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**Notification of the Capital Market Supervisory Board**

**No. TorChor. 34/2551**

**Re: Application for and Approval of Offer for Sale of  
Newly Issued Share Warrants and Newly Issued Underlying Shares**

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By virtue of Section 16/6 and Section 89/27 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 4) B.E. 2551 (2008) and Section 35 of the Securities and Exchange Act B.E. 2535 (1992) which contains certain provisions in relation to the restriction of rights and liberties of persons, which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board under Section 60 of the Securities and Exchange Act (No. 4) B.E. 2551 (2008) hereby issues the following regulations:

**Clause 1** This Notification shall come into force as from 15 December 2008.

**Clause 2** In this Notification:

(1) “underlying share,” “listed company,” “subsidiary company,” “institutional investor,” “registration statement,” and “electronic data” shall have the same meaning as defined in the Notification of the Securities and Exchange Commission governing determination of definitions in notifications relating to issuance and offer for sale of securities;

(2) “warrant” means a share warrant;

(3) “company” means a company applying for an offer for sale of warrants and underlying shares;

(4) “terms and conditions” means terms and conditions on rights and duties of a warrant issuer and a warrant holder;

(5) “offer for sale of newly issued shares at discount” means an offer for sale of newly issued shares at the offering price lower than ninety per cent of the market price, provided that the offering price and the market price are in accordance with the notification of the Office of the Securities and Exchange Commission governing

calculation of offering price and determination of market price for consideration of an offer for sale of newly issued shares at discount;

(6) “offer for sale of warrants at discount” means an offer for sale of newly issued warrants of which the offering price combined with the exercise price falls within the meaning of an offer for sale of newly issued shares at discount;

(7) “offer for sale of convertible bonds at discount” means an offer for sale of convertible bonds of which the conversion price falls within the meaning of an offer for sale of newly issued shares at discount.

**Clause 3** A company eligible to obtain an approval of an offer for sale of newly issued warrants and underlying shares hereunder shall be a public limited company established under Thai law. An offer for sale of newly issued warrants and underlying shares shall be in compliance with the following rules:

(1) An offer for sale of newly issued warrants and underlying shares to the public shall be in compliance with Chapter 1;

(2) An offer for sale of newly issued warrants and underlying shares to specific investors (private placement) shall be in compliance with Chapter 3;

(3) For an offer for sale of newly issued warrants without payment for such warrants, a public limited company shall be granted an approval for an offer for sale of newly issued underlying shares upon compliance with Chapter 1 or Chapter 3, as the case may be;

(4) An offer for sale of newly issued warrants to existing shareholders according to their shareholding proportion, in which the exercise of warrants may be done by a person who is not a shareholder of a listed company or a public limited company which is obliged to the duty under Section 56, regardless of whether such duty is resulted from an offer for sale made by such public limited company or by its shareholder, shall be in compliance with Chapter 2;

(5) An offer for sale of newly issued warrants to existing shareholders according to their shareholding proportion, in which the exercise of warrants may be done by a person who is not a company’s shareholder in any cases other than (4), shall be in compliance with Chapter 1 or Chapter 3, as the case may be.

**Clause 4** In considering whether or not an application complies with rules, conditions, and procedures prescribed herein, the Office shall have power to proceed as follows:

(1) In cases where a company or an offer for sale of warrants and underlying shares has characteristics or meets criteria or conditions to obtain an approval under this Notification but there are certain facts indicating that the purpose or the substance of such offer is intended to avoid compliance with any provision of the

Securities and Exchange Act or this Notification, the Office may disapprove such application. In such case, the Office shall clearly notify the company of reasons supporting its consideration;

(2) In any of the following cases, the Office may waive certain rules of this Notification in considering an application or may not apply certain conditions of this Notification to an approved offer for sale of warrants and underlying shares, by primarily taking into account the appropriateness and sufficiency of information used for making investment decisions and measures for investors protection. In this regard, the Office may also require the company to act or omit from any act.

