hard for the authority to detect such wrongdoing. In relation to rationalisation, it can be inferred from the conversation with the
participating investors that rationalisation that they believed the offending brokers usually employed was a claim to entitlement and a denial of injury.

Table 40: Factors leading to the Commission of the Offence of Using a Client's Account for the Broker's Own Benefit with the Account Owner's Permission (Investors)

| Pressure Factors                  | - Personal greed  
|                                  | - Income pressure |
| Opportunity Factors              | - Technically easy to commit 
|                                  | - Frequently happens |
| Rationalisation                  | - Claim to entitlement 
|                                  | - Denial of injury |

(d) The Offences of Deception and Misappropriation

The participating investors were asked for their views on the offences of deception and misappropriation. All participating investors agreed that the offences were very serious and damaging, and that the offending brokers should be both administratively and criminally punished. One participant commented that if she was defrauded by her trusted broker, she would be very upset and might leave the securities market altogether. When asked how securities brokers might commit fraud or misappropriate funds of their clients, all participants agreed that it should not be easy for the brokers to do so since securities companies had installed various security systems to protect their clients. Two participants commented that they had heard fraudulent cases relating to initial public offering (IPO). They explained that it was usual that large numbers of investors would want to obtain these new shares but could not do so due to the limited numbers available. In such situations, unscrupulous brokers might tell their clients that they could personally acquire such shares if the clients agreed to transfer some deposits or the whole payment to the brokers’ or third parties’ personal bank accounts. The brokers then fled with the money. The other participant commented that the other possibility he could think of was where
there was collusion between brokers and officers from the back office in fabricating documents and forging clients' signatures:

‘One case I can think of is where brokers and back office work together to cheat investors. I have heard of several of such cases. The brokers forge signatures and fabricate withdrawal documents and those admin people, instead of protecting us, help hiding evidence. It is really sad. I hope it would never happen to me. Thinking of it, I have to be more careful I think. (IR2, Representative of Investor, the Thai Investor Association)

The participants were next asked for potential pressure or motivation factors that lead brokers to commit fraud and/or misappropriation. The participants identified greed as the only factors. In relation to opportunity factors, the participants commented that, due to heightened security on the part of both the stock exchange and securities companies, it must be hard and rare for brokers to successfully commit fraud and/or misappropriation against clients. In relation to rationalisation, similar to the interview of securities brokers in the first phase, no verbalisation could be extracted from the interview.

Table 41: Factors leading to the Commission of the Offences of Deception and Misappropriation (Investors)

<table>
<thead>
<tr>
<th>Pressure Factors</th>
<th>- Personal Greed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunity Factors</td>
<td>- Technically difficult to commit</td>
</tr>
<tr>
<td></td>
<td>- Rarely happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
</tr>
</tbody>
</table>

4 Differences in Contributing Factors Between the Three Types of Securities Brokerage Companies

The participating investors were next asked for their views and opinions on the differences between the three types of securities companies, especially in relation to the conduct of their employing brokers. All three participants agreed that they found no significant difference between the conduct of the brokers. One participant further added that the only real differences between the companies
that mattered to him as an investor were the reliability of the Internet trading system and the quality of securities research the companies provided to their clients.

5 *The Impact of the Liberalisation of Brokerage Fees upon the Commission of Fraud and Regulatory Violations*

The participants were asked whether they could notice any change in the brokerage industry and in the conduct of their brokers after the liberalisation of brokerage fees had taken place. All three participants reported that the liberalisation had little impact on them since their trading volumes were not large enough to allow them to negotiate for a reduction of fees. Nevertheless, they suggested that they could feel certain minor changes in the industry, such as the higher competition between securities companies for new clients and small reductions of fees for existing clients. In relation to the conduct and services provided by their brokers, all three participants reported that they could see no change.

6 *Investors’ Attitude Towards Administrative Sanctions*

The participating investors were asked about their views and opinions towards the current administrative sanctions imposed by the SEC Office on the offending brokers. All participants agreed that, to them, reprimand was an acceptable first sanction for minor offences. As for a suspension of licence, one participant stated that the sanction was adequately severe for most offences since the offending brokers would not be able to work and earn their income for a period of time. On the other hand, two participants commented that they did not think the sanction was very severe since they knew of cases where the offending brokers resumed working after the suspension and recommitted the offence again. They proposed that if it was clear that the offenders had malicious intention, their licences should always be revoked and banned from the industry for life. All three participants agreed that the revocation of licence was a proper administrative sanction for serious brokerage offences.
The participants were next asked whether clients would know if the SEC administratively sanctioned their brokers. All participants answered that it was unlikely that the clients would know since very few would pay attention to the legal news on business newspapers or the SEC’s website and they did not think that the companies and the brokers would inform the clients. One participant added that he once read a newspaper and found out by chance that his former broker had been punished for misconduct:

‘I have a direct experience with this. Around two years ago, I randomly picked a business newspaper up when I was waiting for something. There was news on the SEC’s sanction. I read it and found that my former broker was punished for misconduct. I would never know if I did not pick that newspaper up.’ (IR3, Representative of Investor, the Thai Investor Association)

7 Investors’ Attitude Towards Civil Sanctions

The participants were next asked for their views and opinions on civil sanctions and a claim for compensation in cases where they incurred damages as a result of wrongdoing committed by their brokers. All three participating investors agreed that they would seek compensation from the securities companies through negotiation. If they could not reach settlement with the companies, they would present the disputes to the SEC Office and the civil courts, respectively. Nevertheless, all participants were confident that they should be able to settle their cases with the companies since the companies would fear losing credibility and reputation. One participant commented that she would not seek further legal measures against the offender, but rather let the company decide how to punish its employee:

‘If that somehow happens, I will first talk to the supervisor of my broker and negotiate with the company for compensation. If the broker is really in the wrong, they will agree to settle. No securities company would like to be in disputes with its clients. It is likely that I would ask the company to send me a new broker, a better one, and let them deal with the bad one themselves. I would rather focus on trading that wasting time talking to the SEC or going to court.’ (IR1, Representative of Investor, the Thai Investor Association)
In relation to criminal sanctions and proceedings, it is interesting that all three participating investors stated that they would prefer not to go to criminal courts, since it would take a lot of time and resources. One participant commented that, even if the offence were severe, he would rather not seek criminal sanction and would be satisfied with a monetary settlement. The participant further proposed that there should be a government agency providing assistance to injured clients in seeking criminal sanction against offending brokers and securities companies. Without such agency, few investors would be willing to spend time and money to pursue criminal sanctions against offenders. The other two participants commented that they would at least file complaints with the police but whether they would continue with the criminal proceedings depended on the value of the damages and the result of the negotiation with their securities companies, as one of the participants reflected:

‘If the offence is very severe, like when my broker misappropriates my money, I will at least file a complaint to the police and negotiate with the company. But frankly, I am not sure what I would do after that. It depends on the damages and result of the negotiation. As I said, if the company agrees to compensate me, I may not push on with criminal proceedings. This thing [criminal trial or criminal matter negotiation] takes time and money. Nobody likes going to court. Well, I still think the offender needs to be severely punished but it would be too troublesome if I have to do it by myself.’ (IR1, Representative of Investor, the Thai Investor Association)

The last topic investors were asked to comment on in interviews was the participants’ attitude towards the SEC’s Enforcement Functions. The participants stated that they have little confidence in the SEC’s capability in regulating conduct of securities brokers. One participant commented that the SEC Office had few officers while there were many securities brokers and investors in the market. The other participant stated that she rarely heard of the SEC enforcement activities. She proposed that the SEC Office should do more public
relations to increase investors’ confidence. The last participant mentioned that the SEC Office should do better in detecting stock-price manipulation and apprehending both the investors and the brokers who engaged in such unlawful schemes.

E. Summary of Findings in Relation to the Focus Offences

(a) The Offence of Failing to Properly Record Trading Orders

Data from the interviews showed that the offence of failing to properly record trading orders was a key issue in the Thai brokerage industry. Although all participants agreed that the regulation requiring securities brokers to properly record all trading orders was an essential rule to protect both brokers and clients, they stated that it was one of the hardest regulations to fully comply with for a number of reasons. The first reason given was that clients nowadays prefer to call the brokers’ mobile phones to make orders and refuse to call the securities companies’ landlines where conversations were recorded. Secondly, many brokers stated that they found the regulation to be outdated and should be updated to reflect current technologies and business practices. They suggested that voice orders recorded from mobile devices, as well as emails and text messages, should be recognised as additional forms of proper records. The third and last explanation, which linked to the other three focus offences, was that in many cases, clients had never given actual trading instructions to brokers. The order was actually made by the brokers who made trading decisions for their clients, by the brokers who illegally employed clients’ accounts to trade for themselves, or by the brokers who put in orders to commit fraud and/or misappropriation against their clients.

As for pressure/motivation factors leading brokers to commit the offence of failing to properly record trading orders, the brokers identified four sources of pressure, from the highest to the lowest frequency: (1) client pressure, (2) market pressure, (3) income pressure, and (4) ideology. Client pressure was reported by all brokers to be the most important pressure as more and more
clients insisted on calling brokers’ mobiles or sending text messages to give trading instructions, and threatened to move their accounts if their brokers did not agree to take such orders. The interviews of regulators provided different viewpoints on the issue. Two sources of pressure were identified: income pressure and client pressure. Unlike the brokers, the SEC Officers gave a strong emphasis on income pressure. They stated that the most important reason why many brokers did not properly record trading orders was to conceal other violations that were committed to increasing their income. As for the client pressure, the officers commented that although they were aware that many clients preferred to call or send texts to their brokers’ mobile phones, they did not think that it was a valid ground for the brokers to evade their responsibility in complying with the regulation. Lastly, the interviews of investors confirmed the findings from the broker interviews. The investors admitted that they did not like calling the companies’ landlines and would rather call the brokers’ mobile phones to make trading orders.

In terms of opportunity factors, all the participating brokers, regulators, and investors agreed that the violation could be easily committed and happened very frequently. As for rationalisation employed by the offenders to reduce their cognitive dissonance, three groups of verbalisation could be extracted from the broker interviews, which were (1) a claim that the regulation was obsolete, (2) a denial of responsibility, and (3) an appeal to higher loyalties: for the benefits of clients. Based on the conversations with the regulators and the investors, only a denial of responsibility in the form of a shifting of blame to clients could be inferred from interview data.
Table 42: Opinions about Factors Operated on Securities Brokers who Committed the Offence of Failing to Properly Record Trading Orders (Securities Brokers, Regulators, and Investors)

<table>
<thead>
<tr>
<th>Factor Identified</th>
<th>Brokers</th>
<th>Regulators</th>
<th>Investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pressure/Motivation</td>
<td>- Client pressure</td>
<td>- Income pressure</td>
<td>- Client pressure</td>
</tr>
<tr>
<td></td>
<td>- Market pressure</td>
<td>- Client pressure</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Income pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Ideology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opportunity</td>
<td>- Technically easy to commit</td>
<td>- Technically easy to commit</td>
<td>- Technically easy to commit</td>
</tr>
<tr>
<td></td>
<td>- Frequently happens</td>
<td>- Frequently happens</td>
<td>- Frequently happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- Claim that the regulation is obsolete</td>
<td>- Denial of responsibility</td>
<td>- Denial of responsibility</td>
</tr>
<tr>
<td></td>
<td>- Denial of responsibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Appeal to higher loyalties</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(b) The Offence of Making Trading Decisions on Behalf of Clients

Based on the interview data, sixteen from eighteen brokers agreed with the current rule prohibiting brokers from making trading decisions for their clients. The brokers further explained that the main reason for the violation was that their clients had asked them to make trading decisions and they were in a difficult position to either accept or reject such requests. If they agreed to make the decisions and the trades resulted in losses, disputes could easily occur. On the other hand, the brokers feared that, if they refused, their clients would be unhappy and would decide to move their trading accounts to other brokers who agreed to provide such service. Two participating brokers did not agree with the current rule and commented that they should be allowed to make decisions for their clients if prior consent was given. The SEC Officers, in their interviews, strongly rejected such an idea and emphasised that clients should always make their own decisions and that securities brokers should refrain from interfering...
with the clients’ assets, even when the clients asked them to do so. It was interesting that all the participating investors claimed that they had never had their brokers make decisions for them and do not understand other investors who had done so.

In relation to pressure/motivation factors leading securities brokers to commit the violation, the participating brokers identified income pressure, client pressure, and goodwill as major factors. A small number of participants also identified market pressure and company pressure as minor factors that could lead to the violation in certain circumstances. The brokers explained that, first and foremost, making trading decisions for clients was the easiest way to raise their trading volume, which subsequently lessened their income pressure. As for client pressure, the brokers stated that their clients often asked them to make trading decisions and they found that it was hard for them to reject such requests. Brokers’ goodwill was identified as the third major factors. A number of brokers commented that it was common for them to know their clients’ usual trading patterns and sometimes they decided to put in orders based on such patterns without clients’ instructions. The SEC officers identified two pressure/motivation factors, which were: income pressure and brokers’ goodwill. The participating investors, interestingly, did not identify income pressure but pointed out to client pressure and brokers’ goodwill as the major factors leading to the commission of the violation.

In term of opportunity factors, all brokers agreed that it was technically easy to commit the violation and most stated that the violation happened very frequently and throughout the industry. It should be noted that seven brokers admitted to making trading decisions for their clients from time to time and the other five admitted to making such decisions on a regular basis at the time of the interview. Both the regulators and the investors also confirmed that the offence was not technically difficult to commit and that the violation happened frequently in the Thai security market.
Rationalisations employed by offending brokers included four groups of verbalisation, which were: (1) a claim that the regulation was obsolete, (2) a denial of responsibility where the blame was shifted to the clients, (3) an appeal to higher loyalties where the brokers claimed that the violation was committed for the benefit of their clients, and (4) a claim that everyone else in the industry was committing the violation so they had to do the same. Only an appeal to higher loyalties could be inferred from the conversation with the regulators, whereas both an appeal to higher loyalties and a denial of responsibility could be identified in the investor interviews.

Table 43: Opinions about Factors Operated on Securities Brokers who Committed the Offence of Making Trading Decisions on Behalf of Clients (Securities Brokers, Regulators, and Investors)

<table>
<thead>
<tr>
<th>Factors Identified</th>
<th>Brokers</th>
<th>Regulators</th>
<th>Investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pressure/Motivation</td>
<td>- Income pressure</td>
<td>- Income pressure</td>
<td>- Client pressure</td>
</tr>
<tr>
<td></td>
<td>- Client pressure</td>
<td>- Goodwill</td>
<td>- Goodwill</td>
</tr>
<tr>
<td></td>
<td>- Goodwill</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Market pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Company pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opportunity</td>
<td>- Technically easy to commit</td>
<td>- Technically easy to commit</td>
<td>- Technically easy to commit</td>
</tr>
<tr>
<td></td>
<td>- Frequently happens</td>
<td>- Frequently happens</td>
<td>- Frequently happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- Claim that the regulation is obsolete</td>
<td>- Appeal to higher loyalties</td>
<td>- Appeal to higher loyalties</td>
</tr>
<tr>
<td></td>
<td>- Denial of responsibility</td>
<td></td>
<td>- Denial of responsibility</td>
</tr>
<tr>
<td></td>
<td>- Appeal to higher loyalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Claim that everyone was committing the violation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(c) The Offence of Using a Client's Account for the Broker's Own Benefit

The third focus offence is the offence of unauthorised use of a client's account. There were two unlawful practices that fall under the same prohibition. The first was the use of clients' accounts for brokers' benefits with permission from clients, whereas the second was the use of such accounts without permission. Both practices were prohibited by the current SEC regulation.\textsuperscript{710}

(i) The Use of a Clients' Account for the Brokers' Own Benefits with Permission

The brokers explained that the main reason they need to use their clients' accounts was to circumvent the regulation requiring securities brokers to follow specific requirements and obtain prior approval from the SEC Office before they could trade stocks for themselves. It was, therefore, not convenient for the brokers to use their own accounts and many brokers asked their clients for permission to use the clients' accounts to trade. The participating brokers further explained that there were two methods of doing so. The first was profit sharing where brokers put funds into the clients' accounts to trade and share the profits with the clients. The second, which was more common, was the use of nominee accounts where securities brokers asked their friends or family members to open trading accounts and handed over the accounts to the brokers.

Fourteen brokers agreed with the rule prohibiting brokers from using clients' accounts for themselves while the other four brokers argued that they should be able to use such accounts if the account owners gave permission. The regulators, in their interviews, commented that they were aware that many brokers had used nominee accounts. Nevertheless, it was not easy for the agency to detect the wrongdoing and punish these brokers since it was not easy to find concrete evidence of violation. The regulators further explained that only in two circumstances that the SEC Office were likely to discover the wrongdoing. The first was where there was a dispute between the broker and the account owner and the account owner brought the case to the attention of the officers. The

\textsuperscript{710} The SEC Notification No. KorLorTor/Kor/Wor. 12/2011.
second was when the SEC officers conducted on-site inspections and found that a large number of records were missing. The participating investors provided a different viewpoint on this issue. Although they agreed that securities brokers should be prohibited from using their clients’ account for themselves, they argued that the SEC should not limit the brokers’ rights in the first place, as they did not see any damage from such practices as well as there was no effective way to prohibit brokers from trading for themselves.

In relation to pressure/motivation factors leading to brokers using their clients’ accounts to trade for themselves, the brokers identified three major factors, which were greed and jealousy, income pressure, and ideology. Company pressure was also mentioned by one broker. A majority of brokers commented that greed and jealousy were the most important factors. They usually felt jealous when they saw their clients earning large profits from trading they had recommended, but they were not able to obtain the same profits. The second factor was income pressure, as brokers also obtained higher trading volume when they conducted transactions for themselves. The third major factor was a clash of ideology. Several brokers asserted that they disagreed with the current limitations and believed that they should have similar rights to their clients. The regulators and the investors similarly identified personal greed and income pressure as the motivating factors for such practice.

In terms of opportunity factors, all participating brokers commented that it was technically easy for securities brokers to set up and use nominee accounts, whereas it was slightly more complicated to engage in a profit sharing scheme. They also believed that most brokers had nominee accounts and the violation happened very often. It was noted that nine brokers admitted to have and use nominee accounts at the time of the interview, whereas four stated that they had the accounts but no longer used them. The regulators and the investors also agreed with the brokers’ view that it was easy for brokers to use nominee accounts and the practices should happen frequently.
Three types of *rationalisation* used were evident from the broker interviews, which were: (1) an entitlement that brokers should be allowed to freely trade for themselves, (2) a denial of injury that no one was damaged from such practice, and (3) a claim that everyone was committing the violation. Only a claim to entitlement was recognised by the regulators, whereas both a claim to entitlement and denial of injury were inferred from the investor interviews.

Table 44: Opinions about Factors Operated on Securities Brokers who Committed the Offence of Using a Client’s Account for the Broker’s Own Benefit with the Account Owner’s Permission (Securities Brokers, Regulators, and Investors)

<table>
<thead>
<tr>
<th>Factors Identified</th>
<th>Brokers</th>
<th>Regulators</th>
<th>Investors</th>
</tr>
</thead>
</table>
| Pressure/Motivation| - Personal Greed  
                      - Income pressure  
                      - Ideology  
                      - Company pressure | - Personal Greed  
                      - Income pressure | - Personal Greed  
                      - Income pressure |
| Opportunity        | - Technically easy to commit  
                      - Frequently happens | - Technically easy to commit  
                      - Frequently happens | - Technically easy to commit  
                      - Frequently happens |
| Rationalisation    | - Claim to entitlement  
                      - Denial of injury  
                      - Claim that everyone was committing the violation | - Claim to entitlement | - Claim to entitlement  
                      - Denial of injury |

(ii) *The Use of a Clients’ Account for the Brokers’ Own Benefits without Permission*

All *brokers* agreed that it was wrongful conduct that no brokers should commit. The participating brokers explained that every broker could technically log into their clients’ accounts to engage in transactions without the clients’ knowledge. The purpose of doing so was to obtain higher trading volume from the unlawful trades. It was noted that many brokers did not think that this practice was worth the risk since the offenders would only obtain higher volume figures but not the actual profit from the trade, whereas the likelihood that the account owners
would detect irregular items in monthly statements was high. The participating regulators and investors further confirmed this viewpoint in their respective interviews. They commented that they had rarely heard of such cases and that they did not think it was worthwhile for the offenders to take such risks.

As for pressure/motivation factors leading to the commission of this offence, the brokers and the investors identified income pressure as the only potential factor, whereas the regulator identified personal greed and income pressure. In terms of opportunity factors, all three groups of participants agreed that it was technically hard for the offence to be committed and that the violation rarely occurred. No rationalisation or verbalisation for the commission of this unlawful practice was offered by any interviewees.

Table 45: Opinions about Factors Operated on Securities Brokers who Committed the Offence of Using a Client’s Account for the Broker’s Own Benefit without the Account Owner’s Permission (Securities Brokers, Regulators, and Investors)

<table>
<thead>
<tr>
<th>Factors Identified</th>
<th>Brokers</th>
<th>Regulators</th>
<th>Investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pressure/Motivation</td>
<td>- Income pressure</td>
<td>- Personal Greed</td>
<td>- Income pressure</td>
</tr>
<tr>
<td></td>
<td>- Income pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opportunity</td>
<td>- Technically hard to commit</td>
<td>- Technically hard to commit</td>
<td>- Technically hard to commit</td>
</tr>
<tr>
<td></td>
<td>- Rarely happens</td>
<td>- Rarely happens</td>
<td>- Rarely happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
<td>- None offered</td>
<td>- None offered</td>
</tr>
</tbody>
</table>

(d) The Offences of Deception and Misappropriation

All participating brokers agreed that the offences were very serious and damaging. The participating investors further confirmed that the thought of being defrauded by brokers was very feared by every investor. One investor strongly commented that if she was defrauded by her broker, she would leave the securities market altogether and would not recommend anyone she knew to invest in the stock market.
Although no broker who participated in the research had admitted to committing such offences, they agreed to share the fraudulent methods they had observed or known about from their working experiences, colleagues, and from cases published in the SEC Newsletters. The first method was fabrication of documents and/or forging of clients’ signatures to withdraw or transfer funds from the clients’ accounts. The second was where brokers deceived clients to transfer funds to the third parties’ or to brokers’ personal accounts, and ran away with the funds. The third was where clients were overly trusting of their brokers and signed blank withdrawal and/or share transfer forms for convenience. The brokers further explained that in many cases, offending brokers also forged clients’ signatures to change clients’ postal addresses and fabricated monthly statements issued by securities companies in order to conceal the wrongdoing.

The regulators, in their interviews, commented that the prevalence of deception and appropriation cases had significantly decreased due to the introduction of the Automatic Transfer System (ATS) where funds were electronically transferred between clients’ bank accounts and trading accounts. Under the ATS, no cash is handled by brokers, which lessens the opportunity for the brokers to appropriate the money. Nevertheless, there were still cases where brokers forged clients’ signatures and/or fabricated withdrawal documents to misappropriate funds from the clients’ accounts, and the cases where brokers deceived their clients to directly transfer funds to the broker’s personal accounts, claiming that the ATS was malfunctioning or that the brokers could get the clients Initial Public Offering shares (IPO) at discounted prices. The latter was confirmed as a practice by the participating investors.

