

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Walter A. Looney, Jr., Simpson Thacher & Bartlett, 32nd Floor, Asia Pacific Finance Tower, 3 Garden Road, Central, Hong Kong.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### **Applicant's Representations**

1. Applicant is a specialized development bank organized by the Thai Government in 1959 pursuant to the Industrial Finance Corporation of Thailand Act (the "IFCT Act"). The Thai Government established applicant to promote the development of private industrial enterprises and to facilitate the growth of domestic capital markets in Thailand by carrying out credit and financial transactions. Applicant offers its loans with due consideration of specific Thai Government objectives and the particular development needs of the Thai economy. Applicant may be considered an investment company, and it requests an exemption from all provisions of the Act.

2. Applicant provides financial services to a wide range of industries, including manufacturing, agriculture, tourism, and selected service and related industries. These services include long-term loans, medium-term loans, and loan guarantees to finance investment in fixed assets and in office construction for selected industries. Lending constitutes the largest part of applicant's operations, with long-term, medium-term, and working capital loans comprising approximately 65% of applicant's total assets as of December 31, 1994. All of applicant's long-term and medium-term loans are held by applicant to maturity. The sole source of turnover in applicant's loan portfolio is

the maturity of existing loans and the making of new loans. Applicant does not buy or sell loans in the secondary market.

3. In addition to its principal business of extending long-term loans, applicant has the ability to issue short-term promissory notes which are similar to certificates of deposit in term and tenor, and can be payable on demand. Promissory notes are an alternative to deposit taking as a method of procuring funds from the public in Thailand. Applicant also provides concessional loans and financing through equity investments, and applicant has established subsidiaries and affiliated companies to offer other industrial and financial investment services.

4. Section 12 of the IFCT Act authorizes applicant to borrow money in both the domestic and foreign capital markets in order to lend funds to Thai borrowers, and to invest any capital not immediately required for its operations in a securities portfolio. Applicant temporarily invests funds awaiting disbursement to its clients in short-term debt securities such as promissory notes or bills or exchange issued by financial institutions and companies. A substantial portion of applicant's assets consist of obligations of borrowers to repay loans made to them by applicant and investments to facilitate applicant's cash flow management.

5. Applicant is not considered a commercial bank under Thai law. Consequently, it is presently prohibited from accepting deposits from the public. In February 1995, the Thai Government introduced the first Five Year Financial System Master Plan (the "Master Plan"), which would expand the scope of applicant's activities, and allow applicant to accept deposits. The Master Plan is a policy statement and its implementation will require legislative action.

6. Applicant is subject to extensive oversight, supervision, and regulation by the Thai Government. The IFCT Act sets forth applicant's powers, privileges, and operating guidelines. The Thai Ministry of Finance (the "MoF") oversees and supervises applicant's operations and policies through its statutory obligation to administer the IFCT Act. The appointment of applicant's president is also subject to the MoF's approval. Applicant's annual funding plan, which sets forth its basic business strategy and priorities for the upcoming year, must be approved by the MoF, and applicant must notify the MoF of the terms and conditions of all debt instruments offered by applicant. In addition, applicant must submit other

reports, statements, and filings to the MoF.

7. Unlike commercial banks which are governed by the Commercial Banking Act and are under direct supervision of the Bank of Thailand ("BoT"), the Thai central bank, applicant operates under its own act. However, as a recipient of funds from the BoT which applicant channels to industrial sectors, applicant must submit annual financial reports to the BoT and allow the BoT to examine applicant's accounts. Applicant is not subject to capital adequacy requirements imposed by the BoT but complies with such requirements.

8. Applicant's shares are listed on the Stock Exchange of Thailand (the "SET"), and applicant publishes all information, including annual reports and quarterly interim financial statements, which is customarily provided or is required to be published by the SET and the Securities and Exchange Commission of Thailand (the "Thai SEC"). Applicant's external independent auditors perform annual audits of applicant's financial statements. The Thai SEC also regulates the timing and content of all disclosures of information made by applicant.

9. Applicant proposes to issue and sell in the United States medium-term notes (the "Notes") in an aggregate principal amount of up to US\$500,000,000 from time to time outstanding. Notes initially issued in the United States will have a minimum maturity of nine months and will be direct, unsecured obligations of applicant and rank *pari passu* among themselves and with all other unsecured indebtedness of applicant for moneys borrowed. Applicant does not contemplate that its obligations under the Notes will be guaranteed by the Thai Government. Any offering of Notes may be registered under the Securities Act of 1933, as amended (the "Securities Act"), or made pursuant to an exemption from the registration requirements of the Securities Act. The offer and sale of the Notes will provide applicant with an alternate source of funding to supplement its borrowing in Thai and non-U.S. international capital markets. Applicant will use the proceeds of the sale of the Notes to provide funds for making loans in the ordinary course of its business.

#### **Applicant's Legal Analysis**

1. Section 3(a)(3) of the Act defines an investment company to include any issuer engaged in the business of investing, reinvesting, owning, holding or trading in securities, and that owns or proposes to acquire investment securities having a value exceeding 40%