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**Notification of the Capital Market Supervisory Board**

**No. TorChor. 9/2552**

**Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities**

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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 Sections 35, Section 40(11), Section 41(3) and (4), Section 42(10) and Section 43(3) 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 31 March 2009.

**Clause 2** In this Notification:

(1) The terms of “structured note,” “short-term corporate bond,” “bill,” “short-term bill,” “securities finance institution,” “institutional investor,” “high net worth investor,” “listed company,” “subsidiary company,” “executive,” and “controlling person” shall have the same meaning as determined in the Notification of the Securities and Exchange Commission concerning determination of definitions in Notifications related to issuance and offer for sale of all types of debt securities;

(2) “Debt securities” means:

(a) Bonds excluding structured notes and newly issued bonds for securitization; or

(b) Bills;

(3) “Company” means a limited company or a public limited company;

(4) “Convertible bonds” means corporate bonds which may be converted into newly issued shares of the issuer of such convertible bonds;

(5) “Reserved shares” means newly issued shares reserved for the exercising of rights of convertible bonds;

(6) “Terms and conditions” means provisions on rights and duties of the bond issuer and bond holders;

(7) “Thai Bond Market Association” means the Thai Bond Market Association licensed by and registered with the Office;

(8) “Registered debt securities” means debt securities registered with the Thai Bond Market Association;

(9) “Subordinated bonds” means unsecured bonds which specify rights of bond holders subordinate to ordinary creditors;

(10) “Exercising of conversion rights” means conversion of bonds into shares, whether by the exercising of conversion rights or by forced conversion;

(11) “Offer for sale of convertible bonds at discount” means an offer for sale of convertible bonds whose conversion price falls under the characteristics of an offer for sale of newly issued shares at discount;

(12) “Offer for sale of warrants at discount” means an offer for sale of share warrants whose offer price plus exercise price falls under the characteristics of an offer for sale of newly issued shares at discount;

(13) “Offer for sale of newly issued shares at discount” means an offer for sale of newly issued shares at the offer price below ninety percent of the market price, where the market price and the offer price are in accordance with the Notification of the Office of the Securities and Exchange Commission concerning calculation of offer price of securities and determination of market price for consideration of offer for sale of newly issued shares at discount;

(14) “Financial institution” means:

(a) Commercial bank, finance company or credit foncier company under the law on financial institution business;

(b) Financial institution established under specific law which is a financial institution under the law governing lending interest of financial institutions.

**Clause 3** This Notification shall apply to application for and approval of an offer for sale of a company’s newly issued debt securities, including an offer for sale of convertible bonds to existing shareholders according to their shareholding proportion in which the person exercising conversion rights may not be the company’s shareholder. However, this Notification shall not apply to an offer for sale of bonds which is subject to any other specific Notification, as well as an offer for sale of bonds subject to the following Notifications:

(1) The Notification of the Capital Market Supervisory Board concerning rules, conditions and procedures for application for and approval of offer for sale of newly issued corporate bonds to investors in foreign countries;

(2) The Notification of the Capital Market Supervisory Board concerning offer for sale of foreign corporate bonds to commercial banks in Thailand;

(3) The Notification of the Capital Market Supervisory Board concerning offer for sale of foreign government bonds or corporate bonds in Thailand;

(4) The Notification of the Capital Market Supervisory Board concerning application for and approval of offer for sale of newly issued structured notes;

(5) The Notification of the Capital Market Supervisory Board concerning application for and approval of offer for sale of newly issued corporate bonds for securitization.

**Clause 4** Any person wishing to make an offer for sale of newly issued debt securities shall comply with the following rules:

(1) In case of public offering of debt securities, the provisions in Part 1 and Chapter 1 of Part 2 shall be complied and in case of public offering of newly issued convertible bonds and reserved shares, the provisions in Chapter 1 and Chapter 2 of Part 3 shall also be complied;

(2) In case of private placement of debt securities, the provisions in Part 1 and Chapter 2 of Part 2 shall be complied and in case of private placement of newly issued convertible bonds and reserved shares, the provision in Chapter 1 and Chapter 3 of Part 3 shall also be complied;

(3) In case of an offer for sale of newly issued convertible bonds to the company's existing shareholders according to their shareholding proportion (right offering), but the person exercising rights to purchase reserved shares may not be a shareholder of the listed company or the public limited company which is obliged to the duties under Section 56, whether such duties are resulted from an offer for sale made by the public limited company itself or by a shareholder of the public limited company, the provisions in Part 4 shall be complied.

## **Part 1**

### **General Provisions**

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**Clause 5** Any company with the following status shall be granted approval for an offer for sale of newly issued debt securities under this Notification

upon complying with the rules, conditions and procedures prescribed in this Notification:

(1) A company established under Thai law; or

(2) A foreign bank whose branch is granted approval to undertake banking business as a full-scale branch in Thailand, where such foreign bank has liabilities to its creditors for debt repayment in full amount out of its assets.

Any company wishing to make an offer for sale of convertible bonds shall also have the status as a public limited company.

**Clause 6** Documents or evidence required for filing with the Office as prescribed in this Notification, whether prior to or after being granted approval, shall comply with the rules, conditions and procedures as specified by the Office.

## **Part 2**

### **Offer for Sale of Newly Issued Debt Securities**

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#### **Chapter 1**

#### **Public Offering of Debt Securities**

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#### **Division 1**

#### **Application for Approval**

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**Clause 7** Any company wishing to make an offer for sale of newly issued debt securities shall file an application with the Office in accordance with Clause 6 and pay application fees as per the rate prescribed in the Notification of the Securities and Exchange Commission concerning determination of fees related to application for approval of offer for sale of newly issued securities and application for approval of securitization project.

In cases where the applicant is a foreign bank, the application may be filed by its branch office.

**Clause 8** In cases where the Office needs to make a visit of business premises or any other places of the applicant or its subsidiary located outside Bangkok or periphery, the applicant shall be responsible for accommodation and transportation expenses occurred from such visit in accordance with the rules prescribed by the Office.