In relation to pressure/motivating factors that lead to the commission of fraud and misappropriation, the participating brokers, regulators, and investors identified personal greed as the primary factor. Two regulators also identified income pressure as the secondary factor. As for opportunity factors, all the participants agreed that the offences happened very rarely and were very hard to commit. The brokers explained that, nowadays, most securities companies
offered good security systems to their clients, including: (1) a separation of front and back offices, (2) regular account inspections and audits, (3) confirmation calls to clients when fund withdrawal requests were made, and (4) monthly statements itemizing every transaction. Six brokers commented that due to the strong security systems, the offences could not be committed opportunistically or by impulse. The offenders would need careful planning and preparation in order to successfully commit the wrongdoing and to conceal them from the clients and the securities companies. Three brokers further stated that brokers who could commit fraud and/or misappropriation against own clients were very different from ordinary brokers. They asserted that it would be extremely difficult for any ordinary broker to commit fraud against or misappropriate funds of clients who they knew so well and had been with them for a long time. No *rationalisation* or verbalisation was revealed in any interview since all participants stated that the offences should not be committed at any case and that no brokers had admitted to previously committed fraud or misappropriation against their clients.

Table 46: Opinions about Factors Operated on Securities Brokers who Committed the Offence of Deception and Misappropriation (Securities Brokers, Regulators, and Investors)

<table>
<thead>
<tr>
<th>Factors Identified</th>
<th>Brokers</th>
<th>Regulators</th>
<th>Investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pressure/Motivation</td>
<td>- Personal Greed</td>
<td>- Personal Greed</td>
<td>- Personal Greed</td>
</tr>
<tr>
<td></td>
<td>- Income Pressure</td>
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<td>- Rarely happens</td>
</tr>
<tr>
<td>Rationalisation</td>
<td>- None offered</td>
<td>- None offered</td>
<td>- None offered</td>
</tr>
</tbody>
</table>

IV Conclusion

The empirical part of this study employs semi-structured interviews as the main data-gathering tool. The interviews consist of three phases, which are the interviews of eighteen securities brokers in Phase One, the interviews of six
officers of the SEC Office in Phase Two, and the interviews of three representatives from the Thai Investors Association in Phase Three. The interviews were conducted from November 2013 to September 2014 and were transcribed and translated into English for the analytic purpose. The analysis was done using a thematic data analysis method with assistance of NVivo qualitative analysis computer software.

As the theoretical background of this study is the theory of Fraud Triangle, components of a revised Fraud Triangle Model (pressure/motivating factors, opportunity factors, rationalisation, and local societal factors) are employed to formulate the research questions and the data analysis. The first part of the qualitative data provided general information relating to the Thai brokerage industry and practices, which allowed the researcher to gain better understanding of the current situation and the general pressure/motivation factors that could influence the brokers’ working behaviour. The second part of the data revealed views and opinions of the brokers, the regulators, and the investors on general opportunities factors that may facilitate or discourage securities brokers in committing brokerage frauds and relating violations. The third and the last part exposed and discussed specific factors leading to the commission of each of the four focused offences namely: (1) the offence of failing to properly record trading orders, (2) the offence of making trading decisions on behalf of clients, (3) the offence of unauthorised use of a client’s account, and (4) the offences of deception and misappropriation.

In relation to the general pressure factors, it was found that Thai securities brokers suffered most from income pressure due to high-income fluctuation and client pressure due to clients’ high negotiating power, which made it hard for the brokers to refuse their clients’ requests. Securities companies imposed little pressure on their employees as most only required the brokers to earn enough volume to cover their salaries. On the other hand, relationships between team leaders and team members, together with the varying levels of team leader pressure, were found to be crucial factors dictating brokers’ working behaviour as Thai brokers usually stuck together in a team for a long time and often moved
together from one company to another. As a result, working and compliance culture of each team was more influential than company's culture or policies. The other point that should be noted was that Thai brokers usually had close and personal relationships with their clients, which more than often led to regulatory violations that were done as a result of cultural forms of goodwill (‘nam-jai’) or for the perceived benefits of the clients, such as taking trading orders without proper recording and making trading decisions for clients.

In themes relating to the general opportunity factors, the data revealed that Thai securities brokers had moderate to good knowledge of the law and the SEC Office’s enforcement activities. However, the participating brokers commented that although they knew that what they were doing was risky or unlawful, they could not easily change their behaviour due to the need to maintain their trading volume (income pressure) and the need to retain their existing clients who refused to comply with the regulations (client pressure). Regarding personal screening, licensing examinations, and ongoing ethical training, it was found that the effectiveness of these processes in inducing ethical conduct was limited, mainly due to the lack of attention from the brokers who gave more importance to the technical part of the tests and the training.

As for internal monitoring and sanction mechanisms, Thai securities companies had put in place various security systems to protect their clients, yet there were still apparent weaknesses in the monitoring of the conduct of their employees. At the time of the interviews, no companies had provided a specific manual or a code of conduct that securities brokers could consult when they were in disputes with clients or faced with ethical dilemma situations. As for the roles of compliance officers, it was found that although they had generally made good efforts to regulate conduct of the companies’ employees, they often did not have enough autonomy and support from management. In addition, very few companies imposed further internal punishments over the formal punishment imposed by the SEC Office and some even helped their suspended brokers by transferring the brokers to work in other departments during the suspended period.
In the area of external monitoring and sanctions administered by the government as well as by disputed clients. It was found that administrative sanctions were the main forms of sanction that were used to deter the wrongdoing; ranging from a reprimand for minor offences and first-time offenders to a suspension and a revocation of licence for serious offences and repeated offenders. The participants reported that these sanctions were feared, yet there were loopholes that could be circumvented in certain circumstances. Another point that should be noted was that although the SEC Office had introduced a naming and shaming scheme by publishing the offending brokers and their securities companies’ name to inform the public and gave warnings to investors, the scheme had found little success since very few investors had given an attention to the information.

Next were civil sanctions in the forms of damages and remuneration that brokers and securities companies had to pay to clients when there were disputes relating to fraud and relating violations. The brokers reported that these civil sanctions were more frightening than administrative and criminal sanctions due to the much higher chance that they would be in dispute with their clients and that the value of the compensation that they had to pay could be very high. Nevertheless, the imposition of these civil sanctions fully depended on private negotiations and individual civil court cases. Their impacts on opportunity factors were therefore inconsistent and difficult to determine.

The possibility of being subject to criminal sanctions was, from the outset, expected to have great influence on securities brokers’ behaviour. Interview data, on the other hand, showed that criminal sanctions had very limited effects since most brokers believed that the sanctions only apply to very serious offences that they would never commit. The participating investors also confirmed that, even if they were subject to fraud, it was unlikely that they would engage in criminal proceedings beyond filing complaints with the police, as they would prefer to reach a monetary settlement than spending their time and resources to pursue criminal sanctions against offending brokers.
The four focus offences of this study were then analysed using the revised fraud triangle model incorporating two local societal factors, a close and personal relationship between Thai brokers and their clients and the brokers’ extraordinary goodwill or ‘nam-jai’. The four offences could be distinctly divided into two groups. The first group comprises the offences that securities brokers did not directly commit against their clients but rather commit to take advantage of the security market or of the current remuneration system. The offences in this group were the offence of failing to properly record trading orders, the offence of making trading decisions on behalf of clients, and the offence of using a client’s account for the broker’s benefit with the client’s permission. Although these offences were usually not committed with an intention to cause injury to clients’ asset, they were potentially harmful and could result in serious disputes.

The second group of the offences comprises the offences that securities brokers committed directly against the clients’ assets, which were the offence of using a client’s account for the broker’s benefit without the client’s permission and the offences of deception and misappropriation.

Data from the three offences in the first group confirmed the relationships in Fraud Triangle Theory, meaning that the offending brokers are accidental fraudsters who succumbed to certain pressure or motivation factors. They engaged in fraudulent or violating behaviour when opportunities were presented or when loopholes in the system allowed them to find ways to relieve such pressures. The offenders then employed certain rationalisation to reduce their cognitive dissonance so that they could still see themselves as trustworthy professionals. For these three offences, the main pressure/motivation factors were income pressure, client pressure, and goodwill. The data further showed that opportunities factors were clearly presented, as these three offences happened frequently, were technically easy to commit, and were difficult to detect by the regulators. In addition, since the brokers were of the view that they did not commit the offences directly against their clients, it was easy for them to rationalise their behaviour.
The interview data also revealed that the two local societal factors played key roles in the occurrence of the offences in this group. As Thai brokers and clients had very close relationships, clients frequently put pressure on or colluded with brokers for mutual benefits, thus facilitating the culmination of pressure factors, opportunities factors, and rationalisation required for the fraudulent behaviour. Brokers’ goodwill further made it easier for the brokers’ to rationalise their actions, as they often claimed that they violated the rules for the benefits of their clients and not for themselves.

Figure 18: The Revised Fraud Triangle Model

As the fraudulent factors of such three offences correspond nicely with the revised fraud triangle model proposed in this study. Deterrence of these offences could, therefore, be enhanced using the underlying notion the Fraud Triangle
Theory, which is by removing or mitigating factors comprising the triangle. Strategies for doing so are discussed in detailed in the following chapter.

Owing to the close relationship between Thai brokers and their clients, which sometimes leads to or facilitates the commission of the three offences described above, it is prudent to conduct a further analysis of this situation using the A-B-Cs Model of Fraud proposed by Ramamoorti and his colleagues. Under the A-B-Cs Model, the units of analysis are threefold. The first is fraud committed by an individual or bad apple. The second is fraud committed collusively between two or more employees in an organisation or bad bushel. The third fold or bad crop is where fraudulent culture permeates throughout an organisation or an industry. The current situation in the Thai brokerage industry in relation to the three focus offences in this group – the offence of failing to properly record trading orders, the offence of making trading decisions for clients, and the offence of using a client’s account (with permission) for the broker’s own benefit – can be considered largely as both bad bushel and bad crop. The interview data provide strong evidence of collusion between brokers and clients to take advantage of the market and/or the general public, as well as of industry-wide criminogenic belief that these offences are general industry practices. A number of participants asserted that it would be hard to survive in the industry without violating these rules in the course of their work.

Under the bad bushel mode of analysis, pressure, opportunity, and rationalisation factors of the brokers and of the clients need to be considered separately. The brokers’ fraud factors are discussed above. As for specific factors that lead some investors to collude with their brokers, no conclusive data can be drawn from the interviews in this study due to the limitation in the research design that emphasises more the fraud factors perceived by the brokers. Further studies on investors’ fraud factors should therefore be conducted to complement this piece of research. Nevertheless, based on the existing interview data, the researcher can partly deduce that clients’ main motivation factors are greed for more profits.

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711 See details in Chapter 4.
712 Ramamoorti et al, above n 482.
and the desire of convenience. In term of opportunity factors, it would not be
difficult for ‘tricky’ clients to find brokers who agree to collude with them to
commit the three violations thanks to fierce competition between securities
companies; also, these violations are widely deemed to be general industry
practices. The following step is to determine the dynamic and relationship
between the two groups of perpetrators. The interview data show that Thai
brokers and their clients are close in both the physical sense due to their
frequent communication and the psychological sense because of the presence of
brokers’ goodwill and casual relationships between them. Such dynamic easily
leads to collusion for mutual benefits. Based on the bad bushel analysis, in order
to effectively deter such collusive behaviour, fraud examiners and/or regulatory
agencies need to prevent one party from inducing the other to engage in fraud,
which - in this particular situation - is essentially to discourage clients from
putting pressure on their brokers to take orders without proper records or to
make trading decisions on their behalf, as well as letting the brokers use their
accounts to trade. Regulatory strategies that the agencies may employ to achieve
such outcomes include, for example, the launch of information and education
initiatives to educate retail investors, and the introduction of sanctions on
colluding clients. Details of these deterrence strategies can be found in Chapter 6.

Last, under the bad crop mode of analysis, it can be deduced that the current Thai
brokerage industry is permeated with an unhealthy culture wherein the
violation of certain SEC Regulations is regarded as a norm. Such a criminogenic
culture makes it easy for the brokers to find opportunities to engage and
rationalise their fraudulent behaviour. Strategies to foster healthier industry
culture include consistency in enforcement practice on the part of the regulatory
agencies, the use of information and education initiatives, and employment of
credible corporate sanctions so that securities companies would invest more in
their internal control mechanisms. Details of these strategies can be found in
Chapter 6 of this thesis.

On the other hand, data from the second group of offences, the offence of using a
client's account for the broker's benefit without the client's permission and the
offences of deception and misappropriation, provided very different pictures. Personal greed was the only major pressure factor identified by all of the three groups of participants. They also commented that these offences were rare and technically difficult to commit. A number of brokers stated that these offences could not be committed opportunistically or by impulse, as they required careful planning and preparation in order to circumvent preventive systems put in place by securities companies. Lastly, no rationalisation or verbalisation for these offences could be inferred from the interviews. Based on such data, it can be concluded that these offences do not correspond well to the revised fraud triangle model employed in this study, as well as the underlying notion that the offending brokers are accidental fraudsters. Such nonconformities are even more pronounced when the two societal factors are taken into account. As Thai brokers and clients often have very close and personal relationships, and the brokers often have goodwill towards their clients, it is deemed anomalous for the brokers to commit serious and direct offences against their clients. Three participating brokers also made a similar suggestion in their interviews as they asserted that securities brokers who could commit fraud and misappropriation against their own clients were very different from ordinary brokers.

Due to such nonconformity of the offences in the second group to the model, a secondary model of predatory fraudster should, therefore, be employed in an attempt to analyse causes and factors leading to the commission of such serious offences by some Thai securities brokers.
According to the revised predatory fraudster Model, there are two subtypes of predatory fraudsters.\textsuperscript{713} The first is individuals who have malicious intent against the organisation and/or the public from the outset. The second is individuals who started off as accidental fraudsters, but as their fraudulent activities have not been detected they keep committing and gaining benefit from fraud, thus becoming more and more desensitised, evolving into predatory fraudsters.\textsuperscript{714} Under the predatory fraudster model, the perpetrators no longer need the presence of pressure factors and the ability to rationalise their behaviour, they only need opportunity and capability to commit the acts.\textsuperscript{715} Pressure or motivation factors are replaced by 	extit{arrogance}, while rationalisation is replaced by 	extit{criminal mindset}.\textsuperscript{716} These factors seem to be especially meaningful in cases of predatory fraudsters possessing malicious intent from the start. A

\begin{itemize}
  \item \textsuperscript{713} See details in Chapter 4.
  \item \textsuperscript{714} Kranacher et al, above n 457.
  \item \textsuperscript{715} Dorminey et al, above n 23.
  \item \textsuperscript{716} Ibid.
\end{itemize}
number of executives committing large-scale corporate fraud are particularly known for their arrogance and overconfidence, as well as their lack of empathy for others. Many also did not have apparent financial difficulties to pressure them to commit fraud. As a result, the fraud perpetrators in this category can fit readily into the Predatory Fraudster model, which means that they committed fraud not because of necessities but to satisfy their psychological needs.

On the other hand, the analysis of predatory fraudsters in the second category, those that start off as accidental fraudsters to relieve certain pressures or under certain motivations but keep committing their fraudulent activities since their wrongdoing has not been discovered, might not be as straightforward. Although it can be logically assumed these perpetrators no longer need to rationalise their illegal acts since they have committed the acts many times and gradually become desensitised, there is a lack of concrete evidence whether these fraudsters are also arrogant and/or possess a criminal mindset. They could merely continue their illegal activities out of habit or for enjoyment of additional income. In addition, it is possible that the perpetrators may still feel pressure from different sources that force them to continue committing fraud in the predatory manner.

Nevertheless, to date there is no fraud model that provides a clear distinction and explanation between the causes of the two types of predatory fraudster: those with malicious intent from the outset and those who start off as accidental fraudsters then evolving to be the predatory ones. In relation to the offending brokers who commit fraud and/or misappropriation against their clients in this study, based on the interview data, they are clearly distinct from their colleagues who commit lesser violations in the first group of focus offences. Yet, it is inconclusive whether all of them are predatory from the start, or evolve from being offenders of lesser violations, or a hybrid of both groups. There is inadequate data to reach such a conclusion. Such is an interesting avenue for future research, notably by setting up in-depth interviews with former securities brokers who have committed fraud against their clients, and are serving or have

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717 Ramamoorti et al, above n 470.
718 Ibid.
already served their sentences. Nevertheless, one can foresee that getting access to such participants would be difficult, and that ensuring validity and reliability of the data would be a significant issue.

Although it is inconclusive which subcategory of predatory fraudsters the Thai brokers who commit deception and/or misappropriation are to be placed into, to enhance deterrence of these serious offences – based on the revised predatory fraudster model – it is important that the regulators focus their efforts on removing or mitigating opportunity factors and the offenders’ capability to commit such offences. Strategies in enhancing deterrence of the offences in this group are also discussed in the following chapter.
Chapter 6

Recommendations and Conclusions

This chapter consists of two main parts. The first part is an examination of eight hypotheses formulated at the outset of this research. The examination draws on the analysis of the law and related regulations, cases, statistics, and interview data of participating brokers, regulators, and representatives of investors. The second part is the researcher’s recommendations on potential regulatory reform to enhance the current anti-brokerage fraud regime. The chapter ends with a conclusion, which is also the conclusion of this thesis.

I Examination of Research Hypotheses

A Hypothesis I

High work pressure and unstable income are the two main factors leading to the commission of fraud and regulatory violations.

Based on the interview data, it was found that there were five main types of pressure borne by securities brokers in their normal course of work: income pressure, self-pressure, colleague pressure, team leader pressure, corporate pressure, and client pressure. The researcher initially expected that income pressure and other pressures relating to the corporate environment would be substantial. However, only the strong presence of income pressure, due to high-income fluctuation, was confirmed by all three groups of participants. Colleague pressure, team leader pressure, and company pressure, on the other hand, were found to be minimal since most Thai brokers worked strictly as individuals and that Thai securities companies rarely imposed additional working pressure beyond requiring the brokers to earn adequate fees to cover their own salary. Self-pressure was identified by a few participating brokers, yet, the pressure was said to provide positive reinforcement rather than negative. An unexpected factor revealed was client pressure, which was frequently mentioned by all but
one of the participating brokers and, to a lesser degree, by some regulators. As a result, it can be concluded that the two major sources of pressure borne by Thai securities brokers are income pressure and client pressure.

As for these two pressures inducing brokerage fraud and related violations, it was found that both had a negative effect on the working behaviour of securities brokers. Income pressure was the main reason brokers resorted to unlawful brokerage practices to obtain higher trading volume. Regarding the offences of deception and misappropriation, income pressure was also found to be the main inducing factor together with personal greed.\textsuperscript{719} In the case of client pressure, it was found that cunning clients sometimes used their high bargaining power to take advantage of their brokers as well as put pressure on the brokers to violate certain regulations for their benefits. A large number of brokers succumbed to such pressure due to their fear of losing clients.

\textbf{B Hypothesis II}

\textit{The liberalisation of the commission fee structure that the SEC introduced in January 2012 has an impact on the securities brokers’ working behaviour.}

At the time of the interviews in 2014, it was found that only a small number of Thai securities brokers were significantly affected by the liberalisation of the commission fees. Those affected were a few brokers who had clients with very large trading volumes, meaning that they could negotiate for a fee reduction with securities companies. Another element that limited the impact of the liberalisation of fees was an attempt by the Association of Thai Securities Companies (ASCO) to resist the fee changes by asking its members to collectively continue using the sliding scale fee structure that was used between 2011-2014.\textsuperscript{720}

\textsuperscript{719} See details in Chapter 5.
\textsuperscript{720} See details in Chapter 2.
Among the participating brokers who were affected by the liberalisation of brokerage fees, they commented that they were upset and felt additional pressure when their major clients asked for a reduction of fees, as they had to work harder to retain the clients while getting less income due to the discounts given. Nevertheless, it was inconclusive whether these changes would result in higher rates of fraud and related violations. Some of the comments of participating regulators suggested that it was still too premature to determine the effect of such liberalisation on the industry.

C. Hypothesis III

Working conditions, remuneration structures, and work pressure are different among different types of securities companies (local, foreign, and commercial-bank related), and are the key factors determining whether fraud and other violations will be committed.

The researcher initially hypothesised that remuneration structures, working conditions, and work pressure would differ among the three types of securities companies operating in Thailand: local, foreign, and commercial-bank related securities companies. Nevertheless, interview data, together with the analysis of the current remuneration structures, revealed that the working conditions and the remuneration structures were more or less identical throughout the industry. Two key distinctions revealed between the three types of companies, however, were the recruiting methods used to obtain new clients and general compliance culture.

In relation to the recruiting methods of new clients, it was found that commercial bank-related securities companies had access to client databases of their parent commercial banks, whereas competing local and foreign securities companies did not have such an option to rely on. Brokers working for commercial bank-related companies were often provided with lists of high potential clients whom they could directly contact and persuade to open new trading accounts. On the other hand, brokers working for local and foreign companies could only find new
clients through recruitment of individuals who attended investment fairs or on recommendation of existing clients. Based on such data, brokers working for commercial bank-related companies were generally under less pressure to find and obtain trading volume from new clients than their colleagues in local and foreign securities companies.

In relation to the compliance culture of the different types of securities companies, three regulators commented that foreign and commercial bank-related securities companies generally had better compliance standards and were much stricter with the conduct of their brokers than local companies. Taking both distinctions into an account, it can be concluded that brokers working for commercial bank-related securities companies are least likely to commit fraud and related violations since they generally face the least pressure and are subject to the highest compliance standards imposed by their companies. On the other end of the spectrum, brokers working for local securities companies are deemed to be most conducive to fraud and related violations as they are under higher income pressure, while their companies generally provide the weakest internal control mechanisms to monitor their conduct.

D Hypothesis IV

It is easier for a broker to rationalise his or her wrongdoing when the offence is committed against the market or the public than against his or her own clients.

Rationalisations that securities brokers employed to reduce their cognitive dissonance were identified from the participating brokers’ answers to interview questions. In relation to the focus offences that were not committed directly against clients but against market regulations or the public, such as taking orders without proper recordings, making trading decisions for clients, and using nominee accounts to trade for themselves, different rationalisations were offered by the participating brokers, who had committed or would commit such offences in certain circumstances. Among the rationalisations offered were a denial of
responsibility, a denial of injury, an appeal to higher loyalties, a claim to entitlement, a claim that regulations were obsolete, and a claim that everyone was committing the violation. On the other hand, in the case of the focus offences that were committed directly against a particular client, which were the offence of using a client's account without permission and the offences of fraud and misappropriation, no rationalisation was offered by the participants or could be inferred from their interviews. A number of participants, instead, commented that the brokers who could commit these severe offences were very different from ordinary brokers and were more likely to have malicious intent from the start.

The presence of local factors including the personal relationships between Thai brokers and clients, and the brokers' extraordinary goodwill (*nam-jai*) toward their clients, further made it less likely for the brokers to commit the offences and made it more difficult for the brokers to rationalise any fraudulent behaviour where such behaviour would result in losses or damage to the clients whom they had close relationship with. On the other hand, the brokers were not influenced by these local factors when the violations were committed against the market regulations or the public. As a result, it can be concluded that it is more difficult for Thai securities brokers to rationalise their fraudulent behaviour when the offences are committed against individual clients, than when the offences are committed against the market or the public as a whole.

E. Hypothesis V

*Securities brokers have inadequate knowledge and understanding of law and regulations due to the lack of ethics training and their indifferent attitude.*

Data from broker interviews revealed that Thai securities brokers had moderate to very good knowledge and understanding of the law. Data from regulator interviews further confirmed that Thai brokers had moderate to good levels of legal knowledge. As for brokers' knowledge of enforcement, all Thai brokers received enforcement information that the SEC Office sent to their securities
companies. Nevertheless, the attention given to, and the influence of enforcement information, varied among individuals. Over half of the participating brokers had attended to the information and, from time to time, reviewed their practices. The rest commented that they only skimmed through the news and that the information did not influence their working behaviour.

