

(UNOFFICIAL TRANSLATION)

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**Notification of the Capital Market Supervisory Board  
No. TorChor. 15/2552**

**Re: Offer for Sale of Foreign Bonds to Commercial Banks in Thailand**  
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By virtue of Section 16/6 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, Section 40(11), Section 41(3) and (4), Section 56, Section 67, Section 69(11) and Section 70(9) 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) “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 debt securities;

(2) “foreign company” means a company established under foreign law;

(3) “commercial bank” means a commercial bank under the law on financial institutions business;

(4) “terms and conditions [of bonds]” means terms and conditions stating the rights and duties of a bond issuer and bond holders;

(5) “non-resident” means a non-resident according to the Measures for Preventing Thai Baht Speculation of the Bank of Thailand.

**Clause 3** This Notification shall apply to an offer for sale of bonds issued by a foreign company to commercial banks in Thailand.

Where it is necessary and appropriate, the Office, by taking into account the Bank of Thailand’s supervision of commercial banks’ transactions and investments in bonds issued by a foreign company, shall have power to issue rules governing a bond issuer’s

qualifications, bond features or any other requirements in addition to rules prescribed herein.

**Clause 4** A foreign company wishing to make an offer for sale of newly issued bonds under this Notification shall file with the Office an application in form, together with supporting documents, as specified by the Office, and shall pay the application fee in the amount specified by the notification of the Securities and Exchange Commission governing determination of application fees for an offer for sale of newly issued securities and approval of securitization project.

In case of an offer for sale of secured bonds, a foreign company shall file an application for approval of a person who will be a bond holder representative together with the application form, as specified by the Office.

**Clause 5** In case of an offer for sale of bonds in which debt repayment may be made, wholly or partially, in the form of shares, rules on examination of underlying shares and prohibition of being an insider of the underlying shares issuer under the notification of the Capital Market Supervisory Board governing application for and approval of offer for sale of newly issued **structured note** shall be applied *mutatis mutandis*.

In applying for an offer for sale of bonds in which debt repayment may be made, wholly or partially, in the form of shares, an applicant shall pay fees for examination of shares to be used as underlying on the date of submission of application for examination of the use of underlying shares under the notification of the Securities and Exchange Commission governing determination of application fees for an offer for sale of newly issued securities and approval of securitization project.

**Clause 6** In considering an application, the Office shall have power to give a written notice calling an applicant to give an explanation or submit additional supporting documents within a period specified by the Office. In cases where the applicant fails to give an explanation or submit additional supporting documents within the specified period, it shall be deemed that the applicant no longer intends to apply for an approval for offer for sale of newly issued bonds.

**Clause 7** In considering whether or not an application complies with rules, conditions, and procedures specified herein, the Office shall have power to proceed as follows:

(1) in cases where an applicant or an offer for sale of bonds appears to be qualified and comply with rules or conditions of this Notification, but there are certain facts indicating that the purpose or the substance of the offer is intended to avoid any provision of the Securities and Exchange Act or this Notification, the Office may disapprove such application. In this regard, the Office shall clearly notify the applicant of the reason for so doing;

(2) in any of the following cases, the Office may waive certain rules of this Notification in considering an application, or waive certain conditions of this Notification in granting approval for an offer for sale of bonds, primarily taking into account the appropriateness and sufficiency of information for investment decision and measures for investor protection. In this regard, the Office may also require the applicant to act or omit from any act.

(a) if, under the light of circumstances in that case, the benefit from compliance with the rules or conditions to be waived does not reasonably outweigh the compliance cost, and the rules or conditions to be waived are immaterial to the consideration of an application;

(b) if there is a certain limitation under any other laws causing the applicant to be unable to comply with the rules or conditions to be waived;

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

**Clause 8** The Office shall notify consideration results of the application within seven business days as from the date on which the Office receives the correct and complete application and supporting documents.

## **Chapter 1**

### **Application and Approval**

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**Clause 9** A foreign company shall be granted an approval for an offer for sale of newly issued bonds under this Notification upon meeting the following characteristics:

(1) unless a waiver is granted by the Office, the applicant has not failed to submit its financial statements or reports on its financial status and operational results to the Office in compliance with Section 56 or has not been required to correct its financial statements or any other reports required to prepare and submit in compliance with Section 56 or Section 57 as notified by the Office, or has not been obliged to comply with the order of the Office under Section 58;

(2) the applicant has registered a transfer restriction of bonds to be offered, which indicating that the issuing company shall deny any transfer registration if the transferee is a person other than a commercial bank or non-resident;

(3) the applicant has never made an offer for sale of bonds in violation of, or non-compliance with, any rules or conditions specified herein, significantly.