**Clause 9** In considering an application, the Office shall have the power to notify the applicant, in writing, to provide an explanation in person or submit additional documents and evidence within the time period prescribed by the Office. In cases where the applicant does not provide an explanation or submit additional documents and evidence within the time period prescribed by the Office, it shall be deemed that the applicant no longer wishes to apply for approval of an offer for sale of newly issued debt securities.

**Clause 10** In considering whether or not an application complies with the rules, conditions and procedures prescribed in this Notification, the Office shall have the power as follows:

(1) In cases where the applicant or the offer for sale of debt securities has the characteristics or meet the rules or conditions for approval under this Notification, but there is a ground to consider that the purpose or the substance of such offer for sale of debt securities is to avoid complying with any provision of the Securities and Exchange Act or this Notification, the Office may not grant approval for such offer for sale of debt securities, in which case the Office shall clearly notify the applicant of the reasons supporting its consideration;

(2) In any of the following cases, the Office may waive certain rules under this Notification in considering the application or may not apply certain conditions under this Notification with the approved offer for sale of debt securities, by primarily taking into account the suitability and sufficiency of the information supporting investment decisions and measures for investor protection. In this regard, the Office may also prescribe conditions requiring the applicant to take or omit from any actions.

(a) Costs outweigh benefits obtained from compliance with the rules or conditions to be waived and there is a clear ground to consider that such rules or conditions are immaterial to the consideration of approval in such case;

(b) The applicant is subject to limitations under other laws which restrict it from compliance with the rules or conditions to be waived;

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

## **Division 2**

### **Characteristics of Applicant**

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**Clause 11** The applicant to be granted approval for an offer for sale of newly issued debt securities shall have the following characteristics:

(1) The auditor's report of the applicant's financial statements and consolidated financial statements for the latest accounting year and financial statements for the last quarter prior to the application filing shall not express:

(a) Disclaimed opinion on preparation of financial statements of the applicant and consolidated financial statements or adverse opinion;

(b) Qualified opinion due to any material accounting particular which does not comply with the accounting standards applied to a public limited company;

In cases where the applicant is a foreign bank under (2) of the first paragraph of Clause 5, the auditor's report shall not express qualified opinion due to any material accounting particular which does not comply with the accounting standards prescribed by virtue of the law on accounting, International Financial Reporting Standards (IFRS), Financial Accounting Standards (FAS), United States Generally Accepted Accounting Principle (US GAAP), or any other accounting standards accepted by the Office.

(c) Qualified opinion due to limitation of auditing scope as a result of any action taken or omitted by the applicant, its director or executive;

(2) The applicant shall not be in the process of submitting its financial statements or reports on financial status and operating results to the Office or the Stock Exchange of Thailand under Section 56, or Section 199 in conjunction with Section 56, as the case may be, or shall not be in the process of rectifying its financial statements or reports required to be prepared and submitted under Section 56, Section 57, or Section 199 in conjunction with Section 56 or Section 57 as ordered by the Office or the Stock Exchange of Thailand, or shall not have an ongoing obligation to comply with the order of the Office or the Stock Exchange of Thailand under Section 58, or Section 199 in conjunction with Section 58, as the case may be, unless exemption is granted by the Office;

(3) Its directors and executives shall be listed in the database of directors and executives of issuing companies under the Notification related to provisions on directors and executives of issuing companies;

In cases where the applicant is a foreign bank under (2) of the first paragraph of Clause 5, directors or executives of its Thai branch shall meet the characteristics under the first paragraph.

(4) Its controlling person shall not have any prohibited characteristics under the Notification related to provisions on directors and executives of issuing companies *mutatis mutandis*;

(5) The applicant shall not have made an offer for sale of securities in violation or non-compliance with the after-approval conditions as prescribed in related Notifications applied to such particular case.

### **Division 3** **Approval Criteria**

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**Clause 12** The Office shall notify its consideration result of the applicant's characteristics under Clause 11 within seven business days after the day on which it has received correct and complete documents and evidence.

**Clause 13** In cases where the applicant does not meet the characteristics under Clause 11(4) or (5), in notifying the consideration result, the Office shall have power to prescribe the timeframe or conditions for consideration of subsequent application, by taking into account the significance of the prohibited characteristic or the violation or non-compliance with the conditions for approval of an offer for sale of debt securities on a case by case basis. In cases where the timeframe is prescribed, it shall not exceed fifteen years after the day on which the Office has notified the applicant of its consideration.

Upon the expiration of the timeframe prescribed under the first paragraph or the applicant's compliance with the conditions prescribed by the Office, the Office shall disregard the underlying fact on which the order under the first paragraph is made in considering subsequent application.

In cases where the Office is of opinion that the ground causing the applicant's non-compliance with the characteristics under Clause 11(4) or (5) is not material or has been rectified or preventive measures thereof has been adopted, the Office may disregard such non-compliance in considering the application.

**Clause 14** Within two years as from the day on which the Office has notified its consideration result that the applicant meets the characteristics under Clause 11, the applicant shall be granted approval to make an offer for sale of debt securities in all manners in unlimited value and number of offer (shelf approval) upon taking the following actions prior to each offer for sale of debt securities:

(1) Prior to an offer for sale of convertible bonds, upon the applicant's filing of the documents and evidence under Clause 6 which indicate the characteristics of convertible bonds in accordance with Division 4 of this Chapter and of reserved shares in accordance with Division 1 and Division 2 of Chapter 2 of Part 3, the applicant shall be deemed granted approval for such particular offer for sale of convertible bonds and reserved shares on the day on which it has been notified by the Office of the correctness and completeness of the documents and evidence filed and it

shall be deemed granted approval for appointment of the bond holder representative from the Office on the same day. In this regard, the Office shall notify its consideration result of the characteristics and the documents and evidence within thirty days after the day on which the applicant has filed such documents and evidence;

(2) Prior to an offer for sale of debt securities other than the case under (1), upon the applicant's filing of the documents and evidence under Clause 6 which indicate the characteristics of bonds to be offered for sale and compliance with the rules under Division 4 of this Chapter, the applicant shall be deemed granted approval for such particular offer for sale of debt securities on the date of filing correct and complete documents and evidence. Except for an offer for sale of short-term bonds or short-term bills, if the applicant meets the characteristics and complies with the rules under Division 4 of this Chapter, it shall be deemed granted approval for an offer for sale of such short-term bonds or short-term bills and the approved person shall report the characteristics of such bonds or bills to the Office in accordance with Clause 6. In case of an offer for sale of bonds, it shall be deemed granted approval for appointment of the bond holder representative from the Office on the day on which it is deemed granted approval for an offer for sale of such bonds.