To sum up, Thai brokers typically have adequate knowledge of the current regulations and enforcement practices. However, such knowledge does not always translate into compliance due to various pressure factors. Income pressure induces the brokers to resort to illegal practices to increase their trading volume in order to maintain or increase their income. Client pressure, together with the local factors of close personal relationships and extreme goodwill (nam-jai), makes it difficult for Thai brokers to reject their clients’ requests and sometimes led to collusion between the two parties in taking advantage of other investors or the public.

F Hypothesis VI

Securities companies do not seriously enforce a code of conduct and fail to maintain effective internal control, giving brokers opportunities to commit frauds and violate securities regulations.

It was found that in recent years Thai securities companies had put in place a number of safeguards to prevent frauds and protect their clients, including segregation of duties between front and back offices, authorisation of important transactions by team leaders, fund withdrawal and random trade confirmation calls by staff of the back office, and itemised monthly statements. According to the interview data, these safeguards effectively reduced opportunities for brokers to commit fraud and regulatory violations against their clients, such as misappropriation of clients’ funds, and unauthorised use of clients’ accounts for the brokers’ benefits. Nevertheless, these safeguards were less effective in relation to offences committed against market regulations and/or the public, such as making trading decisions on behalf of clients and the brokers’ use of
nominee accounts to trade for themselves. This seemed to be due to the usual lack of individual victims who would report and come forward with information and evidence of such wrongdoing. In order to enhance the deterrence of this latter group of offences against the market and/or the public, credible and effective internal control mechanisms were required. However, according to the interview data, most securities companies operating in Thailand failed to establish and maintain such mechanisms for several reasons.

Firstly, the interview data revealed that although over a half of the participating brokers were provided with manuals or codes of conduct, these manuals or codes of conduct were all general ones given to all employees and were not useful for brokers in difficult legal situations. Secondly, although the performance of compliance departments in monitoring and regulating conduct of brokers were rated favourably, on average, by both the participating brokers and the regulators, the departments were often said to lack manpower and support from the management to carry out their tasks effectively. Thirdly, it was found that very few securities companies imposed further internal sanctions upon their offending employees in addition to administrative sanctions imposed by the SEC Office. On the contrary, many firms were found to help their suspended brokers by transferring them to work in other departments that did not require brokerage licences.

G Hypothesis VII

Sanctions imposed upon offending brokers are not adequately severe and are not well targeted to deter the wrongdoings.

The current Thai anti-brokerage fraud regime employs a combination of administrative sanctions, criminal sanctions, and civil sanctions to deter wrongdoings committed by securities brokers. In relation to the administrative sanctions, the three levels of sanctions are well-structured with sufficient severity, from reprimand for first-time offenders committing minor regulatory violations to a suspension and a revocation of licence for brokers committing
serious offences and repeated offenders. Interview data revealed that brokers feared a suspension and a revocation of licence, since such sanctions removed the brokers’ ability to earn income during the period of the sanction. In addition, few brokers would be able to retain existing clients after they had been punished, which made it difficult for them to resume working as securities brokers. Nevertheless, there were certain loopholes that brokers and securities companies could exploit to lessen the impact of the administrative sanctions. First, if the suspension was not longer than a couple of months, experienced brokers might be able to conceal their suspensions from their clients by making up excuses and transferring the clients to their colleagues during the suspension period. Secondly, some companies were found to help their suspended brokers by transferring the brokers to work in other departments and earn their salary during the sanction period. In order to enhance the severity and the effectiveness of these administrative sanctions, the aforementioned loopholes need to be carefully addressed (see below).

In relation to the criminal sanctions, the current regime comprises both individual and corporate criminal sanctions. Individual sanctions, in the form of a fine and imprisonment, are found in the Penal Code accompanying the offence of deception,721 the offence of misappropriation,722 and the offence of fabrication of documents and forging of signatures.723 Nevertheless, the severity of these individual sanctions is inadequate for deterrence purposes. The highest value of fine prescribed in these offences was very low compared to the potential gains that offending brokers could obtain from committing brokerage frauds.724 Although these offences also carry significant imprisonment terms,725 they are unlikely to be imposed in practice as most offending brokers would qualify for

721 Penal Code s 341.
722 Penal Code ss 352-354.
723 Penal Code s 264.
724 The prescribed amounts of fine are not exceeding 6,000 baht for the offence of deception (s 341 of the Penal Code), not exceeding 10,000 baht for the offence of misappropriation (s 354 of the Penal Code), and from 20,000 to 200,000 baht for the offence of fabrication of documents and forging of signatures (s 264 of the Penal Code).
725 The prescribed terms of imprisonment are not exceeding three years for the offence of deception (s 341 of the Penal Code), not exceeding five years for the offence of misappropriation (s 354 of the Penal Code), and from one to ten years for the offence of fabrication of documents and forging of signatures (s 264 of the Penal Code).
mitigating circumstances to reduce the imprisonment terms. If the sentenced terms were three years or less, the Court of Justice, more than often, would suspend the punishment and impose a probation order on the offenders. To make the matter worse, a majority of fraudulent cases did not get past the complaint filing (with the police) stage since most injured clients, as confirmed by the interview data, preferred to settle for monetary compensation with the offending brokers and their employing securities companies rather than proceeded with costly and time-consuming criminal proceedings. As a result, individual criminal sanctions currently provide little deterrence to serious brokerage frauds. In order to enhance deterrence, greater fines corresponding to the expected gains and the longer imprisonment terms, as well as the greater involvement of the SEC Office in pursuing criminal sanctions on behalf of the injured clients, is required.

The Securities and Exchange Act B.E. 2535 (1992) provided corporate criminal sanctions in the form of corporate fines upon securities companies whose brokers violated securities law and related regulations. Nevertheless, in relation to the brokerage frauds, the imposition of corporate fines under the Act was limited to the cumulative failure of the securities companies in implementing credible internal control mechanisms resulting in repeated violations of the SEC regulations, not as a punishment of single incidents of fraud. The objective of corporate sanction was to induce securities companies to establish and maintain credible internal control so that the number of violations would be lessened. However, it is noted that the current prescribed amount of fine, which cannot exceed 300,000 baht plus a further fine not exceeding 10,000 baht for every day during which the violation continues, is also low compared to potential gains that offending brokers and/or securities companies would obtain from

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726 Examples of mitigating circumstances include the offender being in serious distress, having previous good conduct, being remorseful and trying to minimise the harmful effect of the offence, and giving useful information to the court for the benefit of the trial. See, Penal Code s 78.
727 Penal Code s 56.
728 Under the Thai criminal law system, the offence of deception and the offence of misappropriation are compoundable offence where the victim may withdraw the case or reach settlement with the defendant at any time. See details in Chapter 2.
violations. Therefore, it could be said that the current corporate criminal sanctions are not adequately severe and are not well targeted to deter serious brokerage frauds.

In relation to civil sanctions, according to tort provisions in the Civil and Commercial Code, offending brokers and their employing securities companies are jointly liable to client victims of brokerage frauds and related violations. Interestingly, the interview data revealed that, according to the participating brokers, civil sanctions were more frightening than administrative and criminal sanctions. The reason given was that there was a much higher chance for offending brokers to be in direct dispute with injured clients during civil sanctions than when being held subject to administrative and/or criminal sanctions. Also, the remuneration they had to pay to the clients as a result of civil penalties could be much higher than criminal fines imposed, as well as additional losses from having their licences suspended or revoked. Nevertheless, these civil sanctions cannot be specifically targeted to deter the wrongdoing since their imposition depends on private negotiations between injured clients, and brokers and securities companies, as well as the outcome of individual civil cases decided by the courts.

Hypothesis VIII

The current legal procedures (criminal, civil, and administrative) are overly complicated and there are too many agencies involved in the procedures.

The initial review of laws and regulations relating to brokerage frauds in the Thai securities market suggested that the current anti-brokerage fraud regime is highly complicated since it involves three different proceedings (administrative, criminal, and civil) under judicial and enforcement authorities of multiple courts, government agencies, and appellate bodies. In addition, related procedural

\[^{731}\text{Civil and Commercial Code ss 420, 425.}\]

\[^{732}\text{The analysis is based on information gathered from the Penal Code, the Criminal Procedure Code, the Civil and Commercial Code, the Civil Procedure Code, the Securities and Exchange Act B.E. 2535 (1992), Regulations of the SEC, data from the pilot interviews, and data from the interviews}\]
provisions are scattered across various codes, statutes, notifications, and guidelines.

Under the current regime, the main legal proceedings were the administrative proceedings administered by the SEC Office. The administrative proceedings, on its own, could be considered complicated, involving multiple bodies with layers of appellate reviews. The proceedings commence when its officers uncover violations through on-site inspections, or received notifications from other agencies or clients’ complaints. If the SEC Office’s investigation indicates that a violation has occurred, responsible officers present the case to the Capital Market Personnel Disciplinary Committee (CMPDC) who give recommendations on the proper form and the magnitude of administrative sanction to the SEC Office to be imposed upon the offending broker. If the offending broker does not agree with the sanction order, he or she is first required to file an appeal to the SEC Office. If the SEC Office agrees with the appeal, it will revoke or amend its order. However, if the SEC Office does not agree with the appeal, the case would be submitted to the Board of the SEC for further review. After the Board of the SEC informs the broker of its consideration, if the broker still disagrees with the order, he or she can further file an appeal against the SEC with the Administrative Courts of First Instance and the Supreme Administrative Courts, respectively.

The secondary proceedings available within the current regime are criminal proceedings that the SEC Office and/or the injured clients have discretion to further initiate if they wished to pursue criminal sanctions against the offending brokers and/or securities companies. Under the current regime, the criminal proceedings initiated by the SEC Office, can be summarised as arduous and time-consuming. The primary reason is due to the agency’s lack of legal authority to prosecute cases by itself. For offences that could not be settled financially under section 317 of the Securities and Exchange Act B.E. 2535 (1992), the SEC Office by its Litigation Department has to file criminal complaints with the EICD or the DSI of securities brokers, officers of the SEC Office, and representatives of the Thai Investors Association in the main interview phases.
for further investigation. When the investigation is concluded, the case files are forwarded to the OAG to determine whether the cases should be prosecuted at the Court of Justice. Due to these inherent complications, the lack of control over the outcomes, and the limited resources of the SEC Office, the agency currently adopts the policy that criminal proceedings will be initiated only in the case of severe wrongdoing inflicting substantial damage to the public, such as insider trading and market manipulation. As a result, the four focus offences of this study, which were generally considered as low-level offences, are not criminally pursued by the SEC Office and were left for injured clients to initiate on their own.

Although the Thai *Criminal Procedure Code* allows injured clients to directly present their cases to the courts by employing criminal lawyers to gather evidence and prosecute criminal charges,733 it was found that most clients prefer to settle for monetary compensation rather than proceed with the costly and time-consuming criminal prosecutions. Due to the lack of criminal prosecutions by both the regulatory agency and the injured clients, it could be said that the role of criminal proceedings in the current anti-brokerage fraud regime is minimal. In order to increase the rates of criminal prosecutions, especially by the SEC Office, the current proceedings should be reviewed to simplify and reduce unnecessary procedures.

The current role of civil proceedings in the anti-brokerage fraud regime was limited to a compensatory one. If the injured clients could not reach settlement with the offending brokers and/or securities companies, they could instigate civil proceedings at the civil courts to secure compensation for damages caused by the fraudulent practices. In addition, if the damages do not exceed one million baht, the injured clients had an option to apply to the SEC Office for an arbitration procedure in order to settle their disputes with securities companies.

733 *Criminal Procedure Code* s 28.
II Recommendations

The second part of this chapter offers recommendations on how to potentially enhance deterrence of the current Thai anti-brokerage fraud regime based on a combination of government-based and corporate-based strategies suggested by a regulatory pyramid approach. General strategies are first discussed following by specific strategies in response to each of the focus brokerage offences of this study.

A Breaking the Fraud Triangle with the Regulatory Pyramid Approach

According to the theory of Fraud Triangle employed in this study, pressure, opportunity, and rationalisation factors must be simultaneously present in order for fraud to occur. When any of the three factors is eliminated, the Fraud Triangle is broken and fraud will be eliminated. Breaking the triangle is therefore the key to fraud deterrence. The proposition is particularly salient in the cases of fraud committed by accidental fraudsters, who are usually characterised as first-time offenders, well educated, and are in a position of responsibility. These people commit frauds to relieve themselves of pressures they are facing using opportunities they perceived of in the course of their work, and in doing so they employ certain rationalisation to reduce their cognitive dissonance. Thus, if either their perceived pressures or perceived opportunities are removed, or their abilities to rationalise are limited, they are less likely to commit fraud. In the area of corporate and occupational frauds, fraud-fighting professionals, in practice, focus primarily on the removal of opportunity factors, rather than on pressure factors or rationalisation. The reason given is that the removal of opportunity through the use of the system of internal controls is generally the most actionable route, thus their efforts are directed towards implementing such internal controls and ensuring that companies adhere to

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734 Ayres and Braithwaite, above n 25.
735 Cressey, above n 11.
736 Albrecht et al, above n 12.
737 Ibid.
This study, on the other hand, takes a broader approach by considering a combination of different strategies in removing or reducing all the three groups of factors antecedent to fraud.

As for the types of fraud that are deemed to be committed by predatory fraudsters, such as deceptions and misappropriations by Thai brokers found in this study, the breaking of the triangle can only be done through a removal of opportunities, since the pressure factors and the ability to rationalise are no longer predictive elements. The predatory fraudsters only need to perceive loopholes in the control system and/or the lack of sanction to initiate the wrongdoing. Since these individuals are actively looking for opportunities, control systems or strategies employed to safeguard against this type of fraudsters need to be more robust or impose greater deterrence than the systems or the strategies used against accidental fraudsters.

Strategies to break the fraud triangle and to enhance deterrence of the current anti-brokerage fraud regime suggested in this study are developed under the responsive regulation approach suggested by Ian Ayres and John Braithwaite.\(^\text{739}\)

The recommendations start from education-based and persuasion-based strategies externally implemented by government agencies to reduce pressure, remove opportunity, and limit rationalisation. The suggested strategies then escalate to deterrence-based measures of administrative and criminal sanctions, when there is a lack of positive response from the brokers and/or the securities companies to the agencies’ initiatives. The use of corporate-based strategies of fraud prevention and detection through the use of internal control mechanisms are then discussed in relation to the reduction of pressure and the removal of opportunity factors, respectively.

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\(^{739}\) Ayres and Braithwaite, above n 25.
In 1992, Ian Ayres and John Braithwaite developed an influential regulatory theory of responsive regulation.\textsuperscript{740} The basic idea of the theory is that effective regulation should not be static, but be responsive to the conduct of the regulatees and to the industry context.\textsuperscript{741} The other key concept of responsive regulation is that different individuals and organisations are motivated to behave in different ways for different reasons.\textsuperscript{742} Multiple regulatory approaches that appeal to different motivations are suggested to be included in the paradigm to achieve broad compliance. The focus of responsive regulation, therefore, goes beyond classical deterrence through legal intervention, but emphasises the use of cooperation, trust-building, and public/private networks as elements of a mixed strategy.\textsuperscript{743}

The most distinctive feature of responsive regulation is its regulatory pyramid, which comprises a mixture of persuasion-based and deterrence-based strategies. The pyramid is also Ayres and Braithwaite’s attempt to solve the puzzle of when to persuade and when to punish.\textsuperscript{744} The starting point of any enforcement activity is at the broad base of the pyramid where persuasion and dialogue between the regulators and the regulatees are encouraged. If cooperation is not forthcoming and compliance is not achieved at such level, the regulator has an option to escalate the matter up the regulatory pyramid and implement more and more interventionist and punitive approaches until compliance is achieved.\textsuperscript{745} The other crucial point of the regulatory model is its dynamic character. The response or strategy in each level of the pyramid is not fixed and can be altered to address differences in types of regulation, regulatory goals, the character of the regulatees, industrial contexts, etc. Such advantages can be seen

\textsuperscript{740} Ibid.  
\textsuperscript{741} Ibid.  
\textsuperscript{743} Fiona Haines, Corporate Regulation: Beyond ‘punish Or Persuade’ (Clarendon Press, 1997).  
\textsuperscript{745} Ibid.
through variances in compliance pyramid models of different regulatory agencies that employed responsive regulation approach in their enforcement activities, such as the compliance model of the Australian Competition and Consumer Commission (ACCC), and the more complex model of the Australian Taxation Office (ATO). Nevertheless, one of the shared features of every successful regulatory pyramid model is the presence of a very severe sanction at the apex of pyramid to be used as the last resource, commonly known by the term the 'benign big gun'. The presence of such ultimate sanction, usually the threat of an incarceration or a revocation of licence, although rarely invoked, helps in facilitating negotiations towards cooperation and compliance at the lower stage of the pyramid, as well as provide a credible response when all other strategies fail. It should be noted that although original conceptions of responsive regulation theory stated that the enforcement activities should always start with dialogues at the base of the pyramid, subsequent studies argue that strictly adhering to such a principle and such an ordering is not appropriate in many circumstances, such as in serious crimes or when the violation is severe and cause substantial damage. As a result, the proposition that all regulation should begin at the base of the period has been relaxed and a better approach is thought to be the use of a more responsive and interventionist strategy from the outset.

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746 Rorie, above n 742.
747 The most important quality that makes Ayres and Braithwaite’s regulatory pyramid successful is its flexibility. Regulatory agencies, with adequate information, may design their enforcement pyramid to fit with different social conditions, industry environment, and regulatory requirements. In the context of the Thai securities regulation, although the success of this regulatory approach is so far not certain, the SEC has shown a strong willingness to improve the efficiency of its regulatory regime and is open to suggestion by different bodies. See, The SEC News Release, No. 99/2016, 18 October 2016.
749 John Braithwaite, Restorative justice & responsive regulation (Oxford University Press on Demand, 2002).
750 Braithwaite, above n 744.
In the context of this study, the researcher proposes the use of a responsive regulation approach with its enforcement pyramid to develop coherent and effective strategies to break the fraud triangle within the Thai securities markets. The emphasis is on the strength of the regulatory pyramid in combining different strategies to secure regulatory compliance and to deter Thai securities brokers from committing brokerage fraud. In the following sections, such layers of escalating strategy, developed in response to the identified factors antecedent to fraud and the varying characters of offending brokers, accidental or predatory, are discussed in detail.

2 Reducing Pressure

The first set of recommendations involves strategies that could potentially break the fraud triangle by reducing pressure borne by Thai securities brokers. Based on the interview data, the two main sources of perceived pressure are income pressure and client pressure, respectively. The proposed strategies are, therefore, developed mainly in response to these two pressure factors.

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751 Ayres and Braithwaite, above n 25.
(a) Reducing Income Pressure

The primary type of pressure borne by Thai securities brokers is income pressure, as their income is directly linked to the volume of trade made by their clients each month. Other than a small number of novice brokers, most Thai brokers work under an incentive scheme where they have to first generate adequate trading volume to cover their fixed-salaries then earn additional income from the share of brokerage fees earned beyond the cost of their salaries.\textsuperscript{752} In practice, if the brokers cannot cover their salaries for several consecutive months, their companies would start putting pressure on them to find ways to generate higher volume. If they cannot do so, the company would gradually reduce their salaries and, as the last measure, ask them to leave the company. Nevertheless, according to the participating brokers, the key element of income pressure borne by Thai brokers was not the level of income, as a majority of brokers stated that they were satisfied with their current level of income based on their lifestyle and future plans, or the likelihood that they would not be able to cover their salaries for several consecutive months, as such situations were unlikely to happen unless the market was in a down period for a long time. The brokers, instead, commented that the main element of pressure was the high fluctuation of income. When the market was good, they could easily earn more than 100 000 baht (approximately 4 000 AUD) from their shares of commission fees per month, whereas when the market was bad, they could hardly earn 20 000 (approximately 670 AUD) baht to cover their monthly expenses. Such fluctuation of income made it difficult for them to do long-term financial planning, such as buying houses or cars, or deal with emergency expenses. When their income was lower than expected and they could not pay usual monthly installments or met the emergency expenses, they often needed to find short-term loans, which imposed additional pressure, thus leading many to start committing violations that could increase and stabilise their income such as making trading decisions for clients or using clients’ accounts to trade securities for themselves.

\textsuperscript{752} See details in Chapter 2.
In response to such income fluctuation issue, it is worthwhile to consider different strategies that could create greater income stability, so that income pressure borne by Thai brokers is lessened, as well as empowering the brokers to withstand other related working pressure, such as client pressure. The most obvious strategy is for the SEC Office together with the ASCO to issue a regulation eliminating the incentive remuneration scheme and put all brokers in the fixed-salary scheme, so that their income is the same every month. Nevertheless, such a strategy could be considered heavy-handed and disregards the nature of the securities brokerage industry, where securities companies earn most of their income from brokerage fees that clients pay based on the volume of transactions made. If all brokers were put under the fixed salary scheme, they would not have any incentive to encourage their clients to trade more by finding more profitable transactions or better investment opportunities for their clients. They would just work in a routine manner that would lead to the lack of productivity. The better strategy is for the SEC and the ASCO to reformulate the remuneration structure of the incentive scheme so that differences in the brokers’ income at the time when the market is good and at the time when the market is bad would be smaller. One possible way is to raise the ceiling of highest fixed-salaries that securities companies may currently give to the intensive scheme brokers, which is at 15 000 baht per month (approximately 500 AUD), and at the same time adjust the percentages of the broker' shares of the brokerage fees from 27.50% for traditional transactions and 13.75 for Internet transactions to corresponding rates, as a trade off. The other possible way is for the ASCO to designate all membered companies to provide extra retentions to the brokers based on their tenures with the companies, as suggested by two of the participating brokers. Nevertheless, the proper amount of salary increase, the rates of broker's shares, and/or the amount of extra retentions need to be carefully determined under a consultation with all the stakeholders, so that Thai securities brokers have better income stability yet the

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753 Under the current Association of Thai Securities Company's guideline, the highest salary that securities companies can give to the intensive scheme brokers is 15 000 baht per month (approximately 500 AUD). See, Association of Thai Securities Company's guideline on the Compensation of Investment Consultants, Team Leaders, and Managers of Securities Companies No.3.

754 Ibid.
growth of the capital market and the competitiveness of the securities companies are not hindered.

Apart from the income fluctuation stated above, the other element of income pressure that the SEC together with the ASCO should pay attention to is the impact of the liberalisation of brokerage industry, which took place on 1st January 2012, to morale and job security of the brokers. Although, at the time that the interviews were conducted, it was found that the effect of the liberalisation was limited to a small number of brokers whose clients had trading accounts large enough to negotiate for the reduction of fees with securities companies, all participating brokers express their worry about their job security and their future earnings amidst the growing competition between the companies in reducing the fees to attract new clients and retain existing clients. The brokers commented that when the companies agreed to reduce the brokerage fees for any client, their earnings from transactions made by such clients would be less and less, while they still have to work as hard as before to find profitable trades. Several brokers further commented that this fully negotiable fees arrangement was grossly unfair, as well as imposed great pressure on them to find, legal and illegal, ways to maintain their earnings level. Due to this, it would be prudent for the SEC to address the brokers’ concerns as early as possible, giving that trustworthy and motivated brokers are important contributors to the growth of the capital market.