**Clause 10** In an offer for sale of bonds approved under this Notification, a foreign company shall ensure that the bonds to be offered have the following characteristics:

- (1) having a specific title with reference to bonds offered for sale which clearly indicates year of maturity and special features of bonds (if any);
- (2) being issued under terms and conditions with at least details specified in Section 42(1) to (9);
- (3) having credit rating arrangement according to rules under Clause 11;
- (4) have a transfer restriction [of bonds] amongst commercial banks or non-resident only;

The provision (2) and (3) of the first paragraph shall not apply to an offer specifically made to no more than ten commercial banks during any four-month period.

**Clause 11** Unless a waiver is granted by the Office, bonds offered for sale shall have any of the following credit rating arrangement by a credit rating agency approved by the Office:

- (1) credit rating of bonds to be offered;
- (2) credit rating of a foreign company who is the issuer of bonds;
- (3) credit rating of a guarantor of bonds only in cases where such guarantor is obliged to the debtor's liabilities which is irrevocable before maturity;

The arrangement of credit rating of bonds shall be maintained until the claims thereon are satisfied, except where it is necessary and appropriate, the Office, by taking into account investors' need of credit rating information, may grant a waiver of credit rating arrangement where the timeframe or conditions thereof may be set out.

**Clause 12** Bonds to be offered under this Notification shall be bearer bonds.

In cases where a person requests for a transfer registration to a foreign company, the foreign 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 foreign company shall not accept such transfer registration.

In cases where a foreign company provides a bond registrar, it shall ensure that the bond registrar complies with the second paragraph.

**Clause 13** The foreign company shall complete its offer for sale of bonds within six months as from the date on which the Office notifies its approval.

**Clause 14** In cases where a foreign company issues a bond certificate, it shall deliver the bond certificate to the bond holders in compliance with rules, conditions, and procedures as prescribed in Section 88.

**Clause 15** If it appears to the Office that, after an approval for an offer for sale of newly issued bonds is granted, there is any change which causes the foreign company approved under this Notification to have any characteristics which are different from those prescribed in the approval criteria and the foreign company is unable to rectify such characteristics within the period specified by the Office, the Office shall have power to

notify the foreign company ~~in writing~~ to suspend its offer for sale of newly issued bonds and it shall be deemed that an approval for an offer for sale of newly issued bonds in the portion which has not yet been offered or remains unsubscribed is terminated.

The suspension of an offer for sale of bonds under the first paragraph shall not affect any legal enforcement amongst any parties relating to the bonds issued prior to or after the date on which the suspension takes effect.

## **Chapter 2**

### **Information Disclosure Before and After Offer for Sale of Bonds**

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**Clause 16** Before each offer of newly issued bonds in Thailand, the offeror shall file with the Office three sets of registration statements and draft prospectus, unless granted an exemption from filing of registration statements and draft prospectus under the Notification of the Securities and Exchange Commission governing exemption from filing of registration statements for debt securities offering.

**Clause 17** The registration statements and draft prospectus filed with the Office shall be in Form 69-S attached to the notification of the Capital Market Supervisory Board governing filing of registration statements for debt securities offering and shall be prepared in Thai or English language.

**Clause 18** In addition to filing in the form of paper documents, the offeror shall file with the SEC Office the registration statements and draft prospectus, together with Thai translation (if any), in the form of electronic data via the data transfer system provided by the Office. In this regard, the information filed with the Office in the form of both paper documents and electronic data shall be identical.

**Clause 19** Subject to Section 68 and Section 75, after the offeror has filed with the Office the registration statements and draft prospectus and paid filing fees according to rules and procedures prescribed by the Office, it shall be deemed that the registration statements and draft prospectus filed under Clause 16 becomes effective on the next business day following the date of submission of such registration statements and draft prospectus.

**Clause 20** From the effective date of the registration statements and draft prospectus filed with the Officer under this Chapter, the issuing company shall prepare and submit reports on its financial status and operational results in accordance with rules, condition, and procedures as prescribed by the Capital Market Supervisory Board by virtue of Section 56.

**Clause 21** The following notifications of the Office of the Securities and Exchange Commission shall remain in force, *mutatis mutandis*, subject to this Notification, unless otherwise notified:

(1) The Notification of the Office of the Securities and Exchange Commission No. SorChor. 14/2549 Re: Application Form for Approval of Offer for Sale of Foreign Bonds to Commercial Banks in Thailand and Supporting Documents dated 5 April 2006;

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

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

-Signature-  
(Vijit Supinit)  
Chairman

The Securities and Exchange Commission

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Remark: The rationale for issuing this Notification is to prescribe rules governing approval of offer for sale of bonds by foreign companies to commercial banks in Thailand, and information disclosure rules and exemption, in conformity with rules governing offer for sale of newly issued bonds by companies establish under Thai law to institutional investors.