The provisions in this Clause shall not apply to an offer for sale of short-term bonds or short-term bills of which the applicant has shown its intention to limit the offer value under Clause 15.

**Clause 15** In cases where the applicant has shown its intention, on the date of filing the application, to make an offer for sale of short-term corporate bonds or short-term bills in limited value which, when considered together with the value of short-term bonds and short-term bills earlier approved for an offer for sale in the same manner, does not exceed the time period and value specified by the Office, if the applicant meets the characteristics and complies with the rules under Division 4 of this Chapter, it shall be deemed granted approval from the Office to make an offer for sale of such short-term bonds or short-term bills. In case of an offer for sale of bonds, it shall be deemed granted approval for appointment of the bond holder representative from the Office on the same day. In this regard, the approved person shall report the characteristics of such bonds or bills to the Office in accordance with Clause 6.

The applicant shall complete its offer for sale of short-term bonds or short-term bills under the first paragraph within six months after the day on which the Office has notified its approval result that the applicant meets the characteristics under Clause 11.

**Clause 16** During the time period under Clause 14 or Clause 15, if it later appears that the applicant does not meet the characteristics under Clause 11, the applicant shall not take actions under Clause 14(1) or (2) or the second paragraph of Clause 15 and shall notified the Office of such case within seven days as form the day



on which it has known or should have known of such case. In cases where the applicant has rectified such case within the time period under Clause 14 or Clause 15, it shall then continue to take actions under Clause 14(1) or (2) or the second paragraph of Clause 15.

In cases where the applicant intentionally disregards or ignores informing to the Office of the unmet characteristics under Clause 11, it shall no longer be able to take actions under Clause 14(1) or (2) or the second paragraph of Clause 15 although it has made rectification within the time period under Clause 14 or Clause 15.

#### **Division 4**

#### **Characteristics of Bonds and Bills**

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**Clause 17** Public offering of bonds shall also have the following characteristics:

(1) Having a specific name for the purpose of reference of bonds under each offer for sale, where such name shall clearly signify the year of maturity and special characteristics of bonds (if any);

(2) Having a fixed coupon rate or variable rate according to the interest rate of financial institutions or other interest rate;

(3) Having the total redemption value equal to the par value of bonds, whether such corporate bonds have single or multiple redemption;

(3) Having the bond holder representative, except for short-term bonds.

**Clause 18** In case of subordinated bonds, rights of such bond holders shall be subordinate to ordinary creditors only in relation to the acceptance of debt repayment under such bonds upon the occurrence of the following events:

(1) The bond issuer being under receivership or bankrupt according to the court's order;

(2) Liquidation for the company's dissolution; or

(3) Any other events as approved by the Office.

**Clause 19** In case of perpetual bonds, rights of such bond holders shall be clearly indicated in any of the following manners:

(1) The bond holder does not have rights to call for the issuer's redemption of such bonds before the company's dissolution;

(2) The bond holder has rights to call for the issuer's redemption of such bonds before the company's dissolution in accordance with the conditions and time period specified.

**Clause 20** In case of secured bonds, whether the collateral of such bonds are provided at the time of making an offer for sale of such bonds or provided later, the collateral of such bonds shall have the following characteristics:

(1) Being assets or pledge taken into legal force, by taking into consideration the condition of each category of collateral, the ability to surpass the bond maturity and to be taken care of by the bond holder representative;

(2) In cases where the collateral is real estate or long-term lease agreement, the bond issuer shall arrange for the valuation of such collateral by a property valuer listed in the Office's approved list. The valuation or calculation of the collateral value shall take into account any rights and liabilities incurred, whether by legal provisions or by agreement over such collateral, and shall be made no earlier than one year prior to the issuing date of such bonds. Except where the price or value of collateral has changed significantly during such time period, the bond issuer shall make a re-valuation of such collateral.

**Clause 21** Public offering of corporate bonds shall have any of the following credit rating arrangement provided by the credit rating agency approved by the Office:

(1) Credit rating of corporate bond offered for sale each time (issue rating);

(2) Credit rating of the bond guarantor (guarantor rating), only in cases where the guarantor is obliged to liabilities jointly with the debtor without revocability before the bond maturity; or

(3) Credit rating of the applicant (issuer rating), only in case of an offer for sale of non-subordinated bonds with any of the following characteristics:

(a) Short-term corporate bonds; or

(b) Convertible bonds with repayment term of not exceeding two hundred and seventy days after the issuing date.

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

(1) In cases where the credit rating agency approved by the Office has notified the Office in writing of its inability to provide credit rating arrangement for

such bonds with reasonable ground which is not caused by the bond issuer, the Office may grant an exemption for such credit rating arrangement to be provided by other credit rating agency prescribed by the Office;

(2) In cases where an exemption has been granted by the Office based on necessary and reasonable ground or in cases where it can be considered that credit rating arrangement is not needed.

**Clause 22** Public offering of bills shall be short-term bills with credit rating arrangement which complies with the following rules:

- (1) Credit rating of bills offered for sale each time (issue rating);
- (2) Credit rating of the provider of aval of principle and interest of bills in full amount without any condition; or
- (3) Credit rating of the applicant (issuer rating).

The provisions related to granting of exemption for credit rating arrangement as prescribed in the second paragraph of Clause 21 shall also apply to the case under the first paragraph *mutatis mutandis*.