(a) The benefit from compliance with rules or conditions to be waived does not be reasonably outweigh the compliance cost, and there are certain facts indicating that rules or conditions to be waived are immaterial to the consideration of that case;

(b) There is certain limitation under any other law causing the company unable to comply with rules or conditions to be waived;

(c) The company has provided other sufficient measures in lieu of its compliance with rules or conditions to be waived.

## **Chapter 1**

### **Offer for Sale of Newly Issued Warrants and Underlying Shares to the Public**

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#### **Part 1**

#### **Application and Approval**

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**Clause 5** A company wishing to make an offer for sale of newly issued warrants and underlying shares to the public shall file with the Office an application together with supporting documents as specified by the Office, which are jointly prepared by a financial advisor whose name appears in the Office's approved list. The company shall pay an application fee in the amount specified in the notification of the Securities and Exchange Commission governing determination of application fees for offer for sale of newly issued securities and approval of securitization project.

**Clause 6** In cases where the Office needs to make an on-site visit at a premise of a company or a subsidiary which is located outside Bangkok or its vicinity, the company shall be responsible for accommodation and travelling expenses incurred from such visit in accordance with rules prescribed by the Office.

**Clause 7** The Office shall notify results of application consideration within forty five days from the date on which the Office receives an application together with supporting documents with accuracy and in full.

In considering an application, the Office shall have power to give a written notice calling a company to give an explanation or submit additional supporting documents within a period prescribed by the Office. In cases where the company fails to give an explanation or submit additional supporting documents within the prescribed period, it shall be deemed that the company no longer intends to apply for an approval of an offer for sale of warrants and underlying shares.

**Clause 8** A company eligible to obtain an approval of an offer for sale of newly issued warrants and underlying shares under this Chapter shall comply with the following rules:

- (1) being a public limited company established under Thai law;
- (2) meeting all qualifications prescribed in the notification of the Capital Market Supervisory Board governing application for and approval of offer for sale of newly issued shares with respect to an offer for sale of newly issued shares to the public;
- (3) warrants to be issued and offered for sale shall have the following characteristics:
  - (a) terms and conditions of warrants shall not be inconsistent with the characteristics prescribed in Clause 9;
  - (b) the amount of underlying shares shall not exceed the ratio prescribed in Clause 10, except for an offer for sale of warrants and underlying shares which is granted an exemption from the Office in case of necessity and for the benefit of the company and shareholders as a whole due to the company's need of financial support or for the purpose of debt restructuring or any other cases;
  - (c) being issued under terms and conditions prescribed in Clause 11.
- (4) putting in place sufficient measures for protection of shareholders' rights from being affected by an offer for sale of warrants and underlying shares (dilution effect) in accordance with Clause 12.

**Clause 9** Newly issued warrants shall have the following characteristics:

- (1) having a specified maturity date which shall be not exceed ten years from the issuing date;
- (2) having a company's newly issued shares as underlying shares;
- (3) having a specified exercise price and ratio;

(4) having a period for declaration of intention for the exercise of warrants not less than fifteen days prior to the exercise date;

**Clause 10** The number of newly issued underlying shares applied for an offer for sale, combining with those provided by a company as underlying shares of convertible bonds or warrants issued at any other time, shall not exceed fifty percent of the company's total number of shares sold.

The calculation of shares in the first paragraph shall be in accordance with the following rules:

(1) the company's total number of shares sold shall include shares other than underlying shares which will be offered for sale together with newly issued warrants applied for approval (if any);

(2) the number of shares provided as underlying shares of convertible bonds or warrants shall not include shares provided for an offer for sale under the notification of the Capital Market Supervisory Board governing offer for sale of newly issued securities to directors or employees.

**Clause 11** Terms and conditions of warrants shall contain at least the following particulars:

(1) details of warrants, at least indicating maturity date, price, ratio and procedures for the exercise of warrants;

(2) causes, conditions, and procedures for the amendment of terms and conditions of warrants;

(3) the amount of damages which a warrant holder shall receive in cases where a company fails to deliver underlying shares upon the exercise of warrants which shall not be less than the difference between the market price of the company's shares of the same class as the newly issued underlying shares on the exercise date and the exercise price;

(4) measures to protect warrant holders which at least impose obligations as follows:

(a) in cases where terms and conditions of warrants indicating that the company can call for the exercise of warrants prior to the specified exercise period, such obligations shall:

1. be certified by the company that it is fair and manifest, and the cause of calling for the exercise of warrants prior to the specified exercise period shall be upon events or acts which are not under any person's control;

2. require the company to call for the exercise of warrants upon the occurrence of the specified events;

3. be certified by the company that there are sufficient measures to make subsequent holders of warrants aware of such obligations;

(b) causes and conditions for the adjustment of rights of warrants and the calculation thereof in order to maintain the benefits which warrant holders will receive upon the exercise of warrants not to be adversely affected. The causes of the adjustment of rights shall mean the following events:

1. the change in the par value of the company's shares as a result of combination or splitting of shares;

2. the company's offer for sale of newly issued shares at discount;

3. the company's offer for sale of convertible bonds or warrants at discount;

4. the company's payment of dividend to shareholders, either wholly or partially, in the form of newly issued shares;

5. the company's payment of dividend in the amount exceeding the number specified in terms and conditions;

6. any other events similar to those in 1. to 5. which cause an adverse effect on the benefits which warrant holders will receive upon the exercise of warrants.

The provision in (4)(b) of the first paragraph shall not be applied to any specific event falling within 1. to 6. which obtains an exemption from the Office, provided that the company is able to demonstrate that there are sufficient measures to ensure that investors are fully informed, prior to making investment decisions, of the fact that the company will not adjust the exercise ratio or the exercise price upon the occurrence of such events.

**Clause 12** A company shall take at least the following actions to protect rights of shareholders who will be affected by an offer for sale of warrants and underlying shares (dilution effect):

(1) preparing a notice calling a shareholders' meeting to obtain an approval for the issuance of warrants and underlying shares, which contains at least the following particulars:

(a) general information of warrants such as expected exercise price or ratio, exercise period, the last day of the exercise period, and events in which newly issued shares are needed for the change in the exercise of warrants, etc;

(b) dilution effect to shareholders if warrants are fully exercised, at least indicating price dilution, profit dilution, and control dilution of existing shareholders;

(c) methods for allocating warrants;

(d) any other information specified by the Office as deemed necessary for protection of shareholders' interest;

(2) obtaining a shareholders' resolution approving the issuance of underlying shares for the exercise of warrants, provided that the resolution is obtained no more than one year prior to the date of filing an application under Clause 5;

(3) in cases where the applicant is a listed company wishing to make an offer for sale of warrants to specific investors (placement) at discount, the applicant shall comply with the following rules:

(a) in calling a shareholders' meeting to obtain a shareholders' resolution, the company shall submit a notice calling a meeting to shareholders not less than fourteen days prior to the meeting date;

(b) a notice calling a meeting referred to in (a) shall contain information which is material to shareholders' decision making. In addition to the information prescribed in (1), there shall be at least the following particulars:

1. objectives of an offer for sale of warrants at discount;
2. details of newly issued warrants and underlying shares, including the offering amount, offering price and exercise price in which a specified price or a specified maximum discount is indicated;
3. the market price used for comparing with the offering price and the exercise price of warrants, including calculation methods;
4. in cases where the offering price is specified, prospective investors shall be identified;
5. any effect to shareholders from an offer for sale of warrants at discount applied for an approval, at least indicating price dilution upon an offer for sale of warrants at discount, profit dilution, and control dilution of existing shareholders;
6. shareholders' rights to oppose an offer for sale of warrants at discount as specified under (d);
7. opinions of the company's board of directors indicating the necessity for an offer for sale of warrants at discount, and explaining the worthiness in terms of the benefits received by the company in comparison with the difference of the offering price and the exercise price of warrants with the market price lost by the company, as well as the appropriateness and reasons for the use of such market price and the determination of such offering price;
8. any other information specified by the Office;

(c) a proxy form shall be submitted together with a notice calling a shareholders' meeting and details of at least one independent director whom the shareholders who cannot attend the meeting and vote by themselves may authorize to

vote on their behalf. In cases where such independent director may be allocated the warrants seeking for an approval, the special interest of such independent director shall also be indicated;