First and foremost, the SEC should communicate openly to the brokers that the agency considers the welfare of the brokers seriously, and does not see them as workforce that can be easily replaced. It should be noted that when the SEC announced a roadmap for the liberalisation of securities business in 2006, the welfare of personnel in the securities market was not given as much importance as the benefits to the investors and the competitiveness of the Thai capital market in the regional and international context. As a result, many participating brokers mentioned during their interviews that they the SEC had unfairly neglected their interests while overprotected the benefits of the investors. The second strategy that the SEC and the ASCO should consider in order to lessen
income pressure borne by the brokers due to the growing competition between securities in giving fee discounts is to designated the minimum amounts or percentages of brokerage fees that the brokers would receive from each transaction, no matter how much discount the companies has given to the clients. This measure would, at least, guarantee the brokers their baseline earnings and help avoid situations where the brokers have to work for next to nothing.

(b) Reducing Client Pressure

The second major source of pressure, as extracted from the interview data, is client pressure. It was found that Thai securities brokers often succumbed to pressure imposed by their clients to violate certain regulations for the clients’ benefits or convenience. The main reasons were the high bargaining power on the part of the clients together with growing competition between securities companies. As the clients could always ask the companies to change the brokers who to look after their accounts or open new account with other companies, many brokers were reluctant to reject the clients’ unlawful requests due to the fear of losing the clients. In addition, the presence of two local factors found in this study, a close personal relationship between Thai brokers and clients and the brokers’ extraordinary goodwill toward their clients (‘nam-jai’), made it easy for Thai brokers to forego their professional ethics and violate the law as pressured.

Although it is not possible to totally eliminate client pressure due to the nature of the relationship between brokers and clients and the clients’ high bargaining power, this study proposes three potential strategies that can be together implemented to reduce the pressure so as to enhance deterrence of the current anti-brokerage fraud regime.
(i) Financially Empower the Brokers

The first and most important strategy is to financially empower the brokers so that they can better resist the pressure and reject their clients’ unlawful requests. The manners in empowering the brokers are similar to the strategies employed in reducing income pressure suggested above, which are to reduce their income fluctuation and to provide them with better working benefits and welfares.

(ii) Information and Education Initiatives

The second strategy is to create a better compliance culture through the use of Information and education activities. Both the brokers and the clients do not only need to be informed on what the current laws and regulations are, they also need to be educated on the reasons behind each prohibition and the potential damage that the violation may cause to either or both of them. For example, a surprisingly large number of brokers and clients do not understand the reasoning behind the current SEC regulation prohibiting brokers from making trading decisions for the clients. They do not understand risks involved and the potential damage from such risky practice. Thus, many clients overly trust their brokers and ask them to wrongfully make trading decisions.

Communicating and educating brokers on ethical and legal matters are rather a straightforward processes and are currently being done through multiple channels. Individuals who would like to obtain brokerage licences have to study and pass licensing examinations of which one section concerns ethics and legal knowledge. After the brokers have obtained the licences, they have to attend a series of training every two years to renew their licences. Although, these examinations and training are being provided to increase the brokers’ legal knowledge, the interview data reveal that half of the participating brokers did not think that the test was rigorous enough and all but one of the brokers viewed that the usefulness of the ethical and legal knowledge they gained from the tests was limited due to differences between the theories taught and the actual
working environments. As for the training, a majority of the participating brokers commented that they did not find the training beneficial for a similar reason: that the theories taught and the actual working environments are totally different.

What the SEC Office together with ASCO Training Institution (ATI) could do to improve the impact of the tests and the training on the brokers’ ethical decision-making is to supplement the current didactic teaching method of pointing out what is right or wrong in theory with some interactive classes and engaging case studies using a new curriculum based on research in behavioral ethics called ‘Giving Voice to Values.’ The curriculum, developed by Mary C Gentile, focuses on how one can bring his or her ethics and values to workplace and how to resolve values conflicts with clients, peers, bosses, and organisations. The core techniques of the approach include (1) how an individual learns to recognise, clarify, speak and act on his or her values when the conflicts arise, (2) how to raises the issues in an effective manner and what he or she needs to do and say in order to be heard, (3) how to correct an existing course of action when necessary, and (4) how to find an alignment between his or her individual sense of purpose and that of the organisation.

The other notable method of educating about values is the encouragement of ethical leadership to influence ‘group ethical voice’ to change unhealthy behaviour in an organisational setting. Group ethical voice is defined as the proposal of constructive suggestions, new ideas, and advice by a group of employees who speak up to improve organisational functioning. These ethical voices involve individuals’ evaluations of risks associated with speaking up

755 Mary C Gentile, 'Values-driven leadership development: Where we have been and where we could go' (2012) 9(3) Organization Management Journal 188; Vivien Holmes, 'Giving Voice to Values': enhancing students' capacity to cope with ethical challenges in legal practice' (2015) 18(2) Legal Ethics 115.
756 Gentile, above n 755.
758 Ibid.
against their moral obligation when there is an ethical issue in the workplace.\textsuperscript{759} In order to encourage employees to speak up, one has to find ways to reduce potential negative impacts on them. These negative impacts include the fear of being labelled negatively, the fear of damaging interpersonal relationship, and the fear of being targeted for retaliation and punishment.\textsuperscript{760} Speaking up as a group to challenge ethical issues is much more likely to protect individuals from adverse consequences, as it prevents a single group member from being the primary target, as well as providing a better leverage to negotiate with the organisation that leads to changes.\textsuperscript{761} Research shows that ethical leadership, which is ‘the demonstration of normatively appropriate conduct through personal actions and interpersonal relationship’,\textsuperscript{762} could help to activate the group ethical voice.\textsuperscript{763} In this way, leadership is considered as a key factor influencing team members’ evaluation of risk inherent in speaking up, and in messages they desire to communicate.\textsuperscript{764} Therefore, ethical training at the team-leader level should receive a special attention, since an ethical team leader could directly influence members’ behaviour,\textsuperscript{765} provide better ethical guidance, and encourage their team members to engage in group ethical voice to induce changes of unhealthy culture in their employing securities companies. However, it is worth noting that at the time of this study, there is no training session for team leaders administered by the SEC, the ATI, or any training provider. Therefore, it is recommended that such special training sessions should be implemented to educate the team leaders how to supervise their team members, how to deal with the regulatory violations, how to be good ethical leaders, and how to encourage group ethical voices for changes in organizational culture.

\textsuperscript{759} Ethan R Burris, ‘The risks and rewards of speaking up: Managerial responses to employee voice’ (2012) 55(4) \textit{Academy of Management Journal} 851.


\textsuperscript{761} Ibid.

\textsuperscript{762} Michael E Brown, Linda K Treviño and David A Harrison, ‘Ethical leadership: A social learning perspective for construct development and testing’ (2005) 97(2) \textit{Organizational behavior and human decision processes} 117.

\textsuperscript{763} Brown, above n 762; Huang, above n 757; James R Detert and Ethan R Burris, ‘Leadership behavior and employee voice: Is the door really open?’ (2007) 50(4) \textit{Academy of Management Journal} 869.

\textsuperscript{764} Detert and Burris, above n 763.

\textsuperscript{765} See details in Chapter 5.
On the other hand, communicating with retail investors on legal matters is a much harder process since they are an amorphous group with little interest in anything other than profitable transactions and good service. Such is confirmed by the findings from the third interview phase of this study. Nevertheless, educating the investors on their legal matters is crucial, as they have to know the key restrictions and the reasons behind them so as not to push their brokers to violate such regulations for their benefits. Julia Black in her research for the Task Force to Modernize Securities Legislation in Canada noted three key effective means of delivering financial information and education to retail investors, which are: web-based initiatives, using the media, and curriculum development.766

Web-based initiatives are the most prevalent means that financial regulators all over the world employ to inform investors on various issues, including generic information about regulatory agencies, investment products, relevant laws, and regulatory activities. Better websites are those which are constantly redesigned based on the changing campaigns and many also have interactive sections that include quizzes, financial calculators, and advice on how to work with brokers.767 Nevertheless, the SEC’s websites might not be the best place to deliver important information to the general public, as only specific audiences, such as relevant personnel and serious investors, would intentionally visit this website to find certain information. It would therefore be useful for the agencies to ask for cooperation from popular websites, such as news media websites, to share important content with the public. The benefit of using such popular websites instead of only using the agency-specific websites was part of an experiment by the United Kingdom’s now-defunct Financial Services Authority (FSA) in 2005. The agency launched its web-based ‘Financial Healthcheck’ tools on its website and on the British Broadcasting Corporation (BBC) website simultaneously. It was found that the healthcheck on the BBC site received over double the number of hits (450 000) compared to that of its own website.768

766 Black, above n 633.
767 Ibid.
768 BBC <www.bbc.co.uk>; Financial Services Authority <www.fsa.gov.uk>.
The second means by which financial regulators traditionally employ is the use of the media. Unlike the web-based initiatives, contents that are published through the media often focus on enforcement actions of the agencies, rather than the generic information.\textsuperscript{769} Although the media is an important resource, research suggests that in order to effectively raise awareness of the general public, financial agencies cannot simply rely on financial or specialist media outlets. Important information needs to be repeatedly published in general outlets to reach a wider audience. A baseline survey conducted in the United Kingdom found that 41\% of the participants followed financial news and indicators by reading general sections of the newspapers and watching general programmes on television. Only 19\% monitored financial news and indicators by reading financial pages and just 7\% followed specialist financial programmes on television.\textsuperscript{770}

The third and longer-term initiative should be curriculum development where information and education are delivered to target audiences at the right time and in the way that is most likely to change their behaviour.\textsuperscript{771} Examples of financial curriculum development are personal financial courses for high school and college students, and investment information sessions in workplaces. In doing so, the important roles of the regulatory agencies are to develop a comprehensive curriculum and provide training materials to teachers and trainers.

In addition to the initiatives aiming to communicate with and educate general investors as discussed above, a specific initiative focusing on communicating and educating senior investors, over sixty years old, should receive special attention. Studies have found that senior investors are disproportionately victimized by various types of securities fraud ranging from Ponzi schemes, high-pressure cold calling, spam-email campaigns, to account churning and fund misappropriation.

\textsuperscript{769} Black, above n 633.
\textsuperscript{770} Financial Services Authority, 'Levels of Financial Capability in the UK: Results of a baseline survey' (March 2006).
\textsuperscript{771} Black, above n 633.
by their securities brokers.\footnote{Jayne W Barnard, 'Deception, Decisions, and Investor Education' (2009) 17 Elder LJ 201; Fanto, James A, 'Comparative Investor Education' (1998) 64 Brook. L. Rev. 1083.} Jayne Barnard in her article, \textit{Deception, Decisions, and Investor Education}, points out that studies in gerontology, psychology, neurology, and marketing have increased our understanding on how older individuals make decisions, and how such process differ from those of younger individuals. Barnard concludes that when making decisions older individuals are more like to suffer from: (1) cognitive deficit, (2) impulsiveness in decision making, (3) a ‘truth bias’ towards someone who appears to be authoritative, (4) a longing for intimacy, and, (5) an irrational but powerful excitation at the thought of ending up poor and being dependent on their children.\footnote{Barnard, above n 772.} Additionally, marketing scholars note that these older individuals are particularly challenged by tasks that (1) contain large amounts of information, (2) convey the information in formats that are difficult to decode, (3) fail to include instructions to guide processing and evaluation, and (4) require difficult response formats.\footnote{George P Moschis, 'Marketing to older adults: an updated overview of present knowledge and practice' (2003) 20(6) Journal of Consumer Marketing 516.} Because of these deficiencies, communication and education initiatives designed for general audiences are unlikely to go through to senior citizens who need the most protection from both accidental and predatory fraudsters.

To provide better financial and anti-fraud education programmes for older investors, providers must take account of the deficiencies outlined. Materials to be used should be in a form of short and clear messages, so as not to confuse elder investors. Examples of typical messages used in these programmes are: (1) \textit{‘If an investment opportunity seems to be too good to be true, it usually is’}; (2) \textit{‘Do not make hasty investment decisions’}; (3) \textit{‘Always check the credentials of others’}; (4) \textit{‘Beware cold-callers’}; and (5) \textit{‘Do not be too embarrassed to call the authorities if you suspect anything’}.\footnote{Larry R Abrahamson, \textit{Elder Fraud Prevention} <http://www.co.larimer.co.us/da/elder_fraud.pdf>.} Other notable suggestions include: (1) avoiding ‘scare’ advertising or any startling information as it may lead to habituation annoyance...
and an increased likelihood for older investors to tune out the message,\textsuperscript{776} (2) using messages with emotionally meaningful content, since older adults are more likely to retain information that satisfies their emotional needs,\textsuperscript{777} and, (3) avoiding the use of any messages that remind older adults that they are old, as it has been found that they prefer messages reinforcing their perception that they are still the same person as before, and that a person of any age has a similar capability in making good decisions.\textsuperscript{778} In sum, short and direct messages that empower older investors are more likely to be successful than other types of messages relating to fraud avoidance.

Apart from the use of well-designed educational and informational messages mentioned, the other notable initiative to get through to older investors in relation to fraud prevention and avoidance is to encourage involvement of family members to provide oversight of finance and investment activities of their elderly parents.\textsuperscript{779} Families need to know more about their elders' financial status, as well as their cognitive deficiencies, psychological needs, and environmental circumstances that contribute to unwise trading decisions so that they could provide advice to their old family members. Additionally, such an informal financial education could also be used in an opposite manner. That is, education on sound investments options and against financial fraud could also be included in any protective guidance that parents give to their children.\textsuperscript{780} The researcher is of the opinion that encouraging involvement from family members could be a particularly appealing initiative against fraud in the Thai brokerage industry due to the collectivist nature of the Thai society and the usually close and personal relationship between members of the extended family.

\textsuperscript{777} Helene H Fung and Laura L Carstensen, 'Sending memorable messages to the old: age differences in preferences and memory for advertisements' (2003) 85(1) Journal of personality and social psychology 163.
\textsuperscript{778} Moschis, above n 774.
\textsuperscript{779} Barnard, above n 772, 236.
(iii) The Introduction of Sanctions Against Clients

The third potential strategy in reducing client pressure is the introduction of sanctions and/or liabilities against clients when the regulatory violation is found to be committed under the pressure or with the collusion of the clients. At the moment, only the brokers are administratively sanctioned for the regulatory violation. There is no penalty against the clients who put pressure on or collude with the offending brokers. The only exception to this failure to criminalise the role of the client is the use of criminal sanctions in Thai law against the colluding client in the specific offences of insider trading and market manipulation. A number of participating brokers commented that it was grossly unfair that their clients could conveniently put pressure on them and reaped benefits from the violations at no risk of being punished for their acts. As a result, it would be prudent for the SEC Office to further examine whether it would be feasible under the current capital market structure to impose any administrative measure against the investors, such as a temporary ban on trade or an administrative fine, in order to hold them more accountable and to relieve the undue pressure borne by the securities brokers.

3 Removing Opportunities

The second set of strategies to break the brokerage fraud triangle involves focusing on the removal of opportunity factors, which is deemed the most direct actionable route. This study proposes the use of a combination of external measures – the use of government-based initiatives and sanctions – and internal measures – the use of corporate-based fraud prevention and internal monitoring – to reduce perceived opportunities of fraud.

(a) **External Measures**

(i) **Information and Education Initiatives**

The first strategy at the base of the enforcement pyramid is the use of information and education initiatives to inform and educate securities brokers and general investors. In relation to the investors, they need to be informed of the characteristics of different types of brokerage fraud, the potential damage, and how to avoid fraud. Thai investors should be warned not to overly trust their brokers since trust is the most significant factor leading to any type of fraud. When the clients are sufficiently educated about fraud, it would be harder for the unscrupulous brokers to take advantage of their clients, thus significantly reducing opportunity factors. Nevertheless, effectively communicating with general investors is not an easy task as they, more than often, pay little attention to messages sent by the regulatory agency. What the SEC Office should do is to develop eye-catching content, such as easy-to-read infographics and interactive financial tools, and disseminate them through key channels that can reach the general public, such as popular websites and general media outlets.

On the part of the brokers, they should be regularly reminded of the relevant laws and regulations they have to strictly comply with. The brokers should also be educated on the reasons behind each prohibition and the potential damage the wrongdoing can cause to both the clients and to themselves, as discussed in the previous section. Based on the interview data, the best way for the SEC Office to communicate with the brokers on ethical and legal matters is through the securities companies’ compliance officers. The compliance officers are the ones responsible to forward legal information and news of enforcement activities to the brokers. The compliance officers of certain securities companies also hold legal briefing sessions and provide legal training to the brokers. As a result, the compliance officers currently play a central role in the information and the education initiatives, in addition to their regular monitoring roles. Nevertheless, as there are more regulations to follow and the fraudulent practices are becoming complex, the compliance officers are faced with difficult tasks in...
effectively doing their communicative functions. The SEC Office should, therefore, provide as much support to these compliance officers, such as providing them with specialised training and support them with educational resources in relation to regulatory compliance and professional ethics.

(ii) Personal Screening, Licensing Examination, and Ethical Training

The second set of external strategies to be employed alongside the information and the education initiatives is the enhancement of ethical standards of Thai securities brokers through the improvement of the personnel screening processes, the licensing examinations, and the ethical training. Beginning with the screening processes, the SEC Office currently does a thorough job in examining characteristics and qualifications of individuals who are applying for brokerage licences. The applicants have to have the required educational background and work experience, as well as not having prohibitive characteristics prescribed, such as having prior criminal records relating to financial offences. What the agency could add to the process is the examination of the applicants’ credit records to make certain that they do not have past credit problems, which show their inherent lack of financial discipline and may signal future woes. In relation to the examinations and the ethics training, what the SEC together with the ATI could do to enhance their quality are to give more emphasis on the ethics section of the tests and the training, in relative to the technical knowledge sections. In addition, new teaching techniques, such as those that focus on ethical decision makings and how to resolve values conflicts in workplaces, should be incorporated into the curriculum, as discussed in the earlier section of this chapter.

(iii) Sanctions

The third escalated strategy to be employed after the education initiatives and the enhancement of the brokers’ ethical standards have failed to produce compliance is the use of sanction to punish offending brokers and to deter others brokers who are contemplating whether to commit the offences. Imposing
credible and well-targetted sanctions is key to any deterrence programme. A credible deterrence programme can modify securities brokers’ behaviour and reduce violations, which in turn increases client protection against securities and brokerage frauds. In essence, deterrence would occur when the perceived cost of the expected sanction – the losses from sanctions being imposed discounted by the probability of apprehension – exceeded the expected gain from the offences. Although the fundamental notion of the economic theory of deterrence has been challenged in by many academics in various disciplines, mainly due to its inherent assumptions that an individual is a rational utility maximiser who also possesses adequate information on his or her gains from committing a harmful act, on the magnitude of sanction, and on the probability of being caught and sanctioned by an authority, these assumptions are generally valid in relation to brokerage frauds and relating violations. Firstly, the benefits that brokers derive from committing brokerage offences are predominantly monetary, a direct obtainment of funds and/or an increase of trading volume, which are easily assessed in utility terms. Secondly, the work of securities brokers, unlike most other professions, heavily relies on news and information in the market, including news on regulatory amendments and enforcement activities. The interview data from this study further confirm that Thai securities brokers, on average, have good knowledge of the law and sufficient awareness of the enforcement activities, rendering them able to determine the expected cost of sanction with reasonable accuracy.

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783 International Organization of Securities Commissions Credible, Deterrence In The Enforcement Of Securities Regulation, June 2015.
785 One of the prominent challenging theories of the theory of deterrence is known as ‘bounded rationality’, which suggests that human cognitive abilities are not infinite and human always makes a variety of errors when making decisions. Herbert Simon suggested in his famous article that, unlike artificial intelligences, human reach solutions of the problem in an unorganised fashion by basing our decision on random relevant facts and information. In addition, human often satisfy with merely serviceable solutions, rather that solutions that provide maximise benefits. Thus Simon terms human as ‘satisficers’, not maximisers. See, Herbert A Simon, ‘A behavioral model of rational choice’ (1955) The quarterly journal of economics 99.
As the perceived cost of the expected sanction has to exceed the expected gain from the offences, the sanctions imposed have to be well-targeted and adequately severe, as well as the probability of apprehension be sufficiently certain.\textsuperscript{787} It is interesting to note that recent empirical studies suggest that the certainty of apprehension is more important to deterrence than the severity of sanction, as the increase in policing and monitoring budgets result in significant changes in crime rates, while the increase in the magnitude of sanction does not materially effect deterrence.\textsuperscript{788} The first group of strategies in this section, therefore, focuses on increasing the certainty of apprehension, while the second group attempts to enhance the targeting and the severity of sanctions imposed.

\textit{(iii-a) Increasing of the Certainty of Apprehension}

Starting with the increase of the certainty of apprehension, two main regulatory activities lead to the apprehension of offenders: a detection of wrongdoing and an imposition of punishment on offenders. The SEC Office together with the SET currently employs two strategies to detect the wrongdoing. The first is the use of computerised surveillance and investigation systems administered by the SET. When the abnormalities are detected, the SET will notify the SEC Office for further investigation.\textsuperscript{789} The second strategy administered by the SEC Office is an inspection programme based on four strategies, which are (1) a routine periodic inspection, (2) an inspection based on risk profiles of brokers and securities companies, (3) an inspection upon complaints by clients, brokers, and securities companies, and (4) an inspection upon notifications from other government agencies and media outlets. It can be said that the SEC detecting strategies are

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788 Empirical studies suggest that the certainty of apprehension is more important to deterrence than the severity of sanction, as the increase in policing budgets result in significant changes in crime rates, while the increase in the magnitude of sanction does not materially effect deterrence. See Robinson and Darley, above n 787; Philip Brickman and Donald T Campbell, 'Hedonic relativism and planning the good society' (1971) Adaptation-level theory 287; Shelley E Taylor, 'Adjustment to threatening events: A theory of cognitive adaptation' (1983) 36(11) American psychologist 1161.

comprehensive, however, based on the interview data, two potential improvements can be made.

Firstly, it was revealed that the SEC Office always notifies the securities company in advance before the officers are sent in to conduct on-site inspection. Notifying of the inspection in advance would allow the brokers and/or the securities companies the time to manipulate records and documents, thus conceal the evidence of the violation. It is, therefore, suggested that the SEC Office should conduct unannounced inspections from time to time, based on the risk profiles of the brokers and the securities companies. Secondly, a number of participating brokers raised a concern that the SEC Office had never provided them with a clear inspection guideline, resulting in high level of discretion of individual officers in determining whether the violations had been committed. Some brokers further commented that they have little faith in the SEC Office’s enforcement functions due to the agency’s inconsistent practice. The regulators, in their interviews, commented that inspection guidelines were available but they were for internal use only. To enhance the transparency of inspection and to improve the brokers’ faith, it would be prudent for the SEC Office to develop a clear inspection guideline and to make it publicly available.

As for the imposition of punishments on the offenders, it is found that the current rates of punishment for brokerage offences varied greatly: very high in relation to administrative sanctions, unquantifiable in relation to civil sanctions, and, very low in relation to criminal sanctions. The imposition rate of administrative sanctions is inherently high since the SEC Office conducts the investigations and imposes the sanction by itself. The rate of civil sanction is unquantifiable since there is no direct civil sanction that the agency can impose on the offending brokers and their securities companies, and a claim for remuneration is a private matter. As for the rate of the imposition of criminal sanction, it is extremely low due to the complexity of the current proceedings prescribed by the law. Although, the SEC Office may also, by itself, impose criminal sanctions, they can only do so in very limited circumstances and only in the form of criminal fines. To be more specific, the agency can only settle
individual fines with the offending brokers in the three offences relating to unfair trading practices, and impose corporate fine only in cases where the companies’ cumulative failure in implementing internal control mechanism result in repeated violations. If the SEC Office would like to pursue criminal sanctions against the offenders, they have to engage in a complicated procedure by filing criminal complaints with the ECID for further investigation and having the public prosecutors prosecute the cases in criminal courts. Due to such complication, the lack of control over the outcomes, and the limited resources, the SEC Office currently implements a policy that they would not seek criminal sanctions against the offending brokers in the offences of deception and misappropriation, but rather letting the injured clients initiate the criminal proceeding on their own. As a result, very few brokerage fraud cases have been prosecuted, since most clients preferred to settle for monetary compensation rather than proceed with costly and time-consuming criminal proceedings.