#### **Division 5**

#### **After-Approval Conditions for Public Offering of Debt Securities**

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**Clause 23** The approved person shall provide continuous arrangement of credit rating of bonds or bills in accordance with Clause 21 or Clause 22, as the case may be, until the claim for repayment of such bonds or bills is terminated. Except where it is necessary and appropriate, the Office may grant an exemption for arrangement of credit rating of bonds or bills and may also prescribe the timeframe or conditions thereof, by taking into consideration the necessity of credit rating information for investors.

**Clause 24** The approved person shall file an application with the Thai Bond Market Association for registration of the issued and offered debt securities within thirty days after the issuing date.

**Clause 25** Prior to an offer for sale of bonds, the approved person shall submit a letter to the Office certifying that it has prepared the terms and conditions of bonds which are clear and free from any provisions unfairly taking advantage of the counterparty, and signed by the authorized person of the bond issuer and affixed with the bond issuer's seal (if any). In this regard, the particulars and material information of

the terms and conditions of bonds approved under this Chapter shall be in accordance with the guideline on terms and conditions as specified by the Office.

**Clause 26** In cases where the offered bonds provide the bond holder representative, the approved person shall prepare an agreement appointing the bond holder representative in accordance with the terms and conditions containing at least the following particulars and material information:

- (1) Name and address of the counterparty;
- (2) Effective date of the agreement;
- (3) Power, duties and liabilities of the counterparty, with the provision indicating that the approved person and the bond holder representative shall fully have power, duties and liabilities as stipulated in the terms and conditions;
- (4) Pre-determined rate and method for payment of compensation or remuneration for duty performance of the bond holder representative, including rate and method for repayment of money paid in advance by the bond holder representative during the course of its duty as stipulated in the provisions of the Securities and Exchange Act B.E. 2535 (1992);
- (5) Termination of the agreement.

**Clause 27** In case of secured bonds with real estate or movable property required for legal registration as collateral, the approved person shall make registration of the bond holder representative's acceptance of such property as collateral.

**Clause 28** In changing the bond holder representative after the issuance of bonds, the approved person shall submit the documents to the Office in accordance with Clause 6.

When the approved person has submitted the documents under the first paragraph in full, the approved person shall be deemed granted approval from the Office to change the bond holder representative and the approved person shall submit a copy of the agreement appointing the bond holder representative to the Office within fifteen days after the appointment date.

**Clause 29** An amendment to the rights, duties, liabilities or collateral of bonds after the issuance of bonds shall be made only if such amendment is not inconsistent with nor contrary to the provisions in this Chapter and such amendment is made rightfully according to the terms and conditions, where the approved person shall notify such amendment and submit a copy of related documents to the Office and the Thai Bond Market Association after the effective date of such amendment.

In cases where the amendment under the first paragraph is an amendment to the terms and conditions which require the resolution of the bond holders' meeting, the notice calling the bond holders' meeting shall clearly indicate the reason of such amendment and the effect which occurs or may occur to the bond holders for their decision making.

**Clause 30** The person approved to make public offering of newly issued bills shall provide a statement saying "these bills are securities and have been approved for public offering" on the face of the bills.

**Clause 31** The person approved to make public offering of newly issued bills shall report debt repayment under the bills to the Office in accordance with Clause 6.

## **Chapter 2**

### **Private Placement of Debt Securities**

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#### **Division 1**

#### **Characteristics of Private Placement**

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**Clause 32** An offer for sale of bonds in any of the following manners shall be deemed private placement:

(1) An offer made to institutional investors or high net worth investors, excluding an offer made to institutional investors or high net worth investors with registration of transfer restriction among not exceeding ten investors within any four-month period which shall fall under (2);

(2) An offer made specifically to not exceeding ten investors within any four-month period;

In cases where the securities depository center, custodian, securities broker, securities dealer or any person holds bonds on behalf of other persons, the counting of the number of investors under the first paragraph shall be based on the real owner of such bonds.

(3) An offer made to the person being the company's creditor prior to the offer for sale of bonds for the purpose of debt restructuring;

(4) An offer granted an exemption from the Office, where the approved person shall demonstrate that:

(a) There is reasonable and appropriate cause;

- (b) Such offer for sale shall not affect investors at large; and
- (c) There are sufficient measures for investor protection.

**Clause 33** In case of requesting an exemption for an offer for sale of newly issued bonds under Clause 32(4), the person requesting an exemption shall demonstrate the reasonable and appropriate cause of such case, the non-existence of effects on investors at large and the availability of sufficient measures for investor protection, and the Office may grant an exemption for application of the rules or conditions prescribed in this Chapter, whether totally or partially, to such offer for sale of bonds as deemed necessary, by taking into account the suitability and sufficiency of measures for investor protection.

**Clause 34** Bills issued in any of the following manners shall be deemed issuance of bills for private placement:

- (1) Bills issued by the securities finance institution or any other person as specified by the Office with the purpose to borrow money from institutional investors or high net worth investors;
- (2) Short-term bills offered to institutional investors or high net worth investors;
- (3) Bills which do not fall under (1) or (2) in the amount of not exceeding ten bills at any time when counting all types of bills issued by the company.

For the purpose of the provisions in this Clause, the term “institutional investor” under the first paragraph shall not include the persons prescribed in Clause 5(3) of the Notification of the Securities and Exchange Commission No. KorChor. 4/2552 Re: Exemption from Filing of Registration Statement for Offer for Sale of Debt Securities dated 13 March 2009.

## **Division 2**

### **Cases Deemed Granted Approval**

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**Clause 35** The company under Clause 5 may make private placement of newly issued bonds under Clause 32 and deemed granted approval from the Office to make such offer upon registration of transfer restriction of bonds with the Office in accordance with the second paragraph and filing of documents in accordance with the third paragraph. The approved company shall comply with the conditions prescribed in Division 3 and Division 4 of this Chapter and shall report the characteristics of bonds to be offered to the Office in accordance with Clause 6.