(d) a resolution of shareholders' meeting approving an offer for sale of warrants at discount shall be passed with no less than three-fourth of the total number of votes of the shareholders attending the meeting and having voting rights, and such offer for sale of warrants or underlying shares shall not be voted against by the shareholders holding shares in aggregate number of ten per cent or more of the total number of votes of the shareholders attending the meeting;

The provision in the first paragraph shall not apply to the following cases:

(1) an offer for sale of warrants and underlying shares of the company required to increase its capital under the rehabilitation plan approved by the court under the bankruptcy law, provided that the company has provided sufficient underlying shares for the exercise of newly issued warrants;

(2) any other case as deemed necessary and appropriate, and granted an exemption from the Office.

**Clause 13** After obtaining an approval for an offer for sale of newly issued warrants under this Chapter, it shall be deemed that the company has also obtained an approval to make an offer for sale of underlying shares.

**Clause 14** In cases where the amendment of terms and conditions of warrants is the adjustment of rights under Clause 11(4)(b), the company may either adjust the exercise price and the exercise ratio or adjust the exercise price and issue new warrants instead of adjusting the exercise ratio.

In the proceeding under the first paragraph, if the company is required to issue additional underlying shares, it shall be deemed that the company has obtained an approval for an offer for sale of such underlying shares, provided that it has filed with the Office the shareholders' resolution approving the issuance of additional underlying shares for the adjustment of rights.

## **Part 2**

### **Post-Approval Conditions**

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**Clause 15** A company obtaining an approval under this Chapter shall comply with conditions prescribed in this Part:

(1) complete an offer for sale of securities within the following periods:



(a) an offer for sale of newly issued warrants shall be completed within six months from the date on which the Office notifies its approval or within the period waived by the Office but not exceeding twelve months from the date on which the Office notifies its approval. In this regard, the applicant shall submit to the Office a letter requesting for an extension of the offering period at least thirty days prior to the expiry date of such period, in which the applicant shall indicate the reasons for such request together with any information concerning material changes to its characteristics in accordance with Clause 8(2) (if any). In considering a waiver, the Office may request the company to submit additional information or documents;

(b) the exercise of warrants shall be completed within the expiry date of the exercise period;

Upon the expiration of the period prescribed under the first paragraph, the approval of the Office shall be deemed terminated.

(2) during the period in which the approved company is obliged to comply with rules prescribed in the Notification of the Capital Market Supervisory Board issued by virtue of Section 56, the company shall comply with the obligations given in the application or the registration statement and draft prospectus, and shall ensure that its major shareholders, executives, and controlling persons comply with such obligations, unless otherwise approved by a shareholders' meeting.

**Clause 16** After an offer for sale of warrants, the company obtaining an approval under this Chapter shall not extend the maturity date of warrants and shall not adjust the exercise price or the exercise ratio, except for the case as prescribed in Clause 11(4)(b).

**Clause 17** The amendment of terms and conditions of warrants after an offer for sale shall be in compliance with the given terms and conditions and shall not be inconsistent with nor contrary to the provisions of this Notification. The company shall notify the Office of such amendment in writing within fifteen days from the date of amendment.

**Clause 18** If it appears to the Office that, after an approval for an offer for sale of newly issued warrants and underlying shares is granted, there is any change which causes the company to have characteristics which are different from those prescribed in the approval criteria and the company is unable to rectify such difference within the period prescribed by the Office, the Office shall have power to notify the company to suspend its offer for sale of newly issued warrants and it shall be deemed that the approval for an offer for sale of newly issued warrants for the portion which has not yet been offered or remains unsubscribed and underlying shares is terminated.