To increase the rates of punishment, especially the rate of criminal sanction, the study suggests an expansion of the use of corporate fine against employing securities companies and a reformulation of the regulatory pyramid to include individual criminal sanctions in the revised enforcement structure. As mentioned that the SEC Office currently let the injured clients pursue criminal proceedings on their own, the criminal sanctions are, in term of deterrence, regarded as locating in a separate domain. The suggested strategy is for the SEC Office to amend its’ policy in relation to the initiation of criminal proceedings. The new policy, in which the SEC Office would, jointly or on behalf of the injured clients, initiates criminal proceeding in selected important cases, would allow the agency to strategically employ criminal sanctions to supplement its current administrative sanctions and other deterrent initiatives. In the new enforcement structure, the criminal sanctions would be positioned as the 'benign big gun' at the top layer of the pyramid to penalise serious and repeat offenders, as well as

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790 The offence of misstatement, the offence of insider trading, and the offence of market manipulation. See, Securities and Exchange Act B.E. 2535 (1992) ss 238-244.
792 Under the Thai criminal law system, the offence of deception and the offence of misappropriation are compoundable offence where the victim may withdraw the case or reach settlement with the defendant at any time. See details in Chapter 2.
to facilitate cooperation from the brokers and the securities companies in the education initiatives, the enhancement of the screening and training processes, and the enhancement of preventive measures found at the lower layers. In term of sanction, the current administrative sanctions, in the forms of reprimand, a suspension of licence, and a revocation of licence, would still be the primary tools. Criminal sanctions, as an escalated response, should only be pursued in special circumstances, such as when the severity of the offence is extreme, the quantum of damage is very high, the offence is committed by a repeated offender, or when the SEC Office would like to send strong messages to the public.

Figure 21: The Regulatory Pyramid of The Current Thai Anti-Brokerage Fraud Regime
In order for the SEC Office to legally and effectively pursue criminal sanctions, jointly with or on behalf of the injured clients, several statutory and organisational changes have to be made. Firstly, relevant sections of the Securities and Exchange Act B.E. 2535 (1992) need to be altered so that the agency can initiate criminal proceedings for the offences of deception, misappropriation, and fabrication of documents and forging of signatures. Secondly, the current procedural rules should be simplified to empower the SEC Office and to reduce unnecessary procedures. A proposition made by the participating SEC Officers is to eliminate the ECID from the proceedings, thus allowing the SEC Office’s legal officers to directly work with the OAG in determining which cases to be prosecuted. Third and lastly, legal departments of the SEC Office are required to be provided with more human and financial resources to pursue more criminal convictions.

(III-b) Enhancing the Targeting and the Severity of Sanction

Having discussed the strategies to enhance the probability of apprehension, the next group of strategies attempts to enhance the targeting and the severity of sanction to impose greater cost upon offending brokers and their employing
securities companies. The first strategy aims to alter a compliance culture specific to the Thai brokerage industry, found in the empirical part of this study. It was found that Thai brokers normally be put together in a team from the start of their career and usually work with each other for a very long time. Even when they moved from one company to another, they usually moved as a team and not as an individual. Therefore, the team compliance culture was more important than the corporate compliance culture. Team leaders always played a key role in developing a working culture within their teams, as they were the one who taught team members how to engage in trade, how to analyse securities, how to advise clients, and most importantly, what practices could be done and could not be done. The data further revealed that ambitious and risk-taking team leaders, more than often, influenced their teams to focus on short-term trades, and to advise the clients to take more risks, which sometimes included unlawful practices. Differences in the team leaders’ attitude towards regulations and ethics were also found to have direct influence on the team members’ conduct. One participating team leader stated that she was very serious about compliance and would not let her team members make decisions for clients. On the contrary, another team leader stated that he believed it was each broker’s own responsibility to decide what to do. Based on such findings, it can be seen that the team leaders have significant influence on the team members’ conduct, yet, in the current regulatory structure, the team leaders do not have any responsibility or liability in relation to their team members’ conduct. All regulatory and monitoring duties are, instead, assigned to the companies’ compliance officers who are usually few in numbers and work at arm’s length from the brokers, resulting in less persuasive and legitimate influence as players in regulatory activities. The suggested strategy to address this team culture issue is for the SEC Office to assign formal regulatory and monitoring duties to the team leaders and to hold them administratively accountable when their team members engage in the wrongdoing. For example, if a team member is found to employ a nominee account to trade for herself, her team leader will also be administratively punished for the lack of monitoring. Nevertheless, the proper forms and magnitude of sanctions to be imposed on the team leader need to be carefully determined, so as not to induce excessive oversight.
The second set of strategies is a revision on the targeting and the magnitude of current sanctions employed to punish offending brokers and their employing securities companies. In relation to the administrative sanctions, the three levels of sanctions, from reprimand to a suspension and a revocation of licence, are found to be well-structured with sufficient severity. Nevertheless, there are certain loopholes that need to be addressed. First, as suspended brokers can conceal their suspensions from their clients by making up excuses and by transferring the clients to their colleagues during the suspension period, and having their colleagues transfer their shares of brokerage fees back to them. What the SEC Office can do is to mandate the securities companies to directly inform the clients that their brokers had been suspended. Such mandatory disclosure is a very powerful tool against the offending brokers since what they fear most is a loss of trust and an inability to retain the clients. The second loophole identified is that some companies help their suspended brokers by transferring the brokers to work in other departments that do not need brokerage licences during the suspension period. What the SEC Office could do is to expand the scope of suspension to include working in any capacity for the companies and related organisations.

In relation to the criminal sanctions, the current regime comprises both individual and corporate criminal sanctions. The severity of these individual sanctions is inadequate for deterrence purposes, as discussed in the earlier part of this chapter. What the SEC Office together with the Royal Thai Police Force could do is to support an increase of the minimum amount of fine and term of imprisonment, so that the costs imposed upon the offenders would be higher. Nevertheless, as suggested by recent studies on deterrence, the increase in magnitude of a sanction may have less of an impact on the level of deterrence than the increase in the apprehension rate, it could be more efficient for the SEC Office to focus on the restructure of the enforcement pyramid so that the agency can criminally prosecute and punish larger numbers of offenders.

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793 Robinson and Darley, above n 787.
As for the corporate criminal sanctions, under the Securities and Exchange Act B.E. 2535 (1992), the SEC Office’s power to impose corporate sanction is limited to a corporate fine and only in the case of the cumulative failure of securities companies in implementing credible internal control, resulting in repeated violations.\(^794\) In addition, the prescribed amount of fine, not exceeding 300,000 baht plus a further fine not exceeding 10,000 baht for every day during which the violation continues,\(^795\) is very low comparing to potential gains from the offending behaviour. It should be noted that the lack of effective corporate sanction is a serious regulatory issue. When the corporate sanction does not impose prohibitive cost upon securities companies, they would have little incentive to establish and maintain credible internal control mechanisms to regulate their employees’ conduct. What the SEC Office should attempt to do to increase the cost imposed upon securities companies is twofold. The first approach would be to expand the use of corporate criminal fine so that the agency can strategically punish the companies for serious individual offences. The second is that the maximum amount of fine should be significantly raised. The latter strategy was supported by the participating SEC officers in their interviews.

(iv) Legitimacy of the Regulatory Agency

The last external strategy to be implemented in reducing opportunity factors is the enhancement of legitimacy of the SEC Office in the eyes of securities brokers and securities companies in relation to brokerage frauds and relating violations. Legitimacy is the belief among people in a society that the government and its organs deserve to make decisions influencing the lives of the people.\(^796\) In the case of legal authorities, studies have shown that regulation by a legitimate authority can influence a range of the regulatees’ behaviour,\(^797\) including

\(^796\) Herbert C Kelman and V Lee Hamilton, Crimes of obedience: Toward a social psychology of authority and responsibility (Yale University Press, 1989).
deference during personal encounters, everyday compliance with the law, cooperation with the officers, and the acceptance of the agency’s authority.

In essence, when the regulatory agencies and the regulations they administer are seen as more legitimate and more procedurally fair, compliance with the law is more likely and the cooperation of the regulatees will be more readily secured.

One of the surprising themes that surfaced during the interviews was the Thai securities brokers’ serious lack of faith towards the SEC Office’s regulatory and enforcement function. Five main issues identified by the brokers were: (1) the lack of clear and consistent interpretation of the regulations, (2) the lack of clear inspection guidelines resulting in high level of discretion by individual officers, (3) the over protection of investors and its lack of protection of securities personnel, (4) the agency’s lack of attention to the brokers’ needs and concerns, and (5) the agency’s inconsistent treatment of different securities firms that were known to conduct similar violations. In order to enhance the SEC Office’s legitimacy, first and foremost, this study suggests that clear interpretation and inspection guidelines have to be developed and made publicly available. Although, such reforms pose a great deviation from the existing culture of Thai regulatory agencies, where all enforcement guidelines are classified, the effort to publish the enforcement guidelines could bring a widespread change to the country’s enforcement practice. It is also important that the officers adhere strictly to such published guidelines and refrain from engaging in any preference practice. Secondly, the SEC Office should provide more fora and opportunities to the brokers to voice their concerns and engage them in dialogues concerning any significant change in regulation. After these strategies are effectively

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798 Tom R Tyler and Yuen Huo, *Trust in the law: Encouraging public cooperation with the police and courts through* (Russell Sage Foundation, 2002).


800 Tom R Tyler and Jeffrey Fagan, 'Legitimacy and cooperation: Why do people help the police fight crime in their communities' (2008) 6 *Ohio St. J. Crim. L.* 231


implemented, it is likely that the brokers would have more faith in the SEC Office’s regulatory and enforcement functions, resulting in better cooperation and a weakening of opportunity factors in the commission of brokerage frauds.

(b) Internal Measures

Although the elimination of all opportunities may be impossible, the reduction of the opportunities for fraud often pays big dividends to any organisation.\textsuperscript{803} When frauds are prevalent in any organisation, the organisation loses substantial revenue, which could be as high as five percent according to the United States’ Association of Certified Fraud Examiners (ACFE).\textsuperscript{804} In addition to the direct cost of fraud, indirect impacts that the organisations should be aware of include: (1) low staff morale as they feel betrayed by colleagues and/or management, (2) the lack of ability to attract good employees, (3) the losses of reputation of the business in the eyes of customers, competitors, employees, and other business partners, and, (4) the loss of business opportunity due to the internal focus on responses to fraud.\textsuperscript{805} In relation to brokerage frauds, the additional impacts on securities companies are: (1) losses from administrative sanction and/or fines imposed by regulatory agency, (2) the loss of staff due to the suspension and the revocation of licences, (3) the loss of reputation and trust of investors resulting in decreases in trading volume, and, (4) the losses from remuneration paid to injured clients. Based on such impacts, it is therefore important for securities companies to invest in establishing credible internal control mechanisms to prevent and detect fraudulent practices engaged in by their employees.

Four activities to mitigate the occurrence of fraud are normally conducted by business organisations, which are: (1) fraud prevention, (2) fraud detection, (3) fraud investigation, and (4) follow-up legal action.\textsuperscript{806} This study focuses on the

\begin{itemize}
\item \textsuperscript{803} Albrecht, above n 12.
\item \textsuperscript{804} Association of Certified Fraud Examiners, Report to the Nations on Occupational Fraud and Abuse (2016) \texttt{<http://www.acfe.com/rttn2016.aspx>}.\textsuperscript{805} CPA Australia,'Employee fraud: A guide to reducing the risk of employee fraud and what to do after a fraud is detected' (2011).
\item \textsuperscript{806} Albrecht, above n 12.
\end{itemize}
prevention and detection activities of securities companies in relation to the control of low-level brokerage frauds and relating violations.

(i) Fraud Prevention

Fraud prevention is the most cost-effective way for the companies to reduce losses of fraud as it is less expensive to stop fraud before it occurs than to address it retrospectively with expensive and disruptive legal measures. Effective fraud prevention programmes involve two key activities: (1) creation and maintenance of a culture of honesty and high ethics, and, (2) an assessment of the risk and an elimination of the opportunities of fraud through the use of credible internal monitoring.

In creating and maintaining a culture of honesty and high ethics, five core elements suggested by W. Steve Albrecht and his colleagues are: (1) making sure that top management officials model appropriate behaviour, (2) hiring the right employees, (3) communicating compliance expectations throughout the organisation, (4) creating a positive environment, and (5) developing an effective policy for handling fraud when it occurs. Starting from the first element, managers and officers in higher positions must be good role models to workers in lower levels, as honesty and compliance are best reinforced through proper examples that ethical behaviour is valued and unethical behaviour will not be tolerated. In the context of this study, it is important that team leaders are good role models to the team members as well as provide ethical guidance to the members during the course of work.

The second element which may create a compliance culture in securities companies is hiring ethical employees. Interesting research conducted in the United States shows that thirty percent of workers are dishonest, forty percent of workers are situationally dishonest (honest when it is more beneficial to them

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808 Albrecht, above n 12.
809 Schwartz et al, above n 529.
and vice versa), and thirty percent honest at all time. Although the percentages could be varied in different countries and contexts, what the companies should aim to do is to screen out the first group, to provide positive environment and to monitor the second group, and to always hire the third group. On the part of the companies, what they should do is to establish a positive hiring policy where compliance and ethical behaviour is a key component. Securities companies should be mindful when hiring the brokers with past offending records, notably those whose licences had been suspended for fraudulent practices, even though they may bring many clients and large trading volume with them.

The third key element is the communication of expectations of honesty and integrity. It is very important the ethical and compliance expectations are effectively communicated throughout the organisations. What behaviour is acceptable and what is unacceptable should be clearly communicated to all employees of the securities companies. It is also important that the messages be consistent, as inconsistent communication often encourages rationalisations of fraudulent practices. Techniques of good communication include orientation meetings, ethical awareness training, supervisory discussions, and codes of conduct. In the context of this study, there is a major deficiency in the use of codes of conduct in Thai securities companies. Eight participating brokers stated that their companies did not provide them with codes of conduct, while ten brokers commented that, although they were provided with codes or manuals, they did not find them useful. The reasons given were that such codes were general ones for all employees, which were not particularly useful in their brokerage work, and that many guidelines provided were impracticable due to various pressures and constraints they were facing. Such deficiency is a serious issue that the SEC Office should promptly address. The meaningful codes of conduct need to be specifically developed to match the issues faced by the brokers as well as developed in a manner that encourages the brokers to take

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811 Albrecht, above n 12.
ownership of them. In addition, it is found that requiring the employees to confirm in writing that they understand the organisation's ethics expectation is an effective tool in creating a culture of compliance.

The fourth element is the creation of a positive environment. Studies indicate that fraud occurs less frequently when employees have positive feelings towards organisations, than when they feel abused, threatened, and/or ignored. For example, a positive environment can be created through dynamics such as good relationships at work, open communications, equity within the organisation, participatory management, reasonable performance expectations, realistic pay, training and promotion opportunities, as well as clear organisational responsibilities.

The fifth and last element is proper handling of fraud perpetrators. When fraud occurs and is detected, it is most important that organisations have appropriate policies in place to deal with and to punish the perpetrators. If such individuals are not adequately punished, they suffer insignificant cost and often resume fraudulent behaviour. Such failure also sends wrong signals to other employees in the organisation that the perpetrators do not suffer significant consequences for their wrongdoing, thus increasing perceived opportunity factors. Such issue is the current key weakness of Thai securities companies. The interview data revealed that Thai securities companies rarely impose additional internal sanctions upon offending brokers on top of external sanctions imposed by the regulatory agency. On the contrary, some companies were found to help their brokers lessen the impact of the sanctions. To address this issue, the SEC Office together with ASCO should communicate with the securities companies that they are expected to have appropriate minimum internal sanction policies in place and dutifully adhere to them when their employees were found to commit violations of the SEC Office’s regulations.

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813 Albrecht, above n 12.
814 Ibid.
815 Ibid.
The second key activity of fraud prevention is an assessment of the risk and an elimination of the opportunities of fraud through the use of credible internal monitoring.\textsuperscript{816} In essence, companies can eliminate fraud opportunities by: (1) identifying sources and measuring risks of fraud, (2) implementing appropriate internal preventive and detective controls, (3) creating widespread monitoring by employees, and (4) having internal and external auditors who provide independent checks.\textsuperscript{817} Under the current structure of Thai securities companies, compliance officers play key roles in these activities, including being intermediaries between the brokers and the regulators in regulatory matters. Nevertheless, the interview data reveal that securities companies often have too few compliance officers and management does not always provide them with adequate authority and support. To address this issue, the SEC Office should designate a minimum ratio of compliance officers per employees and require that the compliance units must have adequate autonomy from management as well as sufficient resources be provided to them. The other notable strategy that the companies should consider is an increasing involvement of other employees in the internal monitoring process by providing incentives and a protocol for communication to whom they should report suspected fraud to and in what manners. It is important that such protocols ensure confidentiality and safety of the informers or the whistleblowers.\textsuperscript{818}

(ii) Fraud Detection

Since it is impossible to prevent all, organisations should also have effective detective controls in place. It is important that fraud is detected and stopped early. If the fraud is not caught, the perpetrator’s confidence always increased, and the quantum of fraud become larger and larger.\textsuperscript{819} Three primary ways to detect frauds are identified by researchers: (1) by chance, (2) by providing channels for stakeholders to report suspicious of fraud, and (3) by examining

\textsuperscript{816} Ibid.
\textsuperscript{817} Ibid.
\textsuperscript{819} Albrecht, above n 12.
records and documents. In the context of brokerage fraud, the key detection methods are the report by injured clients and the examination of transaction records by the compliance officers. The injured clients, when discover damage or loss from fraud and/or regulatory violations, often bring their disputes to the attention of the securities companies. Based on the interview data, Thai securities companies would conduct internal investigations and attempt to promptly settle with the injured clients, so as to avoid the loss of reputation and formal sanctions from the SEC Office. Similarly, when the compliance officers discovered evidence of fraud and/or violations, they often dealt with them internally. Only certain companies were reported to dutifully inform the regulatory agency of such incidents. Such practices are against the spirit of the law and should be discouraged. The SEC Office should emphasise to the compliance officers that although they are employees of securities companies, they have an important duty to the public. Without formal sanctions by the agency offenders, it is unlikely that adequate cost would be imposed allowing the wrongdoing to be sufficiently deterred.

4 Limiting Rationalisations

The third and last set of general recommendations about breaking the brokerage fraud triangle involves strategies that potentially make it more difficult for the Thai securities brokers to rationalise their wrongful acts. According to the Fraud Triangle theory, accidental fraudsters have to rationalise or verbalise their wrongful acts to reduce their cognitive dissonance. The interview data revealed that when Thai brokers committed regulatory violations and/or fraudulent acts, they always resorted to rationalisation. The data further indicated that the rationalisations employed by the Thai brokers could be generally classified into six groups, which were: (1) a denial of responsibility, (2) a denial of injury, (3) an appeal to higher loyalties, (4) a claim to entitlement, (5) a claim that regulations were obsolete, and (6) a claim that everyone was committing the violation.
Although rationalisation is said to be mostly an unconscious process, the present research suggests that it would be worthwhile to, directly and indirectly, create situations where brokers’ abilities to rationalise their wrongdoings are limited. The following strategies are suggested in response to different types of rationalisation found in the interview data. In relation to a denial of injury, where securities brokers claim that no one is injured from the wrongdoing, and a claim to entitlement, where the brokers claims that they are entitled to certain rights or benefits prohibited by the law, a viable strategy is to provide more information and education to the brokers so that they better perceive the injury caused by their wrongful acts as well as the reasons behind the prohibitions. For example, the brokers should be reminded regularly that the wrongful practice of using their clients’ accounts to trade for themselves can cause substantial damages to the accounts’ owners and can easily lead to dispute between them. In response to a denial of responsibility, where the brokers shift the blame of their violations to their clients, and an appeal to higher loyalties, where the brokers claim that the violations are committed for the benefit of their clients, the valid strategies are to reduce the client pressure as discussed in the earlier section and to remind them that they are licenced professionals duty-bound to uphold professional ethics, regardless of their personal relationship to their clients. As for a claim that the regulations are obsolete and a claim that everyone else in the industry is committing the violations, it is suggested that the SEC Office should attempt to update its regulations regularly in response to changes in the industry and the business practices, as well as to vigorously and consistently enforce the current regulations so as to enhance credibility of the agency and the regime.

B Strategies in Enhancing Deterrence of Focus Offences
Committed by Accidental Fraudsters

In the previous section, general strategies to break the brokerage fraud triangle and to enhance the current Thai anti-brokerage fraud regime were discussed. In this section, specific strategies to deter each of the three focus brokerage

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offences deemed to be committed by accidental fraudsters are further examined in details.

1 The Offence of Failing to Properly Record Trading Orders

At the time the study was conducted, trading orders are recorded in two ways. The first is where clients have traditional accounts with securities companies. When they would like to buy or sell shares, they have to call their brokers to give trading instructions. The SEC regulation requires that the calls be made to securities companies’ landlines so that the conversations are recorded as evidence. If the conversations are not properly recorded, the brokers will be subject to administrative sanctions ranging from reprimand to a suspension of licence, depending on the number of records missing, the volume of trade, and the brokers’ previous offending records. The second recording method is where the clients have Internet trading accounts and they put in trading orders over the Internet trading system by themselves. In this case, all orders are automatically recorded unless there is a rare failure of the trading system. Although the numbers of Internet trading accounts are rapidly growing, many Thai investors still prefer to conduct trade using the traditional accounts, as they value tailored information and personal services given by their brokers. Recent data still show that although over half of the trading accounts in the Thai securities markets are Internet trading accounts, a majority of trading volume from retail investors still comes from the traditional accounts.821 As a result, it is still important that the SEC Office find viable strategies to induce the brokers to always properly record the voice orders of their clients. The other point of note is that although the violation of this regulatory requirement is not a fraud on its own, having no proper record of trading order is more than often a sign that more serious offences are being engaged and concealed. In the example case of Vairojanakit Making Decisions for Clients and Taking Orders from an Unauthorised Person,822 the lack of records led the officers to discover that Miss Vairojanakit had committed the more serious violation of making trading decisions for clients, and

822 See details in Chapter 3.
in the case of ‘Jansangaram Using a Client’s Account for Her Friend’s Benefits’, an investigation of the missing records exposed that Miss Jansangaram had wrongfully used her client’s account for the third party's benefits.

The interview data revealed that the causes of the failure to properly record trading orders could be mainly attributed to changes in technology and the clients' growing preference to call the brokers’ mobile phones rather than the securities companies’ landline numbers as required by the regulation. The secondary cause identified was the brokers’ and/or the clients’ intention to conceal other more serious offences, such as making trading decisions for the clients, insider trading, and market manipulation. The data also indicated that the violation was technically easy to commit and happened very frequently. Based on such findings, the suggested strategies to induce effective compliance comprise three escalating stages in the context of the enforcement pyramid approach.