The registration of transfer restriction with the Office under the first paragraph shall contain a statement indicating that the bond issuer shall not accept bond transfer registration in any level if such transfer will make such offer for sale of bonds unqualified as private placement under Clause 32(1), (2), (3) or (4), as the case may be, except for transfer by inheritance which is deemed accepted for registration with the Office on the day on which the Office receives the intention of registration of transfer restriction with such statement.

In case of an offer for sale of secured bonds or bonds with the bond holder representative provided, the company shall propose the draft terms and conditions and the draft agreement appointing the bond holder representative in concurrent with the registration of transfer restriction.

**Clause 36** The company under Clause 5 may make private placement of newly issue bills under Clause 34 and deemed granted approval from the Office to make such offer. The approved company shall comply with the conditions prescribed in Division 3 and Division 5 of this Chapter and shall report the characteristics of such bills to the Office in accordance with Clause 6.

**Division 3**  
**After-Approval Conditions for**  
**Private Placement of Debt Securities**

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**Clause 37** In case of an offer for sale of all types of newly issued debt securities to institutional investors established under Thai law or high net worth investors under Clause 32(1), the approved person shall comply with the conditions under Clause 38, Clause 39 and Clause 40.

**Clause 38** Prior to each offer for sale of newly issued debt securities, the approved person shall provide any of the following credit rating arrangement by the credit rating agency approved by the Office:

(1) Credit rating of debt securities offered for sale each time (issue rating);

(2) Credit rating of the debt securities guarantor (guarantor rating), only in cases where the guarantor is obliged to liabilities jointly with the debtor without revocability before the debt securities maturity, including credit rating of the provider of aval of principle and interest of bills in full amount without condition; or

(3) Credit rating of the approved person (issuer rating), excluding the case of an offer for sale of subordinated bonds.

The provisions related to granting of exemption for credit rating arrangement as prescribed in the second paragraph of Clause 21 shall also apply to the case under the first paragraph.

**Clause 39** After the issuance of debt securities, the approved person shall provide continuous arrangement of credit rating of debt securities in accordance with the rules under Clause 38 until the claim for repayment of such debt securities is terminated. Except where it is necessary and appropriate, the Office may grant an exemption for arrangement of credit rating of debt securities and may also prescribe the timeframe or conditions thereof, by taking into consideration the necessity of credit rating information for investors.

**Clause 40** The approved person shall file an application with the Thai Bond Market Association for registration of the issued and offered debt securities within thirty days after the issuing date.

**Clause 41** In case of an offer for sale of short-term bonds or bills to institutional investors or high net worth investors, the approved person may make unlimited offer for sale of short-term bonds or bills subject to the registration statement filed for an offer for sale of short-term bonds or bills to institutional investors or high net worth investors as prescribed in the Notification of the Capital Market Supervisory Board concerning filing of registration statement for offer for sale of debt securities, but any offer shall be made within one year after the effective date of such registration statement.

#### **Division 4**

#### **Additional After-Approval Conditions for Private Placement of Bonds**

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**Clause 42** Prior to an offer for sale of bonds, the approved person shall obtain an explicit resolution from the company's board of directors approving the issuance of bonds. Except where the applicant is a public limited company, the resolution for the issuance of bonds shall be obtained in compliance with the law on public limited company.

The provisions in the first paragraph shall not apply to the case where the company is required to issue bonds according to the rehabilitation plan under the bankruptcy law which has been approved by the court, or any other case granted an exemption by the Office.

**Clause 43** In case of secured bonds or bonds provided with the bond holder representative, the approved person shall provide the bond holder representative whose name is in the list of persons qualified to be the bond holder representative in



accordance with the Notification concerning qualifications of bond holder representative and authority of bond holder representative.

**Clause 44** The approved person shall take the following actions:

(1) Having the bonds to be issued and offered for sale meet the following characteristics:

(a) Being registered bonds and having a statement in the certificate of bonds offered for sale each time that the bond issuer shall not accept transfer registration of bonds in any level if such transfer is inconsistent with the transfer restriction as indicated and registered with the Office;

(b) Having the characteristics in accordance with Clause 17(1), (2) and (3);

(c) Complying with the rules prescribed in Clause 18 and Clause 19 in case of an offer for sale of subordinated bonds or perpetual bonds, as the case may be;

(d) In case of an offer for sale of bonds to institutional investors established under Thai law or high net worth investors under Clause 32(1), having the terms and conditions with at least the particulars as prescribed in Section 42(1) to (9) and complying with the first paragraph of Clause 29;

(2) In case of private placement of bonds under Clause 32(2), (3) or (4), the approved person shall not advertize an offer for sale of newly issued bonds and reserved shares. If the distribution of offer documents is made, the approved person shall distribute such documents only to persons with the characteristics or in the limited number as prescribed in Clause 32(2), (3) or (4) as granted approval;

(3) Offer documents (if any) shall contain a statement indicating the transfer restriction under (1)(a) and in case of an offer for sale of subordinated bonds, such subordination shall be clearly indicated.

**Clause 45** In cases where any person shows his intention to the approved person to register transfer of bonds, the approved person shall make verification of such transfer. If such transfer is inconsistent with the transfer restriction registered with the Office, the approved person shall not register such transfer, except for transfer by inheritance.

In cases where the approved person has provided the bond registrar, the approved person shall have the bond registrar comply with the rules prescribed in the first paragraph.

**Division 5**  
**Additional After-Approval Conditions for**  
**Private Placement of Bills**

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**Clause 46** Prior to an offer for sale of bills, the approved person shall obtain an explicit resolution from the company's board of directors approving the issuance of bills, except for the case where the company is required to issue bills according to the rehabilitation plan under the bankruptcy law which has been approved by the court or any other case granted an exemption by the Office.

**Clause 47** The approved person shall provide a statement that "These bills are securities and approved for private placement" on the face of the bills. In case of the issuance of bills under Clause 34(1) or (2), the bill issuer shall provide additional statements saying "Being offered for sale only to institutional investors or high net worth investors" and "Non-negotiable" or "With the purpose of transfer among institutional investors or high net worth investors" or any other statement with similar meaning.