**Chapter 2**  
**Offer for Sale of Newly Issued Warrants**  
**to Existing Shareholders and Underlying Shares**

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**Clause 19** In case of an offer for sale of newly issued warrants to existing shareholders according to their shareholding proportion, in which the exercise of warrants may be done by a person who is not a shareholder of the company, if such company is a listed company or a public limited company established under Thai law which is obliged to the duty under Section 56, regardless of whether such duty is resulted from an offer for sale made by such public limited company or by its shareholder, such company shall be deemed to have obtained an approval from the Office to make an offer for sale of newly issued warrants and underlying shares. The approved company shall comply with post-approval conditions as follows:

(1) warrants to be issued and offered for sale shall have the characteristics as prescribed in Clause 8(3);

(2) sufficient measures for protection of shareholders' rights shall be provided in accordance with Clause 12(1) and (2) *mutatis mutandis*;

(3) an offer for sale of warrants and underlying shares shall be completed within one year from the date of obtaining a shareholders' resolution approving the issuance of warrants and underlying shares and the exercise of warrants shall be completed within the expiry date of the exercise period;

(4) the amendment of terms and conditions of warrants shall comply with Clause 14 and Clause 17;

(5) the maturity date of warrants shall not be extended and the exercise price or the exercise ratio shall not be changed, except for the case as prescribed in Clause 11(4)(b);

In case of an offer for sale of newly issued warrants under this Part due to the company's obligation to increase its capital under the rehabilitation plan approved by the court under the bankruptcy law, such company shall be exempted from the conditions with respect to the calling of a shareholders' meeting, a notice calling a shareholders' meeting, and a shareholders' resolution. In this regard, the company shall complete its offer for sale of warrants and underlying shares within the period required by the rehabilitation plan.

A company obtaining an approval under this Part may be granted an exemption from certain post-approval conditions from the Office upon demonstrating that there is necessity and appropriateness according to Clause 4(2). In this regard, the Office may also require the company to act or omit from any act.

**Chapter 3**  
**Offer for Sale of Newly Issued Warrants and**  
**Underlying Shares to Specific Investors (Private Placement)**

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**Part 1**  
**Approval**

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**Clause 20** An offer for sale of newly issued warrants and underlying shares to specific investors (private placement) means an offer for sale which falls within any of the following characteristics:

(1) an offer for sale made to specific investors, after combining with holders of all types or series of warrants issued by the company, in the total number of no more than fifty investors at any time;

(2) an offer for sale in an aggregate value of not exceeding twenty million baht during any twelve-month period. The aggregate value of warrants shall be calculated from the offering price combining with the exercise price of warrants;

(3) an offer for sale made to institutional investors;

The number of investors referred to in (1) and the aggregate offering value referred to in (2) shall exclude the offering value made to investors referred to in (3), regardless of whether such offer is made simultaneously or at a different time.

**Clause 21** A public limited company established under Thai law shall be deemed to have obtained an approval from the Office to make an offer for sale of newly issued warrants and underlying shares to specific investors, provided that it has registered with the Office the transfer restriction of warrants to be offered, bearing a statement that the company shall not accept any transfer registration if it would result in the non-compliance with the criteria of an offer for sale to specific investors, except for the case of inheritance. Such transfer restriction shall be deemed registered with the Office on the date the Office is informed of the intention to register such transfer restriction.

The company obtaining an approval under the first paragraph shall comply with post-approval conditions under Part 2, and the provisions in the second and the third paragraph of Clause 19 shall also apply, *mutatis mutandis*, to the compliance with conditions prescribed in Part 2.

**Part 2**  
**Post-Approval Conditions**

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**Clause 22** A company obtaining an approval shall proceed as follows:

(1) ensure that warrants to be issued and offered for sale have the following characteristics:

(a) being name warrants which bears a statement of transfer restriction;

(b) having characteristics as prescribed in Clause 8(3)(b), Clause 9(1)(2) and (3), and Clause 11(1) and (2), in cases where terms and conditions of warrants contain a clause relating to the causes and conditions for the adjustment of rights, such causes and conditions shall also comply with Clause 11(4)(b) *mutatis mutandis*;

(2) provide sufficient measures for protection of shareholders' rights in compliance with Clause 12, *mutatis mutandis*;

(3) complete an offer for sale of newly issued warrants and underlying shares within one year from the date on which the company obtains a shareholders' resolution approving the issuance of warrants and underlying shares and the exercise of warrants shall be completed within the expiry date of warrants;

(4) not make any advertisement of an offer for sale of newly issued warrants and underlying shares. In cases where offering documents are provided, such documents shall be distributed to designated persons with specified characteristics or within the amount specified in Clause 20 (1), (2) or (3) only;