The SEC Office should give primary and early consideration to revising the current regulation requiring clients to call the securities companies’ landlines to give trading instructions and to record voice orders. Due to the advancement of technology and changing communication behaviour, Thai people nowadays prefer to call mobile numbers than landline numbers. In addition, sending emails and text messages have become the preferred communication channels in many sectors. The interviews data further confirmed the investors’ displeasure of strictly having to call the companies’ landline numbers. The investors commented that they prefer to call or send text messages to their brokers’ mobiles to give trading instructions and questioned why the SEC Office did not also recognise voice records from mobile phones, emails, and text messages as valid evidence of trading instructions. Due to this, it is important the SEC Office takes step to update its regulation to recognise other communicating channels so as to reflect the changes in the investors’ behaviour as well as to prevent unnecessary violations due to such changes. Nevertheless, the participating regulators, in their interviews, expressed a valid concern that voice records from

823 See details in Chapter 3.
the brokers’ mobile phones, emails, and text messages could be prone to tampering and were generally not reliable. A potential way to increase the reliability of such records is for the SEC Office to mandate securities companies to develop specialised voice recording and messaging applications for their clients, of which the hosting servers are managed by the SEC Office itself, or by the securities companies under the supervision of the SEC Office.

The second strategy, which is an escalation from the initial strategy, aims to deal with brokers who have intention to fully comply with the regulation, but find it almost impossible to do so due to the overwhelming presence of income and client pressure. The strategy is, therefore, to reduce income pressure by financially empowering the brokers, though the reduction of income fluctuation and the increase of brokers’ welfare, as well as to reduce client pressure through the investor education and the introduction of client administrative sanctions and/or liabilities as outlined in the previous section. Under the implementation of this strategy, the brokers would be under less pressure and be in a better position to refuse taking trading orders that are sent via incorrect channels.

The third strategy, at the tip of the pyramid, is designed to deal with brokers who have no intention to comply with the requirement or intentionally fail to keep proper records to conceal more serious offences. The suggestion is similar to the measures currently implemented by the SEC Office, which is to suspend the offending brokers and to impose corporate fine on the employing securities companies for their failure in monitoring and regulating their employees conduct. Nevertheless, the existing loopholes of the sanction of a suspension of licence need to be addressed as well as the amount of the corporate fine need to be raised, as discussed earlier in this chapter.
2 The Offence of Making Trading Decisions on Behalf of Clients

The SEC regulation currently prohibits securities brokers from making trading decisions for their clients, even when the clients instruct them to do so, on the grounds that the brokers must refrain from interfering with clients' assets and that such practice can easily lead to conflicts of interest as well as disputes between the clients and the brokers. Nevertheless, the interview data revealed that this offence is committed often both intentionally and unintentionally. Many brokers voluntarily made trading decisions for their clients and offered them as a normal part of their services. The main reason for these brokers to risk committing the violation was that when they made trading decisions for the clients, they could easily generate more trading volume, thus obtaining more income. On the other hand, a large number of brokers were found to involuntarily make trading decisions for their clients. Many participating brokers commented that they did not like to make trading decisions for their clients since disputes could easily occur. However, they were not in a position to reject the
clients’ requests, due to the fear that the clients would be unhappy and decided to move their trading accounts to other brokers who offered such service.

Based on such findings, the suggested strategies to enhance deterrence of this regulatory offence come in three stages. The first stage, similar to the strategy employed to deter the offence of failing to properly record trading orders, is for the SEC Office to review the suitability of the current regulation prohibiting the brokers from making trading decisions for their clients. The interview data revealed interestingly that many Thai investors would like to have their brokers making trading decisions for them, for different reasons, in the same fashion as licenced fund managers managing investment portfolios for mutual funds or private equity funds. At the same time, many brokers would like to offer such services to their clients as they felt they had adequate knowledge and expertise to make such decisions for their clients.

Although allowing the brokers to act in such capacity could pose significant risks to the investors, it would be prudent for the SEC Office to examine whether the benefits to individual clients, the growth of the capital market from the increase in trade, and the elimination of unnecessary regulatory burden would outweigh the risks. One potential way to limit such risks, as suggested by several participating brokers, is for the SEC Office to introduce a higher class of brokerage licence, allowing the holders of this new licence, who pass the rigorous examination and are under close scrutiny, to manage investment portfolio and make trading decisions for individual investors in designated circumstances. On the other side, investors who would be allowed to use such a service must meet certain requirements, such as having sufficient investing experience and having net worth above certain thresholds, as well as giving

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824 In Australia, there is a special class of retail investors called ‘sophisticated investor’. These investors are eligible to buy into certain investment opportunities that are not available to general investors. In order for an individual to qualify and obtain a certificate as a sophisticated investor, he or she must have either a net worth of $2.5 million or have earned more than $250,000 in the past two years. See, Australian Securities & Investments Commission, Certificates issued by a qualified accountant <http://asic.gov.au/regulatory-resources/financial-services/financial-product-disclosure/certificates-issued-by-a-qualified-accountant/>. 
clear and unequivocal consent to the brokers and the securities companies to manage their investment portfolios.

The second strategy, to be implemented after the revision of the regulation, aims to deal with the brokers who intend to comply with the regulation, but cannot do so due to their lack of resistance to income and/or client pressure. The strategy is therefore to relieve the income pressure by financially empowering the brokers and to relieve the client pressure through the investor education programmes. It is important that the clients are communicated in details about the risks involved when they let their brokers make trading decisions for them and the reasons behind the prohibition. In addition, the ASCO Training Institution (ATI) should give a strong emphasis on this the brokers’ duty to fully comply with the SEC regulations and to uphold professional ethics, even when they are under income and/or client pressure.

The third and the most interventionist strategy is the use of sanctions to deter the brokers who intentionally violate the regulation by offering to their clients the portfolios management services which include making trading decisions for the clients. It is important that the offending brokers be suspended for a lengthy period since they maliciously commit the violation to generate more income for themselves at the expense of their colleagues who dutifully comply with the law, yet have to bear pressure from the clients asking why they cannot provide the services similar to the offending brokers. The offenders’ securities companies should also be heavily fined for their lack of effective internal monitoring mechanism to regulate their employees’ conduct. The credible sanction against securities companies is very important in this case since when the brokers make trading decisions for their clients to generate more income for themselves, the securities companies are the ones who gain most benefits. Due to that, although the companies may not conspire to or directly encourage the practice, they have a reason not to seriously deter the violation.
3 The Offence of Using a Client’s Account for the Broker’s Own Benefit (With Permission)

The third focus brokerage offence that is deemed to be committed by accidental fraudsters is the offence of unauthorised use of a client’s account with permission from the account owner. The SEC regulation prohibits securities brokers from using their clients’ accounts for their own or third party’s benefits, with and without consent of the account owners, so as to prevent the brokers from taking advantage of their clients, to reduce conflicts of interest, and to increase business transparency.\textsuperscript{825} The reason that Thai brokers would like to use their clients’ accounts to trade, with consent, is to circumvent the current rules limiting the brokers’ ability in trading securities for themselves. Under the Notification of the Association of Thai Securities Companies Re: Rules on Securities Trading of Employees and Directors of Securities Companies, the brokers have to

\textsuperscript{825} The SEC Notification No. KorLorTor/Kor/Wor. 12/2011, Group 1.2.2 Using a Client’s Account for the Broker’s Own Benefit.
meet a number of requirements and follow rigorous procedures before they can use their own accounts to engage in trade. As a result, a number of brokers collude with their clients to circumvent such restrictions by using the clients’ accounts instead of their own. There are two well-known methods of collusion. The first is a joint investment between the brokers and the clients. The second, which is the use of ‘nominee accounts’ where the brokers ask their friends or relatives to open new trading accounts and turn such accounts over to the brokers for their uses.

The empirical data further revealed that the illegal use of nominee accounts among Thai securities brokers was very common. Nine from eighteen participating brokers in the study admitted that they had and used nominee accounts to trade for themselves at the time of the interview, while four claimed that they had such accounts but no longer used them for various reasons. Three main reasons why the brokers would like to trade stocks for themselves were identified in the interviews, which were greed and jealousy, income pressure, and ideology. Personal greed and jealousy were interestingly identified as the most important factors as a number of brokers stated that they felt jealous when they saw their clients earn large profits from the trade, while they were not able to engage in such transactions for themselves due to the limitations imposed by the regulation. The second factor was income pressure. When the brokers were in financial difficulties, making profits from the trade was the most direct way to relieve such pressure. In addition, as the brokers conducted the trade for themselves, they also obtained trading volume that provided them with additional income. The last factor was a clash of ideology as several brokers strongly asserted that they disagreed with the limitations and believed that they should have similar trading rights to their clients.

Devising effective strategies to deter this offence, especially the use of nominee accounts, is not an easy task since discouraging individuals from increasing their wealth, when they are able to, is against human nature. In addition, the participating regulators further commented that the offence is one of the most difficult to detect since it was not easy to find concrete evidence of violation,
unless there was a dispute between the broker and the account owner. Nevertheless, three layers of potential strategies are suggested in this study. Similar to the previous two offences, the first strategy is for the SEC Office together with the ASCO to review the current regulation limiting the securities brokers’ right to trade stocks for themselves, so as to counter the personal greed and jealousy factor. At the moment, before the brokers can conduct the trade using their own accounts, they have to send trading requests to the compliance department for an approval. The participating brokers commented that such procedure usually took several days, which was highly inconvenient and killed off their ability to trade volatile stocks whose price move quickly. The brokers tentatively suggested that the approval procedure should be simplified and the decisions should be made within one business day, so that they would be able to conveniently use their own accounts to trade, without having to wrongfully resort to the clients’ accounts. Although, such proposal seems to make practical sense, it should be noted that allowing the brokers to conveniently trade stocks for themselves also carries significant risks. The brokers who diligently trade their own stocks are likely to pay less attention to their clients thus their quality of service would be poor. In addition, the risk that unscrupulous brokers would engage in a front running practice against their own clients would be higher. As a result, the SEC Office has a difficult task in weighing the gains against the risks involved in allowing the brokers to trade more freely, against limiting their trading rights, as of now, which lead many to circumvent the regulation by using their clients’ accounts to trade for themselves.

The second strategy is the use of communication and education initiatives to inform both the brokers and the clients regarding the reasons behind the limitation of the brokers’ right to trade and the risks involved when clients let their brokers use their accounts. The interview data, surprisingly, reveals that there was a widespread misunderstanding of the current regulation. Many

\textsuperscript{826} Notification of the Association of Thai Securities Companies Re: Rules on Securities Trading of Employees and Directors of Securities Companies r 3.7.
\textsuperscript{827} Front running practice is an illegal trading practice where a security broker has advanced knowledge of a pending order of his or her own client, and decides to take advantage of such knowledge by buying or selling those particular stocks from his or her own accounts before executing the client’s order.
brokers stated, in their interviews, that Thai brokers were totally forbidden from having their own trading accounts and could not trade stocks for themselves, which was the reason they used their clients’ accounts to avoid the prohibition. It is therefore important for the SEC Office to correct such misunderstanding and communicate to the broker community that securities brokers can have their own trading accounts and can use such accounts to trade for themselves, given that they meet the requirements and follow the designated procedures. In addition, general investors should be educated of the risk and damage involved, if they let the brokers wrongfully use their trading accounts and/or help setting up nominee accounts.

The third strategy to be implemented involves a relief of income pressure borne by the brokers. As one of the main factors leading brokers to trade stocks themselves, in violation of the SEC and the ASCO regulations, is to relieve their income pressure, especially when they cannot generate adequate trading volume from their clients. The strategy is, therefore, to financially empower the brokers through the reduction of income fluctuation and the increase of brokers’ welfare as discussed in previous sections.

The fourth strategy at, the top of the sanction pyramid, is the use of credible sanctions to deter the violation. The offending brokers should be heavily punished with a suspension or a revocation of licence depending on the length of the violation, the benefits gained, and the quantum of damage. The employing securities companies should also be heavily fined for their failure in monitoring the conduct of their brokers. It should be noted that since this offence is one of the hardest to detect by the regulator, the emphasis should be placed on the roles of the compliance officers and the back office staff in detecting and reporting the violation to the SEC Office. When new clients open trading accounts with the companies, the officers should pay close attention to the relationship between the brokers and the new clients. They should also keep an eye of the transactions made by the new clients and report to the authority if there are irregularities in the clients’ trading patterns.
C. Strategies in Enhancing Deterrence of Focus Offences

Committed by Predatory Fraudsters

In this last section, the specific strategies to deter the two focus brokerage offences that are deemed to be committed by predatory fraudsters are examined in details.

1 The Offence of Using a Client’s Account for the Broker’s Own Benefit (Without Permission)

Unlike in the previous offence of unauthorised use of clients’ accounts with permission, in this more serious offence, the brokers use their clients’ accounts for their own benefit without the clients’ knowledge. All participating brokers, in their interviews, commented that using clients’ accounts for their own benefit without consent was seriously wrongful conduct that no brokers should engage in any circumstance. Several brokers further stated that the brokers who could
commit this offence against their clients were very different from ordinary brokers, who more than often have personal and close relationships with their clients, and would try their best to protect the benefit of their clients. In addition, no rationalisation could be identified from the interviews. Based on these data, it can be deduced that the brokers who commit this violation are predatory fraudsters, actively seeking to gain undue profits from fraudulent acts, rather than accidental fraudsters who succumb to situational pressure. The specific strategies to deter this offence, therefore, focus on eliminating the opportunity factors, since pressure factors and rationalisation do not motivate the fraud.

The participating brokers, however, noted that the benefits gained from this particular offence were unlikely to be worth the risk since the offender would only obtain higher volume figures but would not obtain the actual profit from the trade, whereas the likelihood that the account owners would detect irregular items in monthly statements was high. The only circumstance they could think of in which violation could be successfully committed and concealed was when the account owners were deceased or had abandoned their accounts, resulting in no trading activity for a long period of time. The unscrupulous brokers could, therefore, use such inactive accounts to buy and sell shares to increase their trading volume without anyone noticing. The first strategy suggested, therefore, is for the SEC Office to mandate securities companies to pay special attention to dormant or inactive accounts, and to transfer these accounts to a specialised department, so that the brokers could no longer log into and engage in unlawful trade. In addition, the companies should also be required to make reasonable effort to contact account owners or their descendants with a view to ascertaining the wishes of the account owners or the descendants in relation to the accounts.

The third strategy is the use of administrative sanctions to deter the wrongful practice. Since these brokers are deemed predatory, the magnitude of sanction to be imposed upon them needs to be severe so as to deter them from committing the violation. Under the current regulation, the offending brokers are subject to an administrative sanction of a suspension of licence for 6 months at minimum, which is a considerable degree of penalty. To promote compliance and ethical
culture, the SEC Office should further remind the companies of their legal and ethical duties in hiring trustworthy personnel and in providing bona fide services to all clients, even in their absence. As for the securities companies, they should be heavily fined for their failure in regulating the conduct of their employees and for the failure in securely protecting their clients’ accounts.

![Diagram](image)

Figure 26: The Proposed Regulatory Pyramid in The Offence of Unauthorised Use of a Client’s Account (Without Permission)

2. The Offences of Deception and Misappropriation

The last brokerage offences of this study are the offence of deception, where securities brokers deceive their clients to transfer them money or shares, and the offence of misappropriation where the brokers misappropriate the clients’ assets from their trading accounts. Similar to the offence of unauthorised use of clients’ accounts without permission previously discussed, the offences of fraud and misappropriation are deemed to be committed by predatory fraudsters, rather than accidental fraudsters. This is especially true giving that the SET
together with membered securities companies have put in place many mechanisms to prevent fraud and misappropriation, such as the introduction of the ATS that eliminate the use of cash in trade and the dissemination of itemised monthly statements to all clients. The offences, therefore, can no longer be committed opportunistically or by impulse, as careful planning to execute and conceal the wrongdoing is required. In addition, due to the presence of the two local factors of close and personal relationship between brokers and clients, and the brokers’ extraordinary goodwill (nam-jai), it can be concluded that the brokers who can commit fraud and misappropriation against their clients are very different, culturally, from ordinary brokers in the Thai securities market.

Although various preventive systems are currently put in place, the empirical data revealed that securities brokers might yet commit fraud and misappropriation in several ways. The first and most prevalent was forging of clients’ signatures and/or fabrication of assets withdrawal documents. In many cases, the brokers also forged the clients’ signatures in the change of postal address form, then fabricated monthly statements to be sent to such clients, in order to conceal the wrongdoing. Secondly, some brokers were found to deceive their clients to directly transfer funds to their own or to third parties’ accounts, and ran away with the funds. The common circumstances were where the brokers told the clients that the ATS was malfunctioning or that they could get the clients’ Initial Public Offering shares (IPO) at discounted prices. Thirdly, some clients, usually elder ones, might overly trust their brokers and may have signed blank withdrawal and/or share transfer forms for convenience.

The primary cause of the offences was personal greed as identified by all the participants. The other crucial elements of the offence are trust and arrogance. Without trust on the part of the clients, it would be very hard for the brokers to commit fraud.\textsuperscript{828} As for the arrogance, since these individuals are predatory, they are actively seeking loopholes and are willing to take risk against the sanctions. Deterrence strategies, therefore, need to reflect the offenders’ characters as well as the circumstances facilitating the commission of the offences.

\textsuperscript{828} Albrecht, above n 12.
The first primary recommended strategy to be pursued at the earliest convenience is the use of communication and education initiatives to educate and warn general investors of the potential fraud and deception. The information should be communicated via multiple channels, such as the agencies’ and popular websites, general and specialist media outlets, and through curriculum development in education institutions, so as to reach general audiences.\textsuperscript{829} The most important messages are that the clients should always be mindful and not overly trust their brokers, no matter how close they are. The clients should also be repeatedly warned not to put their signatures in blank forms, or transfer funds directly to the brokers’ or third parties’ accounts in any case. In addition, the SEC Office should provide direct channels so that the investors may conveniently and independently contact the agency on the matter or file complaints against their brokers and/or securities companies.

The second set of strategies is the enhancement of the ethical standards of securities brokers. As already discussed in the general section of this chapter, the SEC Office can enhance the quality of personnel screening processes, licensing examinations, and mandatory ethical training in multiple ways, as discussed earlier. On the part of the companies, what they should do is to establish a positive hiring policy where compliance and ethical behaviour is a key component, as when dishonest people are hired, even the best control will not be able to prevent fraud.\textsuperscript{830}

The third set of strategies, to be implemented by securities companies under the guidance of the SEC office, is the enhancement of preventive measures against deception and misappropriation. After the ATS was implemented, which eliminated the presence of cash in transactions, deception and misappropriation become more and more complicated, as brokers can no longer run away with cash. They now have to find elaborate ways to withdraw clients’ assets from trading accounts and to conceal their wrongdoing. The recommended strategies, therefore, revolve around the prevention and the detection of such misconduct from their illegal activities.

\textsuperscript{829} Black, above n 633.
\textsuperscript{830} Albrecht, above n 12.
by back office staff and compliance officers. Firstly, since the primary form of fraud and misappropriation involve forging of signatures and fabrication of documents, the back office staff should pay regular attention to the authenticity of signatures and documents. It would also be useful for the companies to employ forms that have unique design elements such as watermarks and holograms that are hard to fabricate. Most importantly, whenever important documents are submitted, such as a request to withdraw a large amount of funds or a request to increase credit limits, the staff should always call the clients to confirm the authenticity and the correctness of such requests. It would also be prudent for the staff to randomly call the clients to discuss the quality of services they are receiving and to update the clients’ basic information, such as residential addresses and contact numbers, from time to time. In relation to the prevention of the brokers’ ploys in luring the clients to directly transfer funds to their personal bank accounts, what the back office staff and the compliance officers could do is to repeatedly emphasise to the clients that they shall not transfer funds to any account that is not the company account, and that if they have any suspicions or questions regarding the investment products and/or the brokers’ behaviour, they should immediately contact the compliance department for clarification.

The fourth strategy, to be implemented by the SEC Office when education initiatives, the screening and the training processes, and the preventive measures all fail to deter the brokers from committing fraud and/or misappropriation, is the imposition of administrative sanctions against individual offenders and the imposition of corporate fines upon the securities companies that fail to regulate their employees’ conduct. Under the current regulation, the offending brokers are subject to a severe sanction of a revocation of brokerage licence and a prohibition of licence re-applications for a minimum of 5 years as well as publication of their names and the names of their employing companies.\textsuperscript{831} Such revocation of licence is considered a severe penalty, since the offenders would not be able to work as brokers for any securities companies for the designated periods of time. Even after the revocation period has expired, it

\textsuperscript{831} The SEC Notification No. KorWor. 12/2011 (Group 1.1 Dishonesty).
would be very difficult for such individuals to reapply for the licences and resume working as securities brokers due to bad records and the loss of clients during the revocation period.

The fifth strategy, at the tip of the enforcement pyramid, could be the strategic application of individual criminal sanctions to induce compliance and to deter deception and misappropriation, respectively. Nevertheless, the effective application of the sanctions is not a simple matter and several major amendments need to be made. First and foremost, as discussed earlier in this chapter, the current magnitude of sanction imposed is inadequate for deterrence purposes. The value of fine prescribed is very low compared to the potential gains from fraud and/or misappropriation and although the offences carry significant imprisonment terms, the offending brokers are likely to be granted probation. The magnitude of sanction accompanying the offences of deception, the offence of misappropriation, and the offence of fabrication of documents and forging of signatures, therefore, needed to be significantly raised. Second and most importantly, the enforcement pyramid needs to be structured so as to increase the rate of individual criminal sanction as discussed in the earlier section of this chapter.

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832 Penal Code s 341.
833 Penal Code ss 352-354.
834 Penal Code s 264.
III Conclusion

This study starts with the researcher's attempt to find effective strategies to enhance the current anti-brokerage fraud regime in Thailand. The first stage of the research was documentary archival research conducted to gain insight into the current regime and to gather all statutory provisions and regulations relating to brokerage fraud committed by Thai securities. The current regime was found to be highly complicated and lacking coherent structure. There are multiple types of proceedings administered by multiple government agencies who have different objectives and policies. In addition, the rates of apprehension and the magnitude of administrative and criminal sanctions that may be imposed on the offending brokers and their employing securities companies was found to be insufficient for the purpose of deterrence, especially when compared to potential gains from wrongdoing.

Donald R. Cressey's Fraud Triangle Theory was selected as the main theoretical approach used to identify contributing factors – pressure, opportunity,
rationalisation – in relation to the commission of four low-level brokerage frauds. A notable feature of the revised Fraud Triangle model employed in this study is an incorporation of local societal factors and business context that affects the commission of offences as suggested by Joshua K Cieslewicz. An empirical qualitative research project, using semi-structured interviews, was conducted in Thailand between November 2013 and August 2014. The researcher interviewed eighteen securities brokers, six regulators, and three representatives of investors (from an investors’ organisation) asking for their views and opinions of the current regime and factors of pressure, opportunity, and rationalisation that could lead to the commission of the focus offences. A thematic analysis was then conducted to identify recurrent themes and patterns in the interview data.

In essence, the data revealed that the brokerage offences studied could be classified into two groups. The first group, comprised the offence of failing to properly record trading orders, the offence of making trading decisions for clients, and the offence of unauthorised use of a client’s account with permission. It was found that these offences are usually committed by ‘accidental fraudsters’ and their motivations corresponded neatly with predictions from the Fraud Triangle model. The main pressure factors found were income pressure and client pressure. At the same time, opportunity factors were evidently present, together with the brokers’ apparent ability to rationalise their wrongful behaviour. On the other hand, the offence of unauthorised use of a client’s account without permission and the offences of deception and misappropriation did not fit as well with the model. Personal greed was identified as the only motivation factor, whereas the opportunity factors were scarce, and rationalisation was non-existent. These offences, instead, matched well with a revised Predatory Fraudster Model; the second model employed in the study. According to this model, the offending brokers were regarded as predatory fraudsters, who no longer required situational pressure factors and rationalisation to motivate offending as they would actively seek opportunities

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835 Cressey, above n 11.
836 Cieslewicz, above n 24.
to offend and only need small loopholes to perpetrate fraud. The presence of two local societal factors was identified as influencing choices made by accidental fraudsters – close and personal relationships between brokers and clients and brokers’ extraordinary goodwill or ‘nam-jai’ towards clients – and the presences of these factors further differentiate Thai brokers who are ‘accidental fraudsters’ from their predatory colleagues.