**Clause 48** In case of an offer for sale of bills under Clause 34(3), the approved person shall not advertize such offer. If the distribution of offer documents is made, the approved person shall distribute such documents only to persons with the characteristics or in the limited number as prescribed in Clause 34(3) as granted approval.

**Part 3**  
**Additional Rules and Conditions for Offer for Sale of**  
**Convertible Bonds and Reserved Shares**

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**Chapter 1**  
**General Provisions**

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**Clause 49** Apart from the rules and conditions under Chapter 1 of Part 2 in case of public offering or Chapter 2 of Part 2 in case of private placement, approval and offer for sale of convertible bonds shall also comply with the rules and conditions in this Part.

In cases where convertible bonds fall under the characteristics of structured notes, application for and approval of an offer for sale of such convertible bonds shall also be subject to the Notification of the Capital Market Supervisory Board concerning application for and approval of offer for sale of newly issued structured notes.

**Clause 50** Approval for an offer for sale of convertible bonds under Part 2 shall include approval for an offer for sale of reserved shares.

The person approved to make an offer for sale of convertible bonds shall proceed for the exercising of conversion rights within the maturity of such convertible bonds. Upon the end of the exercise period, approval for an offer for sale of such newly issued shares in the portion of unexercised rights shall be terminated.

## **Chapter 2**

### **Public Offering of Convertible Bonds and Reserved Shares**

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#### **Division 1**

#### **Application Criteria**

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**Clause 51** In case of an offer for sale of convertible bonds and reserved shares, the applicant shall take actions and has characteristics in accordance with the following rules:

(1) Providing a notice calling its shareholders' meeting for approval of the issuance of convertible bonds and reserved shares which shall contain the information as prescribed in Clause 53;

(2) Obtaining an explicit resolution from a shareholders' meeting of the company approving the issuance of reserved shares to adequately accommodate the exercising of conversion rights. In this regard, the resolution approving the company to issue convertible bonds and reserved shares shall have been obtained for no more than one year until the date of application filing under Clause 14(1);

(3) Making an offer for sale of convertible bonds with the following characteristics:

(a) Having reserved shares to accommodate the exercising of conversion rights in the number of not exceeding the percentage as prescribed in Clause 52, except for an offer for sale of convertible bonds granted an exemption by the Office due to necessary and appropriate causes and for the interest of the applicant and shareholders as a whole because the applicant is in need of financial assistance or for the purpose of debt restructuring of the applicant or any other cases;

(b) Having a predetermined conversion price and ratio with no alteration, except for the case prescribed in Clause 55;

(c) If there is a provision of forced conversion or granting of rights to the applicant to call for the bond holders' exercising of conversion rights ahead of schedule, such provision shall:

1. Be certified by the applicant that such provision is fair and clear and the cause of calling the exercising of conversion rights ahead of schedule is based on events or actions which are not under any person's control;

2. Require the applicant to force conversion or call for the exercising of conversion rights upon the occurrence of the prescribed events;

3. Be certified by the applicant that there are adequate measures to make the convertible bond holders in subsequent levels known of such provision;

(d) Having the last time period for expression of intention to exercise conversion rights not less than fifteen days prior to the date of exercising conversion rights, except for forced conversion;

(4) Having the characteristics in accordance with the Notification of the Capital Market Supervisory Board concerning application for and approval of offer for sale of newly issued shares in relation to offer for sale of newly issued shares to the public.

The provisions in (1) and (2) of the first paragraph shall not apply to the following cases:

(1) An offer for sale of convertible bonds and reserved shares of the company which is required to increase its capital according to the rehabilitation plan under the bankruptcy law which has been approved by the court. In this regard, the company shall adequately provide newly issued reserved shares to accommodate the exercising of conversion rights;

(2) Any other case as deemed necessary and appropriate with an exemption from the Office.

**Clause 52** The number of reserved shares for convertible bonds offered for sale this time plus the number of reserved shares the applicant has provided for convertible bonds or share warrants at other times shall not exceed fifty percent of the total number of shares sold by the applicant.

The calculation of the number of shares under the first paragraph shall comply with the following rules:

(1) The total number of shares sold by the applicant shall include shares other than reserved shares which will be offered for sale together with convertible bonds offered for sale this time (if any);

(2) The number of reserved shares provided by the applicant for convertible bonds or certificates representing the rights to purchase shares shall not include the number of reserved shares for an offer for sale under the Notification concerning offer for sale of newly issued securities to directors or employees.

**Clause 53** The notice calling a meeting under Clause 51(1) shall contain at least the following information:

(1) Preliminary information of convertible bonds e.g. expected conversion price or ratio, exercise period, last day of exercise period, and cause of issuing new shares to accommodate the change in the exercising of conversion rights;

(2) Dilution effect on shareholders of the applicant in case of full exercising of conversion rights of such convertible bonds, indicating at least price dilution and control dilution;

(3) Methods for allotment of convertible bonds;

(4) Any other information as specified by the Office by taking into account the protection of shareholders of the applicant.