The offering documents under the first paragraph shall contain a statement indicating the transfer restriction of warrants with the same details as registered with the Office and shall also contain a statement referred to in (7);

(5) the amendment of terms and conditions of warrants shall comply with Clause 14 and Clause 17;

(6) the maturity date of warrants shall not be extended and the exercise price or the exercise ratio shall not be changed, except for the case as prescribed in Clause 11(4)(b);

(7) within two years from the registration of the change in the paid-up capital, in which there shall be no shares or underlying shares pending for sale and deemed to have obtained an approval from the Office, the company shall not sign to certify the accuracy of information in the registration statement and draft prospectus which its shareholders file with the Office for an offer for sale of such shares to the public, or have such shares listed on the Stock Exchange, unless an application is filed and an approval is granted to the company for an offer for sale of newly issued shares in

accordance with the notification of the Capital Market Supervisory Board governing application for and approval of offer for sale of newly issued shares or the approved company is a listed company.

**Clause 23** In cases where any person makes a request for a transfer registration to the company, the company shall examine the validity of such transfer. If it is found that such transfer would contravene the transfer restriction registered with the Office, the company shall not accept such transfer registration, except for the case of inheritance.

If the company appoints a warrant registrar, it shall ensure that the warrant registrar complies with conditions prescribed in the first paragraph.

## **Chapter 4**

### **Submission of Documents and Reports on Sale Results**

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**Clause 24** A company obtaining an approval under Chapter 2 and Chapter 3 shall submit to the Office documentary evidence and reports on sale results in accordance with guidelines provided in the Office's electronic system.

## **Chapter 5**

### **Transitional Provisions**

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**Clause 25** In cases where the Office has already received an application for an offer for sale of newly issued warrants and underlying shares prior to the effective date of this Notification, such application and approval shall be in accordance with the Notification of the Securities and Exchange Commission No. KorChor. 13/2547 Re: Application for and Approval of Offer for Sale of Newly Issued Share Warrants and Newly Issued Underlying Shares dated 9 February 2004 and relevant Notifications, unless the company notifies the Office in writing of its intention to comply with this Notification within thirty days from the effective date of this Notification.

**Clause 26** A public limited company which has obtained a shareholders' resolution approving an offer for sale of newly issued warrants and underlying shares which falls within any of the following criteria prior to the effective date of this Notification, but has not yet submitted the application for an offer for sale of newly issued warrants and underlying shares as approved by the shareholders' resolution, or has already submitted the application but notified its intention to comply with this Notification according to Clause 25, shall complete its offer for sale of newly issued warrants and

underlying shares within 30 June 2009 or within one year from the date of obtaining the shareholders' resolution, whichever ends last:

(1) a listed company or a public limited company which is obliged to the duty under Section 56, regardless of whether such duty is resulted from an offer for sale made by the public limited company or by its shareholder, wishing to make an offer for sale of newly issued warrants and underlying shares to existing shareholders according to their shareholding proportion, in which the exercise of warrants may be done by a person who is not a shareholder of the company;

(2) a public limited company wishing to make an offer for sale of newly issued warrants and underlying shares to specific investors.

**Clause 27** A company obtaining an approval in accordance with the Notification of the Securities and Exchange Commission No. KorChor. 13/2547 Re: Application for and Approval of Offer for Sale of Newly Issued Share Warrants and Newly Issued Underlying Shares dated 9 February 2004 shall be subject to the said Notifications and relevant notifications.

Notified this 15<sup>th</sup> day of December 2008.

-Signature-  
(Vijit Supinit)  
Chairman

The Securities and Exchange Commission

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**Remark:** The rationale for issuing this Notification is to prescribe rules on approval of an offer for sale of newly issued share warrants and newly issued underlying shares, and to relax rules on an offer for sale of share warrants and underlying shares to specific investors or existing shareholders according to their shareholding proportion by a public limited company which is obliged to the duty under Section 56, under which the company shall be deemed to have obtained an approval from the Office to make an offer for sale of warrants and underlying shares, provided that the company has made sufficient information disclosure and obtained an approval from its shareholders for an offer for sale of such securities.