Based on such findings, recommendations to enhance the current regime were shaped by the responsive regulation approach,837 where effective regulatory strategies respond to the conduct of the regulatees and to the specific industrial context. For the offences committed by accidental fraudsters, the recommended strategies are to start with a revision of regulations together with information and education initiatives and a reduction of pressure factors. However, if such persuasion-based measures fail to deliver compliance, the well-targeted administrative and criminal sanctions should be invoked. As for the offences committed by predatory brokers, the recommended strategies were for the relevant agencies to put their effort to increase investor awareness in the first place then focus on enhancement of preventive measures administered by the agencies and securities companies. If deception and misappropriation still occur, the agencies should then escalate regulatory response up the enforcement pyramid and punish the offenders and their companies severely, through the use of revocation of licence, corporate fine, and individual criminal sanctions, respectively.

Three notable methodological limitations were present in this study. The first is the time constraint. Without time limitations and political unrest in Thailand the number of the interviewees could have been greater and the length of the conversations had during interviews with each interviewee could have been longer, thus increasing depth, and strengthening validity and reliability of the research. Nonetheless, the selection of interviewees is suggested to be a representative sample. Secondly, since there is no prior research employing the theory of the Fraud Triangle to examine low-level brokerage fraud, as well as the

837 Ayres and Braithwaite, above n 25.
fact that there are few studies on fraud factors in Thai organisations, this study is pioneering in nature. As a result, pressure, opportunity and rationalisation factors identified and the correlation between them are unlikely to be conclusive. Beyond this initial study, further research is welcome to further identify additional factors and to test for their influence. The final limitation lies in the selection of the participants. Since the researcher wished to obtain a wide range of qualitative data, securities brokers in different positions (novice brokers, experienced brokers, and team leaders) and remuneration schemes (fixed and incentive) were chosen as the participants. Further studies focusing on brokers in a specific position, and/or in a particular remuneration scheme, could provide more in-depth data and may identify more specific fraud factors associated with the specific groups of brokers. Any of the suggested law reforms would benefit from evaluative studies if and when implemented following further consultations with the SEC, lawmakers, and other relevant experts.
Appendix 1

Relevant Statutory Provisions

*The Penal Code*

**Section 18:** Punishments for inflicting upon the offenders are as follows:
1. Death;
2. Imprisonment;
3. Confinement;
4. Fine;
5. Forfeiture of property.

The capital punishment and life imprisonment shall be not enforced to offender less than eighteen years of age.

In case of offender less than eighteen years of age has committed the offence to be punished with death or imprisoned for life, the punishment, as aforesaid. shall be deemed as commuted as imprisoned for fifty years.

**Section 59:** A person shall be criminally liable only when such person commits an act intentionally, except in case of the law provides that such person must be liable when such person commits an act by negligence, or except in case of the law clearly provides that such person must be liable even though such person commits an act unintentionally.

To commit an act intentionally is to do an act consciously and at the same time the doer desired or could have foreseen the effect of such doing.

If the doer does not know the facts constituting the elements of the offence, it cannot be deemed that the doer desired or could have foreseen the effect of such doing.
To commit an act by negligence is to commit an offence unintentionally but without exercising such care as might be expected from a person under such condition and circumstances, and the doer could exercise such care but did not do so sufficiently.

An act shall also include any consequence brought about by the omission to do an act which must be done in order to prevent such consequence.

**Section 78:** Whenever it appears that there exists an extenuating circumstance, whether or not there be an increase or reduction of the punishment according to the provisions of this Code or the other law, the Court may, if it is suitable, reduce the punishment to be inflicted on the offender by not more than one-half.

Extenuating circumstances may include lack of intelligence, serious distress, previous good conduct, the repentance and the efforts made by the offender to minimize the injurious consequence of the offence, voluntary surrender to an official, the information given or the Court for the benefit of the trial, or the other circumstance which the Court considers to be of similar nature.

**Section 264:** Whoever, in a manner likely to cause injury to another person or the public, fabricates a false document or part of a document, or adds to, takes from or otherwise alters a genuine document by any means whatever, or puts a false seal or signature to a document, if it is committed in order to make any person to believe that it is a genuine document, is said to forge a document, and shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both.

Whoever, fills in the contents on a sheet of paper or any other material bearing the signature of another person without the consent or by violating the order of such person, if it has committed in order to take such document for use in any activities which may cause injury to any person or the public, shall be deemed to forge a document, and shall be punished likewise.
**Section 265:** Whoever, forges a document of right or official document, shall be punished with imprisonment of six months to five years and fined of one thousand to ten thousand Baht.

**Section 266:** Whoever forges any of the following documents:

1. A document of right, which is an official document;
2. A will;
3. A share certificate or debenture, or share warrant or debenture warrant;
4. A bill; or
5. A negotiable certificate of deposit shall be punished with imprisonment of one to ten years and fined of twenty thousand to two hundred thousand Baht.

**Section 341:** Whoever, dishonestly deceives a person with the assertion of a falsehood or the concealment of the facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person, or causes the person so deceived or a third person to execute, revoke or destroy a document of right, is said to commit the offence of cheating and fraud, and shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both.

**Section 352:** Whoever, being in possession of a property belonging to the other person, or of which the other person is a co-owner, dishonestly converts such property to himself or a third person, is said to commit misappropriation, and shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both. If such property comes under the possession of the offender on account of being delivered to him by the other person by mistake by any means whatever, or being a lost property found by him, the offender shall be liable to one-half of the punishment.

**Section 353:** Whoever, to be entrusted to manage the other person’s property or property which the other person to be the co-owner, dishonestly to do any act contrary to oneself duty by any means whatever, up to cause the danger to the
benefit on account of being the property of such other person, shall be
imprisoned not out of three years or fined not out of six thousand Baht, or both.

**Section 354:** If the offence under Section 352 or Section 353 be committed by
the offender in the status of being an executor or administrator of the property
of the other person under the order of the Court or under a will, or in the status
of being a person having an occupation or business of public trust, the offender
shall be punished with imprisonment not exceeding five years or fined not
exceeding ten thousand Baht, or both.

**The Civil and Commercial Code**

**Section 420:** A person who, willfully or negligently, unlawfully injures the life,
body, health, liberty, property or any right of another person, is said to commit a
wrongful act and is bound to make compensation therefore.

**Section 425:** An employer is jointly liable with his employee for the
consequences of a wrongful act committed by such an employee in the course of
his employment.

**Section 812:** The agent is liable for any injury resulting from his negligence or
non-execution of agency, or from an act done without or in excess of authority.

**Section 814:** The subagent is directly liable to the principal and vice versa.


**Section 113:** In operating the business of securities brokerage, a securities
company shall comply with the rules, conditions and procedures as specified in
the notification of the Capital Market Supervisory Board.
Section 238: No securities company or any person responsible for the operation of a securities company or company which issues securities or any person having an interest in the securities shall impart any false statement or any other statement with the intention to mislead any person concerning the facts relating to the financial condition, the business operation or the trading prices of securities of a company or juristic person whose securities are listed in the Securities Exchange or are traded in an over-the-counter center.

Section 239: No securities company or any person responsible for the operation of a securities company or company which issues securities or any person having an interest in any securities shall disseminate news concerning any information which may cause any other person to understand that the prices of any securities will increase or decrease, except where the dissemination of information has already been reported to the Securities Exchange.

Section 240: No person shall disseminate any false news to be remoured which may cause any other person to understand that the price of any securities will increase or decrease.

Section 282: Any securities company which violates or fails to comply with Section 92, Section 94, Section 96, Section 97, Section 98, Section 100, Section 101, Section 102, Section 103, Section 104, Section 105, Section 106, Section 108, Section 109, Section 110, Section 112, Section 113, Section 114, Section 115, Section 116, Section 117, Section 122, Section 123, Section 124, Section 125, Section 126, Section 129, Section 130, the first paragraph of Section 134, Section 135, Section 136, Section 139 (1), (2), (3) or (4), the first paragraph, second paragraph or third paragraph of Section 140, Section 151 or the first paragraph of Section 195 or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 92, Section 98(7) or (10), the second paragraph of Section 100, Section 117, Section 135, Section 139(4), the second paragraph of Section 140, Section 141, Section 142, Section 143, Section 144, or Section 150 shall be
liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

**Section 296:** Any person who contravenes Section 238, Section 239, Section 240, Section 241 or Section 243 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the benefit received or which should have been received by such person as a result of such contravention but such fine shall be not less than five hundred thousand baht, or both.

**Anti-Money Laundering Act B.E. 2542 (1999)**

**Section 5:** Any person who:

1. transfers, accepts a transfer of or converts the asset connected with the commission of an offence for the purpose of covering or concealing the origin of that asset or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offence; or
2. acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offence or the acquisition of rights therein, shall be said to commit an offence of money laundering.

**Section 7:** In an offence of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offence shall be liable:

1. aiding and abetting the commission of the offence or assisting the offender before or at the time of the commission of the offence,
2. providing or giving money or asset, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or
to evade punishment or for the purpose of obtaining any benefit from the commission of the offence.

In the case where any person provides or gives money or asset, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

**Section 61:** Any juristic person who commits offences under section 5, section 7, section 8 or section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht.
Appendix 2

The Office of Securities and Exchange Commission (SEC Office)

30 June 2011

Dear Director,

Every securities company

Ref: the SEC Office Notification No.KorLorTor.Khor.Wor 12/2011 re the principles and guidelines on the sanctions of securities brokers

The SEC office has been receiving more and more complaints about securities brokers failing to meet professional standards, even if the office has had imposed sanctions on those securities brokers. In addition, the SEC office has a policy to raise professional standards of securities brokers and had already amended the Notification on the Prohibitive Characteristics of Personnel in Securities Business to reflect such a policy.

In this connection, the Capital Market Personnel Disciplinary Committee (CMPDC) has issued the Notification on the principles and guidelines on the sanctions of securities brokers, targeting in particular repeated misconducts by securities brokers. The Notification, which would be effective from 1 July 2011, divides the levels of sanctions, as follows:

Group 1: Securities brokers whose conducts could lead to dishonesty
- In the case of misconduct, the minimum sanction is a revocation of license for 5 years.
- In the case of taking advantages of investors or acting for the securities brokers’ own benefit, the minimum sanction is a suspension of license for 6 months.
- Formerly, the minimum sanction of the above cases was a suspension of license for 6 months.

Group 2: Securities brokers whose conducts are a breach of the law, SET regulations, the regulations of relevant associations, or relevant professional standards

- In the case of breaching the securities laws or other laws such as the law on money laundering, the minimum sanction is a revocation of license for 2 year.
- Formerly, the minimum sanction of this case was a suspension of license for 1 year.
- In case of breaching the SET regulations and the regulations of the relevant associations, the minimum sanction is a suspension of license for 1 month.
- Formerly, the minimum sanction of this case was probation for 1 year.

Group 3: Securities brokers whose conducts do not meet the professional standards

- In the case of failing to meet significant standards such as making trading decisions for clients, the minimum sanction is a suspension of license for 3 months.
- In the case of acting without adequate care, the minimum sanction is a suspension of license for 1 month.
- Formerly, the minimum sanction of the above cases was probation for 1 year.

In addition, the SEC office will disclose the names of the offending securities brokers in all cases to the public. In cases of a suspension or a revocation of license, the SEC office will also disclose the names of the employing securities companies at the time the offences were committed.
For your information and please inform all your securities brokers accordingly.

Yours sincerely,

(Mr. Praveth Aongargsittikul)
Senior Associated Secretary-General

Enclosed: The list of conducts that do not meet the professional standards

Securities License Department
Tel: 0-2695-9579
Fax: 0-2695-9785
The list of Conduct That Do Not Meet the Professional Standards

Group 1: Conducts that could lead to dishonesty

1.1 Fraudulent conducts
   1.1.1 The commission or the association of deception or misappropriation of investor assets
   1.1.2 The concealment of information or the submission of false information in the licence application process, or the submission of false information to securities companies to assist clients, such as concealment of important data or decorating account to be granted additional trading limits.

1.2 Breach of fiduciary duty by taking advantage of investors or seeking improper benefits
   1.2.1 Front running practice
   1.2.2 Unauthorized use of clients’ accounts for the benefit of oneself or for the benefit of third parties
   1.2.3 Churning practice

Group 2: Conducts that are a breach of the law, SET regulations, the regulations of relevant associations, or relevant professional standards

2.1 The commission or the assistance in the commission of unfair trading practices under the Securities and Exchange Act B.E. 2535 (1992)
   2.1.1 Committing an offence as a principal in unfair trading practices
   2.2.2 Committing an offence as an accessory in unfair trading practices
   2.2.3 Putting in improper trading orders, which are not in accordance with the SET regulations

2.2 The commission or the assistance in the commission of other laws such as money laundering law
2.3 The contravention of the SET regulations on improper trading orders that do not warrant a sanction by the SET, but are considered as very improper practice

2.4 The contravention of the SEC regulations and professional ethics
   2.4.1 Failing to properly record trading orders
   2.4.2 Providing incomplete or improper advice to clients

Group 3: Conducts that do not meet the professional standards

3.1 Failure to meet professional standards
   3.1.1 Trading without client instructions or making trading decisions on behalf of clients
   3.1.2 Acting in support or cooperating with clients in conducting financial transactions that are not suitable to the clients’ financial conditions
   3.1.3 Asking for trading fees that clients are not required to pay
   3.1.4 Trading securities while an analysis is being prepared or within three working days after the analysis has been disseminated
   3.1.5 Helping clients to secure off-market loans for the purpose of securities trading

3.2 Acting without adequate care, such as
   3.2.1 Taking trading instructions from third parties
   3.2.2 Acting beyond duties assigned by employing securities companies
   3.2.3 Giving assurance to clients on future profits from trading
   3.2.4 Interfering with clients’ assets
   3.2.5 Disclosing personal and/or trading information of clients to third parties
   3.2.6 Failing to execute trading orders in chronological orders unless the investors had given instructions otherwise such as providing a specific time to execute orders

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## Appendix 3

**Administrative Cases Relating to Brokerage Fraud and Related Violations:**

**Office of the Securities and Exchange Commission, 2001-2013**

<table>
<thead>
<tr>
<th>Years</th>
<th>Names of Offender</th>
<th>Types of Service</th>
<th>Release No.</th>
<th>Offences</th>
<th>Sanctions</th>
<th>Duration [Months]</th>
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<td>06/2008</td>
<td>Placing Improper Trading Orders (False Market)</td>
<td>Probation</td>
<td>12</td>
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<td>Sansanee Kitcharoen</td>
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<td>Placing Improper Trading Orders (False Market)</td>
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<td>Placing Improper Trading Orders (False Market)</td>
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<td>Wannaporn Yodsomsak</td>
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<td>Placing Improper Trading Orders (False Market)</td>
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<td>Sugunya Changchua</td>
<td>Consultant</td>
<td>05/2008</td>
<td>Fraud, Trading on Behalf of Clients on a Regular Basis</td>
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<td>60</td>
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<td>Sakkarin Uttakrit</td>
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<td>18/2008</td>
<td>Giving Improper Advice</td>
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<td>Sitthidej Sirisanpirun</td>
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<td>18/2008</td>
<td>Unauthorised Use of Clients' Accounts for Own Benefit, Interfering with Clients' Assets</td>
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<td>2008</td>
<td>Patcharee Moungsri</td>
<td>Consultant</td>
<td>27/2008</td>
<td>Prior Criminal Record Deemed to Have Prohibited Characteristics</td>
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<td>Piyawat Yongsawadvanich</td>
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<td>Wittaya Permpongsacharoen</td>
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<td>44/2008</td>
<td>Trading on Behalf of Clients on a Regular Basis</td>
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<td>Kittipong Piyasakulbri</td>
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<td>44/2008</td>
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<td>2008</td>
<td>Preeyamich Anuvongkul, Executive</td>
<td>Consultant</td>
<td>59/2008</td>
<td>Fraud, Using Subordinates to Falsify Documents</td>
<td>Revocation</td>
<td>120</td>
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<tr>
<td>2008</td>
<td>Chatuporn Phanhom</td>
<td>Consultant</td>
<td>59/2008</td>
<td>Market Manipulation</td>
<td>Probation</td>
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<td>Sonthaya Moumniang</td>
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<td>59/2008</td>
<td>Unauthorised Trading</td>
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<td>Tippawan Chaiyasawad</td>
<td>Consultant</td>
<td>62/2008</td>
<td>Fraud, Unauthorised Use of Clients' Accounts for Own Benefit</td>
<td>Revocation</td>
<td>180</td>
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<td>Nattavut Kitprasert</td>
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<td>62/2008</td>
<td>Unauthorised Trading</td>
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<td>Surachada Chanmoosik</td>
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<td>85/2008</td>
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<td>Sarinpong Ponkramorn</td>
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<td>Misappropriation, Forging Signatures</td>
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<td>32/2009</td>
<td>Giving Improper Advice, Failing to Get to Know Clients</td>
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<td>12</td>
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<td>Channarong Saede</td>
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<td>32/2009</td>
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<td>Pim on Raksurong</td>
<td>Consultant</td>
<td>60/2009</td>
<td>Unauthorised Trading, Falsifying Documents</td>
<td>Suspension</td>
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<td>2008</td>
<td>Napasan Warapichayothai</td>
<td>Consultant</td>
<td>74/2009</td>
<td>Fraud, Falsifying Documents</td>
<td>Revocation</td>
<td>180</td>
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<tr>
<td>2008</td>
<td>Prakaidaw Jonglee</td>
<td>Consultant</td>
<td>84/2009</td>
<td>Trading on Behalf of Clients on a Regular Basis, Interfering with Clients' Assets</td>
<td>Probation</td>
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<td>Pracha Ju-ngake</td>
<td>Consultant</td>
<td>84/2009</td>
<td>Trading on Behalf of Clients on a Regular Basis, Interfering with Clients' Assets</td>
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<td>Peera Nokdum</td>
<td>Consultant</td>
<td>84/2009</td>
<td>Trading on Behalf of Clients on a Regular Basis, Interfering with Clients' Assets, Supporting or Cooperating with Clients in Trading Securities in a Manner Inappropriate for Clients' Financial Conditions</td>
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<td>Kunakorn Karnchavakul</td>
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<td>99/2009</td>
<td>Fraud, Interfering with Clients' Assets</td>
<td>Revocation</td>
<td>120</td>
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<td>2008</td>
<td>Sutasinee Pansawat</td>
<td>Consultant</td>
<td>99/2009</td>
<td>Unauthorised Use of Clients' Accounts for Own Benefit</td>
<td>Suspension</td>
<td>3</td>
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<td>Suwaradee Sriprasert</td>
<td>Consultant</td>
<td>11/2010</td>
<td>Unauthorised Use of Clients' Accounts to Avoid Credit Limit of Other Clients</td>
<td>Probation</td>
<td>12</td>
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<td>Ditipon Mokdara</td>
<td>Consultant</td>
<td>13/2010</td>
<td>Interfering with Clients' Assets</td>
<td>Probation</td>
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<td>Nitiwat Jurawathee</td>
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<td>13/2010</td>
<td>Placing Improper Trading Orders</td>
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<td>Wattanya Wongopasi</td>
<td>Consultant</td>
<td>13/2010</td>
<td>Placing Improper Trading Orders</td>
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<td>2010</td>
<td>Chirawan Vatanavijarn</td>
<td>Consultant</td>
<td>13/2010</td>
<td>Severe Professional Misconduct</td>
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<td>Napat Jippasant</td>
<td>Consultant</td>
<td>32/2010</td>
<td>Fraud, Misappropriation</td>
<td>Revocation</td>
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<td>Names of Offender</td>
<td>Types of Service</td>
<td>Release No.</td>
<td>Offences</td>
<td>Sanctions</td>
<td>Duration (Months)</td>
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<td>Consultant</td>
<td>32/2010</td>
<td>Interfering with Clients' Assets</td>
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<td>Chonlada Teethavolpsal</td>
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<td>39/2010</td>
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<td>Unchalee Chusri</td>
<td>Consultant</td>
<td>45/2010</td>
<td>Following Orders of Non-Account Owners</td>
<td>Probation</td>
<td>12</td>
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<td>Chawawat Buranasittichai</td>
<td>Consultant</td>
<td>45/2010</td>
<td>Unauthorised Use of Clients' Accounts for Own Benefit, Dissemination of False News</td>
<td>Suspension</td>
<td>24</td>
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<td>Jiraporn Sirisawad</td>
<td>Consultant, Executive</td>
<td>47/2010</td>
<td>Trading on Behalf of Clients on a Regular Basis, Interfering with Clients' Assets</td>
<td>Suspension</td>
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<td>Praepak Kuptanond</td>
<td>Consultant</td>
<td>65/2010</td>
<td>Interfering with Clients' Assets</td>
<td>Probation</td>
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<td>Akarawat Thanachitnararat</td>
<td>Consultant</td>
<td>65/2010</td>
<td>Giving Improper Advice, Interfering with Clients' Assets</td>
<td>Probation</td>
<td>12</td>
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<td>2010</td>
<td>Adirek Umbangtalad</td>
<td>Consultant</td>
<td>91/2010</td>
<td>Market Manipulation</td>
<td>Revocation</td>
<td>Pending Criminal Proceedings</td>
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<td>Pakitta Chiablam</td>
<td>Consultant</td>
<td>53/2011</td>
<td>Fraud, Unauthorised Use of Clients' Accounts for Own Benefit</td>
<td>Revocation</td>
<td>120</td>
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<td>Sayan Peurkong</td>
<td>Consultant</td>
<td>53/2011</td>
<td>Trading on Behalf of Clients on a Regular Basis, Unauthorised Use of Clients' Accounts for Own Benefit, Churning</td>
<td>Revocation</td>
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<td>Chalerm Suakamram</td>
<td>Consultant, Executive</td>
<td>57/2011</td>
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<td>Revocation</td>
<td>120</td>
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<td>Kruewan Rittiwong</td>
<td>Consultant</td>
<td>58/2011</td>
<td>Unauthorised Use of Clients' Accounts for Own Benefit</td>
<td>Suspension</td>
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<td>2011</td>
<td>Meunjit Limpodom</td>
<td>Consultant</td>
<td>58/2011</td>
<td>Unauthorised Use of Clients' Accounts for Third Party's Benefit, Failure to Properly Record Trading Orders</td>
<td>Suspension</td>
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<tr>
<td>2011</td>
<td>Vachira Duangpanya</td>
<td>Consultant</td>
<td>75/2011</td>
<td>Failure to Properly Record Trading Orders</td>
<td>Reprimand</td>
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<td>Watthipong Ruengkitchanchai</td>
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<td>75/2011</td>
<td>Placing Improper Trading Orders</td>
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<td>Amnaj Kurakeaw</td>
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<td>Wanida Sryotong</td>
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<td>Surat Boonrat</td>
<td>Consultant</td>
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<td>Jit-apa Saranwong</td>
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<td>86/2011</td>
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<td>Surasak Julabao</td>
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<td>86/2011</td>
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<td>Tanaporn Wannaprakasit</td>
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<td>Market Manipulation</td>
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<td>04/2012</td>
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<td>Anussara Chuaak</td>
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<td>Kraisa Tanyanaraks</td>
<td>Consultant</td>
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<td>Nathinee Panijphan</td>
<td>Consultant</td>
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<td>Sumonrat Traipobbhumi</td>
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<td>Nisarat Harnpimai</td>
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<td>Nongluk Katesub</td>
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<td>Pimlada Pattanawaroj</td>
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<td>Somphol Sajiapithak</td>
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<td>Varaporn Budploy</td>
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<td>Consultant, Executive</td>
<td>06/2012</td>
<td>Market Manipulation</td>
<td>Revocation</td>
<td>120</td>
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<td>Chandrapha Wongpaibul</td>
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<td>2012</td>
<td>Prasarn Ruengkittisub</td>
<td>Consultant, Executive</td>
<td>06/2012</td>
<td>Market Manipulation, Following Orders of Non-Account Owners</td>
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<td>Market Manipulation, Following Orders of Non-Account Owners</td>
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<td>Surachai Thepsud</td>
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<td>Chaiide Owananusorn</td>
<td>Consultant</td>
<td>07/2012</td>
<td>Deceiving Clients’ Trading Information to Others</td>
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<td>2012</td>
<td>Hattaya Yungyneung</td>
<td>Consultant</td>
<td>07/2012</td>
<td>Fraud, Misappropriation</td>
<td>Revocation</td>
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<td>2012</td>
<td>Upanyat Arunjartpong</td>
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<td>07/2012</td>
<td>Fraud, Misappropriation</td>
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<td>Suppachai Pengchan</td>
<td>Consultant</td>
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<td>Misappropriation</td>
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<td>Prapada Tattapornpan</td>
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<td>08/2012</td>
<td>Failure in Performing Brokerage Duties Assigned by the Securities Company</td>
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<td>Sanongpol Ruzgreungworawat</td>
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<td>08/2012</td>
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<td>Jariya Singharachai</td>
<td>Consultant</td>
<td>08/2012</td>
<td>Unauthorised Trading, Interfering with Clients’ Assets</td>
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<td>Lapadol Teerapong</td>
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<td>43/2012</td>
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<td>Revocation</td>
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<td>Ujcharavadee Kiriyakanul</td>
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<td>Sittichi Sangsrisujithanayanan</td>
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<td>Pongpat Taweesombun</td>
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<td>88/2012</td>
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<td>Suntatee Verojsakol</td>
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<td>Lakkiga Aromseri</td>
<td>Consultant</td>
<td>88/2012</td>
<td>Submission of False Information to the SEC Office in the Licence Application Process</td>
<td>Revocation</td>
<td>24</td>
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<td>2012</td>
<td>Nappapol Bunjamnong</td>
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<td>88/2012</td>
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<td>Worrasun Jaruphan</td>
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<td>Nathassai Laangphuengkaw</td>
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<td>88/2012</td>
<td>Trading on Behalf of Clients on a Regular Basis, Unauthorised Trading</td>
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<td>Pantharaksa Jaitawin</td>
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<td>88/2012</td>
<td>Unauthorised Trading</td>
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<td>Nitipong Chusompop</td>
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<td>91/2012</td>
<td>Failure to Properly Record Trading Orders</td>
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<td>Ptitpong Panteeranurak</td>
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<td>91/2012</td>
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<td>Tanapa Rangsing</td>
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<td>Failure to Properly Record Trading Orders, Interfering with Clients’ Assets</td>
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<td>Premrutai Rinnasuk</td>
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<td>91/2012</td>
<td>Trading on Behalf of Clients on a Regular Basis, Unauthorised Trading</td>
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<td>2012</td>
<td>Chokchai Kansalee</td>
<td>Consultant</td>
<td>100/2012</td>
<td>Misappropriation, Forging Signatures, Falsifying Documents</td>
<td>Revocation</td>
<td>24</td>
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<td>Pakkawat Buawan</td>
<td>Consultant</td>
<td>100/2012</td>
<td>Trading on Behalf of Clients on a Regular Basis, Unauthorised Use of Clients’ Accounts for Own Benefit</td>
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<td>Muthita Somvong</td>
<td>Consultant</td>
<td>100/2012</td>
<td>Unauthorised Trading, Falsifying Documents, Churning</td>
<td>Revocation</td>
<td>24</td>
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<td>2012</td>
<td>Nattakit Hirapattanachote</td>
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<td>Surapee Khunkao</td>
<td>Consultant</td>
<td>106/2012</td>
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<td>Nonkan Sae-Tang</td>
<td>Consultant</td>
<td>111/2012</td>
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<td>Theera Chovanaprechasip</td>
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<td>Sirilert Kitikunadul</td>
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<td>115/2012</td>
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<td>Sutin Chimlapibul</td>
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<td>Varaporn Varamitr</td>
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<td>03/2013</td>
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<td>Kornkamol Arpornrat</td>
<td>Consultant</td>
<td>12/2013</td>
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<td>Rujira Hinchin</td>
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<td>26/2013</td>
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<td>Pongsit Amornitipong</td>
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<td>31/2013</td>
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<td>Placing Improper Trading Orders</td>
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<td>Satthirak Tassanasri</td>
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Appendix 4