## **Division 2**

### **Offer for Sale of Convertible Bonds at Discount**

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**Clause 54** In cases where the applicant is a listed company wishing to make a private placement of convertible bonds at discount, the applicant shall comply with the following rules:

(1) In calling a shareholders' meeting to obtain the resolution for the company's offer for sale of newly issued convertible bonds at discount, the company shall submit a notice calling a meeting to shareholders in advance at least fourteen days prior to the meeting date;

(2) The notice calling a meeting under (1) shall contain material information for shareholders' decision making. In addition to the information under Clause 53, there shall be at least the following details:

(a) The objective of an offer for sale of convertible bonds at discount;

(b) The details of newly issued convertible bonds and reserved shares in relation to the offer amount, the offer price, and the exercise price indicated as fixed price or maximum discount;

(c) The market price used for making comparison with the offer price and the exercise price of convertible bonds, including the calculation method;

(d) In case of fixed offer price, expected group of persons to be offered shall be indicated;

(e) The effects on shareholders as a result of an offer for sale of convertible bonds at discount as applied for approval this time, indicating at least price dilution and control dilution;

(f) The rights of shareholders to make an objection to an offer for sale of convertible bonds at discount under (4);

(g) The opinions of the company's board of directors stating the necessity of an offer for sale of convertible bonds at discount with an explanation on the value or the benefit which the company will obtain compared to the difference between the offer price, the exercise price and the market price which the company will lose, as well as the suitability and reason for the use of such market price and determination of such offer price;

(h) Any other information as specified by the Office;

(3) A proxy form shall be submitted together with the notice calling a meeting, indicating the details of at least one independent director whom may be appointed as proxy of shareholders who are unable to attend the meeting and cast their votes by themselves. In cases where such independent director may be allotted convertible bonds applied for approval, the special interest of such independent director shall also be indicated;

(4) The resolution of the shareholders' meeting for an offer for sale of convertible bonds at discount shall be obtained with not less than three-fourths of the total votes cast by the shareholders who attend the meeting and there shall be no more than ten percent of the total votes cast by the shareholders who attend the meeting against such offer for sale of convertible bonds or reserved shares.

The provision in the second paragraph of Clause 51 shall also apply to the case in the first paragraph.

**Division 3**  
**After Approval Conditions for**  
**Offer for Sale of Convertible Bonds and Reserved Shares**

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**Clause 55** Apart from the particulars and material information as prescribed in Clause 25, the person approved to issue convertible bonds shall provide in the terms and conditions the provision of the change in the exercising of conversion rights including the calculation method for such change so as not to lessen the benefits to be obtained by convertible bond holders upon the exercising of conversion rights when the following events occur:

(1) The change of the par value of shares of the person approved to issue convertible bonds as a result of share split or reverse split;

(2) The approved person's offer for sale of newly issued shares at discount;

(3) The approved person's offer for sale of convertible bonds or certificates representing the rights to purchase shares at discount;

(4) Payment of dividend, whether partially or wholly, in the form of newly issued shares by the person approved to issue convertible bonds to shareholders;

(5) Payment of cash dividend by the person approved to issue convertible bonds in the amount exceeding that indicated in the terms and conditions;

(6) Any other events in the same manner as (1) to (5) which lessen the benefits to be obtained by convertible bond holders upon the exercising of conversion rights;

The provisions in the first paragraph shall not apply to any specific event falling under the characteristics under (1) to (6) which is granted an exemption by the Office, provided that there shall be adequate measures to make investors to be affected by the non-change of the exercising of conversion rights know before making investment that the person approved to issue convertible bonds will not change the exercising of conversion rights because of such event.

Upon the occurrence of the events under the first paragraph, the person approved to issue convertible bonds shall notify the Office of the change in the exercising of conversion rights in writing within fifteen days after the date of changing the exercising of conversion rights.

**Clause 56** In case of any change in the exercising of conversion rights, whether due to the events prescribed in this Notification or not, if the issuance of

additional new shares is required to accommodate the change in the exercising of conversion rights, the approved persons shall issue new shares to accommodate the change in the exercising of conversion rights only upon filing the resolution of a shareholders' meeting approving the issuance of shares to adequately accommodate the change in the exercising of conversion rights with the Office.

**Clause 57** The person approved to issue convertible bonds shall provide in the terms and conditions the provision related to the damages to be received by convertible bond holders in cases where the approved person is unable to provide reserved shares for convertible bonds.

The damages under the first paragraph shall be determined at no less than the spread between the market price of the approved person's shares in the same type as newly issued reserved shares for convertible bonds on the date of exercising conversion rights and the price calculated from the conversion ratio.

**Clause 58** An amendment to add the conversion feature after the issuance of bonds shall be made only upon obtaining approval from the Office. In this regard, the approval criteria in Division 1 and Division 2 of this Chapter shall be applied *mutatis mutandis*.

### **Division 3**

#### **Private Placement of Convertible Bonds and Reserved Shares**

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**Clause 59** The person approved to make private placement of newly issued convertible bonds and reserved shares under Clause 32 shall comply with the following conditions:

(1) Providing a notice calling a shareholders' meeting for approval of the issuance of convertible bonds and reserved shares which shall indicate the information as prescribed in Clause 53;

(2) Obtaining an explicit resolution from a shareholders' meeting of the company approving the issuance of reserved shares to adequately accommodate the exercising of conversion rights;

(3) Completing an offer for sale of newly issued convertible bonds and reserved shares within one year after the date of obtaining the resolution from the shareholders' meeting approving the issuance of convertible bonds and reserved shares to accommodate the exercising of conversion rights;

(4) The conversion price and ratio as well as the number of reserved shares shall be in accordance with the provisions in Clause 51(3)(a) and (b) and in case



of an offer for sale of convertible bonds at discount, the rules in Clause 54 shall be complied;

(5) Having complied with the conditions in Clause 56 when there is a change in the exercising of conversion rights, due to any event, where the issuance of new shares is required to accommodate the change in the exercising of conversion rights;

(6) In case of the issuance of convertible bonds of which high net worth investors may exercise conversion rights, such high net worth investors shall meet the number or the characteristics as prescribed in the provisions under the Notification of the Capital Market Supervisory Board concerning application for and approval of offer for sale of newly issued shares which approves the company's offer for sale of newly issued shares, where it is deemed granted approval from the Office.

The provisions in the first paragraph in relation to the notice calling the shareholders' meeting and the resolution of the shareholders' meeting shall not apply to the case where the company is required to issue bonds according to the rehabilitation plan under the bankruptcy law which has been approved by the court or any other case granted an exemption by the Office.