Interview Questions

The final list of revised interview questions consisted of twenty-eight main questions organized under five headings.

(a) Section I: General Information

The first section consists of nine general questions investigating the participants’ work experience, work environment, organization’s structure, general work pressure, sources and satisfaction of income, occupational mobility, and the impact of the liberalization of brokerage industry upon them. Probing questions following the first few main questions were also employed to set the stage for the interview and to establish a good contact between the interviewer and the interviewee.

**Question 1:** How long have you worked in the brokerage industry and how long have you worked for your current company?

The purpose of this question was to gather general information on the interviewee’s work experience and on his or her opinions of the differences between securities companies he or she has worked for. An example of a further probing question used was: “Could you please explain the differences between each firm that you have worked for?”

**Question 2:** Could you please explain your job responsibilities as a securities broker?

The purpose of this question was to gather general information on the interviewee’s job description and responsibilities, and also his or her views of the profession. Further probing questions were employed to inquire about the interviewee’s different roles and responsibilities towards traditional clients and
Internet clients. Examples of probing questions used were: “As far as I know, there are 2 types of clients, traditional clients and Internet clients. Do you look after both types? Is there any difference in how you look after them?

**Question 3:** Could you please explain your current work environment and corporate structure?

The purpose of this question was to gather general information on the interviewee’s work environment and his or her relationships with colleagues and supervisors. The question also explored “pressure” side of the Fraud Triangle relating to work environment and relationships within the organization. An example of a probing question used was: “Could you please explain the relationship between you and other team members?”

**Question 4:** Is there much pressure in your workplace, such as from your colleagues, your supervisor, and the company?

The purpose of this question was to explore general “pressure” perceived by the interviewee during the course of work. Example of probing questions used were: “Does your supervisor pressure you to perform?” and “Does the pressure you received make you change the way you work?”

**Question 5:** Do you think there is any difference in work environment between local, foreign and commercial-bank related securities companies?

The purpose of this question was to test the hypothesis that different types of securities companies have different working cultures and impose different types and amounts of “pressure” upon the securities brokers. An example of a probing question used was: “Is there any difference in the way brokers in the three types of companies work?”
**Question 6:** Could you please explain sources of your earnings as a broker and how satisfied you are with your current earnings?

The purpose of this question was to gather information on the interviewee’s sources of earnings as a securities broker and to explore “pressure” and “rationalisation” factors associated with his or her income satisfaction. Examples of probing questions used here were: “Comparing your earnings to expenditure and the lifestyle you want to have, how satisfied are you?” and “Comparing your earnings to your responsibility, how satisfied are you?”

**Question 7:** What is the impact of the liberalization of the commission fee structure that the SEC introduced in January 2012 upon you as a broker?

The purpose of this question was to gather information on the impact that the liberalization of the commission fees has upon the interviewee as well as to test the hypothesis that such liberalization has increased “pressure” imposed upon securities brokers, which in turn has increased the likelihood that brokerage fraud and related violations would be committed. An example of a probing question used here was: “Does the decreasing level of income affect the way you work or your relationship with your clients?”

**Question 8:** If you feel uncomfortable with your current employer, how easy is it for you to switch to another securities company or go and do something else altogether?

The purpose of this question was to gather information on the occupational mobility of the securities brokers and to explore “pressure” and “opportunity” factors relating to such an issue. An example of probing a question used was: “So which is more difficult, moving to another company or going to do something else?”

**Question 9:** Could you please explain your relationship with your clients? How close you are with them and how does such a relationship affect your work as a securities broker?
The purpose of this question was to gather information on the relationship between the interviewee and his or her clients. The questions also explored “pressure” and “opportunity” factors relating to such relationship. An example of probing question used was: “Have your clients asked you to do anything for them that you did not like to do?”

(b) Section II: Attitudes Towards Law and Internal Control Mechanisms

The second section consisted of two questions investigating the participants’ knowledge of law and relevant regulations, their awareness of enforcement incidents, and their attitudes towards internal control mechanism employed by the companies.

**Question 10:** How much do you know about the law and the SEC regulations relating to the conduct of securities brokers?

The purpose of this question was to gather information about the participant’s knowledge of law and relevant regulations and the awareness of enforcement incidents. The questions also explored “opportunity” factors relating to knowledge. This question was followed by several probing questions. Examples of probing questions were: “Before you’re qualified as a securities broker, you needed to pass an examination to obtain your licence. Does such exam provide you with adequate knowledge on the law and regulations of the SEC and the SET?”; “After you passed the test, does the SEC or your employing securities company provide any training to educate brokers about the law and regulations of the SEC and SET?”, and “When the SEC punishes brokers for their misconduct, the SEC will send information to securities companies detailing who was punished. Has such information been forwarded to you?”

**Question 11:** Does your company have a code of conduct and an internal control mechanism to supervise securities brokers, and how has such a code of conduct been enforced?
The purpose of this question was to inquire whether the participant’s employing company provides a code of conduct for their employee brokers and to explore the participant’s views and opinions toward the internal control mechanism. An example of a probing question asked was: “Do you think the compliance department of your company works effectively and efficiently enough?”

(c) Section III: Perception of Causes, Opportunities, and Rationalisation Relating to the Focus Offences

The third and core section of the interview consisted of eight questions exploring the participants’ perception of pressure/motive, opportunity, and rationalisation leading to the commission of the four focus offences of this study.

**Question 12:** *What is your view of the offence of failing to properly record trading orders, especially over-the-phone orders?*

The purpose of this question was to explore the participant’s views and opinions toward the offence of failing to properly record trading orders. Probing questions were also employed to gather information on how the offence can be committed. Examples of probing questions used were: “Do you have any issue in complying with this regulation?” and “Why do brokers fail to record trading orders?”

**Question 13:** *What are the causes and opportunities that lead brokers to commit the offence of failing to properly record trading orders?*

The purpose of this question was to inquire into “pressure”, “opportunity”, and “rationalisation” factors relating to the commission of the offence of failing to properly record trading orders. Examples of probing questions asked were: “How easy is it to commit this offence?” and “How often do you think this offence occurs?”
Question 14: What is your view of the offence of making trading decisions on behalf of clients?

The purpose of this question was to explore the participant’s views and opinions toward the offence of making trading decisions on behalf of clients. Probing questions asked which were aimed at gathering information about the reasons that the offence is committed were, for example: Examples of probing questions are “Do you have any objection to comply with this regulation?” and “Why do brokers make trading decisions for their clients?”

Question 15: What are the causes and opportunities that lead brokers to commit the offence of making trading decisions on behalf of clients?

The purpose of this question was to inquire into “pressure”, “opportunity”, and “rationalisation” factors relating to the commission of the offence of making trading decisions on behalf of clients. Examples of probing questions asked were: “How hard is it to commit this offence?” and “How often do you think this offence occurs?”

Question 16: What is your view of the offence of unauthorized use of a client’s account?

The purpose of this question was to explore the participant’s views and opinions toward the offence of unauthorized use of a client’s account. Probing questions were also employed to gather information on how the offence can be committed. Examples of probing questions used were: “How do brokers use their clients’ accounts for their own benefit?” and “Do you think that it is normal for brokers to have nominee accounts?”

Question 17: What are the causes and opportunities that lead brokers to commit the offence of unauthorized use of a client’s account?
The purpose of this question was to inquire into “pressure”, “opportunity”, and “rationalisation” factors relating to the commission of the offence of unauthorized use of a client's account. Examples of probing questions used were: “How hard is it to commit this offence?” and “How often do you think this offence occurs?”

**Question 18: What are your views of the offences of fraud and misappropriation?**

The purpose of this question is to explore the participant’s views and opinions toward the offence of fraud and misappropriation. Probing questions are also employed to gather information on how the offence can be committed. An example of probing questions asked was: “How do brokers commit fraud against their clients?”

**Question 19: What are the causes and opportunities that lead brokers to commit the offences of fraud and misappropriation?**

The purpose of this question was to inquire into “pressure”, “opportunity”, and “rationalisation” factors relating to the commission of the offences of fraud and misappropriation. Examples of probing questions asked were “How easy is it to commit these offences?” and “How often do you think these offences occur?”

(d) **Section IV: Attitudes Towards the SEC’s Functions and the Sanctions Imposed**

The fourth section of the interview consisted of seven questions exploring the participants’ attitudes towards the SEC’s regulatory and enforcement functions as well as their attitudes towards administrative, civil, and criminal proceedings and sanctions. Factors relating to opportunity and rationalisation were also explored in this section.

**Question 20: What do you think of the role and the capability of the SEC in regulating brokers’ conduct, especially in the detection of wrongdoing and in the imposition of sanctions?**
The purpose of this question is to explore the participant’s views and opinions toward the SEC’s regulatory and enforcement functions. An example of probing question used was: “In your opinion, how can the SEC improve its detection capability?”

**Question 21:** What is your view of the disciplinary sanction of reprimand that the SEC imposes upon offending brokers?

The purpose of this question was to explore the participant’s views and opinions toward the administrative sanction of reprimand. An example of a probing question used was: “How serious is it and what would the impact be if the sanction was imposed upon you?”

**Question 22:** What is your view of the disciplinary sanction of a suspension of licence that the SEC imposes upon offending brokers?

The purpose of this question was to explore the participant’s views and opinions toward the administrative sanction of a suspension of licence. An example of a probing question used was: “How serious is it and what would the impact be if the sanction was imposed upon you?”

**Question 23:** What is your view of the disciplinary sanction of a revocation of licence that the SEC imposes upon offending brokers?

The purpose of this question was to explore the participant’s views and opinions toward the administrative sanction of a revocation of licence. An example of a probing question asked was: “How serious is it and what would the impact be if the sanction was imposed upon you?”

**Question 24:** What is your view of the criminal proceedings and the criminal sanctions that clients and the SEC may pursue against offending brokers in cases of fraud and related violations?
The purpose of this question was to explore the participant’s views and opinions toward the criminal proceedings and criminal sanctions that may be imposed upon him or her. An example of a probing question asked was: “During the course of your work, have you ever thought about the possibility of being subject to criminal proceedings and sanctions?”

**Question 25**: What is your view of the civil claims for compensation that the clients may pursue against offending brokers?

The purpose of this question was to explore the participant’s views and opinions toward the civil proceedings and monetary compensation that clients may pursue against him or her. An example of a probing question asked was: “How often do clients pursue civil claims?”

**Question 26**: What do you think of the role and the capability of the securities companies to regulate their employees’ conduct, to detect wrongdoing, and to impose internal sanctions upon offending brokers?

The purpose of this question was to explore the participant’s views and opinions about the capability of his or her employing company to regulate his or her conduct through the use of internal sanctions. An example of probing question asked here was: “Does your company impose any further internal sanction over the sanctions imposed by the SEC?”

*(e) Section V: Final Questions*

The fifth and last section of the interview consisted of two concluding questions asking for other suggestions and feedback about the interview, respectively.

**Question 27**: Do you have anything else that you would like to say in this interview that you have not said yet?
The purpose of this question was to provide the participant a chance to freely express his or her opinions on any issue and/or introduce a new topic into the interview that he or she believed was relevant to the study.

**Question 28: How do you feel about this interview?**

The purpose of this question was to let the participant freely express their feelings, opinions, and experience relating to the interview. The question also provided the participant with a chance to voice any concern or to withdraw from the study due to any reason.
Appendix 5

Participant Information Sheet (First Interview Phase)
(To be translated to Thai and handed out to participants)

Researcher:
My name is Abhichon Chandrasen. I am a PhD candidate at the College of Law, The Australian National University. I graduated with an LLB (First Class Honours) from Chulalongkorn University, Thailand and an LLM from London School of Economics and Political Science, UK.

Project Title:
Enhancing Deterrence of Anti-Fraud Measures in Thai Securities Law and Compliance Procedure

General Outline of the Project:
This project is my PhD thesis at the Australian National University. The project focuses on the legal issue of brokerage fraud and violation of securities regulation in the Stock Exchange of Thailand, exclusively in the area of four low-level brokerage frauds and regulatory violations as follows:

1. The offence of failure to properly record trading orders;
2. The offence of making trading decisions on behalf of clients;
3. The offence of using a client’s account for the broker's own benefit; and
4. The offences of fraud and misappropriation.

The primary aim of this research is to find effective measures to enhance deterrence of the anti-fraud regime using an optimal combination of legal tools: various forms of sanctions, civil responsibilities, licences, education and training, a code of conduct and internal control, etc. In order to do so, it is important to identify key factors leading to the commission of fraud and regulatory violation.
by Thai securities brokers and to gather views and opinions of the regulators and the regulatees towards the current Thai anti-brokerage fraud regime.

I have chosen to use semi-structure interview methodology to collect data for this project. More general thematic questions will be asked, followed by several short questions. The interview has two phases. The first is a series of interviews of eighteen securities brokers and the second is an interview of five officers of the Office of the Securities and Exchange Commission.

Participant Involvement:
In this first interview phase, I have selected you as a potential participant because of your work as a broker in a securities company. Participation in the project is purely voluntary, and there will be no adverse consequences if you decide not to participate. If you participate in this research project, I would like to ask for your views and opinions towards potential causes and opportunities in the commission of brokerage fraud as well as your view of the law and regulatory regime as someone regulated by both. The interview session will last approximately one and a half hours. If you agree, I may record the interview on a digital recorder. The recording will be transcribed and translated into English. After the translation is completed, I will send both Thai and English transcripts to you for the confirmation of accuracy.

You may withdraw from participation in the project at any time, and you do not need to provide any reason to me. If you decide to withdraw from the project I will not use any of the information you have provided and the data will be destroyed.

Potential risks in participation:
Due to the nature of this project, there is a chance that any wrongdoing disclosed by you and/or any third party could be revealed. Under Thai law and the regulation of the Securities and Exchange Commission, there is no obligation to report such information to the authority, if the wrongdoing is in the scope of (1) the offence of failure to properly record trading orders, (2) the offence of making
trading decisions on behalf of clients, (3) the offence of unauthorized use of a client's account for the broker's own benefit, and (4) the offences of fraud and misappropriation.

Although there is no such obligation, I will take the following steps in order to protect you as a participant. First, I will not record your name and the securities company that you are working for. Codes will be given to represent you and your company. Second, if you would like to give examples or mention any action or wrongdoing of third parties, please do not mention their names or their employers, unless such incident has already been reported and publicly recorded by the relevant authority.

In addition to the legal risk above, if you feel any interview question is personally sensitive or you feel reluctance to discuss any issue due to any concern, please immediately notify me. You have the right not to answer any of the questions in this interview.

**Confidentiality and Data Storage:**
All information you give me in this interview will be kept confidential as far as the law allows. Only the one assistant and I, who together will transcribe the recordings into text and translate the transcripts from Thai to English, will have access to the voice recordings. All voice recordings will be erased after the translation is completed and the transcripts are verified by the participants. The transcripts, in Thai and English, will be in secure storage for at least five years following publication. All data will be stored on my password protected laptop computer. Hard copies of the transcripts will be stored in a locked filing cabinet. During the qualitative data analysis phase, the transcripts will be additionally stored and processed by a password protected desktop computer at my office in The John Yencken Building, ANU.

**Queries and Concerns:**
If you have any questions, comments, or complaints about this research, please do not hesitate to contact:
Abhichon Chandrasen (Researcher)
College of Law, The Australian National University
Phone: +66 81 383 3200 (Thailand) or +61 41 357 0212 (Australia)
Email: chandrasena@law.anu.edu.au, or

Nitivadee Tasuwanin (Local Contact)
Country Group Securities PLC
Phone: +66 89 634 7247 (Thailand)
Email: nitivadee.ta@countrygroup.co.th, or

Dr Prasong Vinaiphat (Local Contact)
The Office of the Securities and Exchange Commission
Phone: +66 81 814-6927 (Local Contact)
Email: prasong_vi@hotmail.com, or

A/Prof Mark Nolan (Supervisor)
College of Law, The Australian National University
Phone: +61 2 6125 8354 (Australia)
Email: mark.nolan@anu.edu.au

Ethics Committee Clearance:
The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee. If you have any concerns or complaints about how this research has been conducted, please contact:

Ethics Manager
The ANU Human Research Ethics Committee
The Australian National University
Telephone: +61 (0) 2 6125 3427
Email: Human.Ethics.Officer@anu.edu.au
Appendix 6

Oral Consent Request (to be translated to Thai and read out to participants)

1. I have given you the information sheet about the research project, Enhancing Deterrence of Anti-Fraud Measures in Thai Securities Law and Compliance Procedure, and you have read it. Was the information clear? Do you have any questions about the project?

2. Let me make it clear that due to the nature of this project, there is a chance that we will discover any wrongdoing or violation of the law committed by you and/or any third party. Under Thai law and the regulations of the Securities and Exchange Commission, we do not have an obligation to report such information to the authority, if it is in the scope of the four offences that I mentioned in the information sheet. Is this clear to you?

3. Although we do not have a legal obligation to report, I will take the following steps in order to protect both of us and I will keep all the information you give me in this interview confidential as far as the law allows. First, I will not record your name and the securities company that you are working for. Codes will be given to represent you and your company in this project. Second, if you would like to give examples or mention any action or wrongdoing of third parties, please do not mention their names or their employers. You may wish to do so, however, if you are certain that the matter you discuss has already been dealt with completely by the regulator or any other investigator. Third, any note or recording I make will be kept in a password-protected computer and a locked cabinet. I will not share them with anyone else. Are all these clear to you? Would you allow me to proceed?

4. Some of the information you give me may be published in English or Thai. It will not be possible from these reports to directly identify individuals. However, there is still a possibility that people will recognize you by the things you say during the semi-structured interview, so you should avoid
disclosing sensitive information or saying anything defamatory. Is that clear?

5. You can stop this interview at any time, without giving me any reason. And if you mention anything that you do not want me to record or include in the research, please say so and I will follow your request. In addition, if you feel any interview question is personally sensitive or you feel reluctance to discuss any issue due to any concern, please immediately notify me. Okay? After the interview, if you decide to withdraw from the project or would like me not to use any part of the interview, you can directly contact me at (mobile number and email) or contact (Miss Nitivadee Tasuwanin in first interview phase, Dr Prasong Vinaiphat in the second interview phase, and Dr Kanate Wangpaichitr in the third interview phase) who is the contact of this project at (mobile number). Is this clear to you?

6. I would like to record this interview using a digital audio recorder. That way, I can listen to the recording afterwards and catch things you say that I might not fully understand during the interview, or might otherwise forget. I will not give access to the recording to anyone else. The recording will be transcribed and translated into English. After the translation is completed, I will send you both the Thai and the English versions for verification. Do you give me permission to record?

7. Do you have any further questions? Can we start the interview now?
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