**Clause 60** An amendment to add the conversion feature after the issuance of bonds shall be made only after the approved person has arranged a shareholders' meeting and obtained the resolution from the shareholders' meeting in accordance with the conditions prescribed in Clause 59(1) and (2) and high net worth investors who may exercise conversion rights shall meet the number or the characteristics as prescribed in Clause 59(6), in which case the conversion of bonds shall comply with the conditions prescribed in Clause 59(4) and (5).

The addition of the conversion feature under the first paragraph shall be completed within one year after the date of obtaining the resolution from the shareholders' meeting approving the issuance of reserved shares to accommodate the exercising of conversion rights.

#### **Part 4**

#### **Offer for Sale of Newly Issued Convertible Bonds to Existing Shareholders and Reserved Shares**

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**Clause 61** In case of an offer for sale of convertible bonds not falling under the characteristics of structured notes to the company's existing shareholders according to their shareholding proportion, in which the person exercising conversion rights may not be the company's shareholder, the company under Clause 5 which is a listed company or a public limited company established under Thai law which is

obliged to the duties under Section 56, whether such duties are resulted from an offer for sale made by the public limited company itself or by the public limited company's shareholder, shall be able to make an offer for sale of newly issued convertible bonds and reserved shares, where it is deemed granted approval from the Office, and the approved company shall comply with the following conditions:

(1) Prior to an offer for sale of convertible bonds, the approved person shall provide a notice calling a shareholders' meeting in accordance with Clause 53 and shall obtain the resolution from the shareholders' meeting in accordance with Clause 42 and Clause 59(2);

(2) Completing an offer for sale of convertible bonds within the time period under Clause 59(3);

(3) Determining the name of convertible bonds, coupon rate and redemption value in accordance with Clause 17(1), (2) and (3);

(4) Having convertible bonds meet the characteristics as prescribed in Clause 51(3);

(5) Complying with the rules prescribed in Clause 18 and Clause 19 in case of an offer for sale of subordinated bonds or perpetual bonds, as the case may be;

(6) Offering for sale in accordance with the terms and conditions in compliance with Clause 25, Clause 29, Clause 55 and Clause 57;

(7) Providing the bond holder representative whose name is in the list of persons qualified to be the bond holder representative in accordance with the Notification concerning qualifications of bond holder representative and authority of bond holder representative, except for convertible bonds with repayment term of not exceeding two hundred and seventy days after the issuing date;

(8) Having complied with the conditions in Clause 56 when there is a change in the exercising of conversion rights, due to any events, where the issuance of new shares is required to accommodate the change in the exercising of conversion rights;

(9) Reporting the characteristics of convertible bonds to the Office in accordance with Clause 6.

The provisions in the first paragraph in relation to the notice calling the shareholders' meeting and the resolution of the shareholders' meeting shall not apply to the case where the company is required to issue bonds according to the rehabilitation plan under the bankruptcy law which has been approved by the court or any other case granted an exemption by the Office.

**Part 5**  
**Transitional Provisions**

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**Clause 62** For an application filed with the Office together with correct and complete documents and evidence in accordance with the Notification of the Securities and Exchange Commission No. KorYor. 31/2549 Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities dated 15 November 2006 prior to the effective date of this Notification, such application and approval shall remain subject to such Notification and related Notifications.

**Clause 63** Bonds or bills granted approval for an offer for sale under the Notification of the Securities and Exchange Commission No. KorYor. 31/2549 Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities dated 15 November 2006 prior to the effective date of this Notification shall remain subject to such Notification and related Notifications.

**Clause 64** Bonds or bills granted approval for an offer for sale under the Notification of the Securities and Exchange Commission No. KorChor. 32/2547 Re: Application for and Approval of Offer for Sale of Bills Which Are Securities and Newly Issued Short-term Bonds dated 15 June 2004 shall remain subject to such Notification and related Notifications.

**Clause 65** Bonds granted approval for an offer for sale under the Notification of the Securities and Exchange Commission No. KorChor. 32/2544 Re: Application for and Approval of Offer for Sale of Newly Issued Bonds dated 19 October 2001 shall remain subject to such Notification and related Notifications.

**Clause 66** Bonds granted approval for an offer for sale under the Notification of the Securities and Exchange Commission No. KorChor. 13/2537 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Bonds dated 10 August 1994 shall remain subject to such Notification and related Notifications.

**Clause 67** Convertible bonds granted approval for an offer for sale under the Notification of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Convertible Bonds dated 30 October 1992 shall remain subject to such Notification and related Notifications.

**Clause 68** The following Notification of the Office of the Securities and Exchange Commission shall remain in full force subject to this Notification until changed otherwise:

(1) The Notification of the Office of the Securities and Exchange Commission No. SorChor. 35/2545 Re: Provisions on Rights and Duties of Bond Issuer and Bond Holder dated 6 August 2002;

(2) The Notification of the Office of the Securities and Exchange Commission No. SorChor. 39/2547 Re: Determination of Characteristics of Investors for the Purpose of Notifications Related to Bills dated 19 October 2004;

(3) The Notification of the Office of the Securities and Exchange Commission No. SorYor. 37/2549 Re: Approval for Credit Rating Agency for Offer for Sale of Debt Securities dated 6 December 2006.

**Clause 69** The time period and value of an offer for sale of short-term bonds or short-term bills under Clause 15 shall remain in accordance with the Notification of the Office of the Securities and Exchange Commission No. SorYor. 20/2550 Re: Determination of Value and Time Period for Offer for Sale of Short-term Bonds or Short-term Bills dated 14 August 2007 to the extent that they are not inconsistent with nor contrary to Clause 15 until changed otherwise.

Notified this 13<sup>th</sup> day of March 2009.

-Signature-  
(Mr. Vijit Supinit)  
Chairman  
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 debt securities by a company established under Thai law or a branch of a foreign commercial bank and, so as to promote development and growth of Thai debt securities market, to relax rules on approval of an offer for sale of debt securities to limited group of investors which will help facilitate fund raising through debt securities issuance of the private sector, as well as to re-define an offer for sale to limited group of investors to include an offer for sale of debt securities to institutional investors or high net worth investors without limitation of offer value to be in accordance with international standards.