

UNOFFICIAL TRANSLATION

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**Notification of the Capital Market Supervisory Board  
No. TorThor. 70/2552  
Re: Rules, Conditions and Procedures for Securities Underwriting**

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By virtue of Section 16/6 and Section 113 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 114, Section 115 and Section 116 of the Securities and Exchange Act B.E.2535 (1992), which contain 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** In this Notification:

(1) the term “company,” “parent company,” “subsidiary company,” “major shareholder,” and “controlling person” shall *mutatis mutandis* 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) “related person” means a person who has a relationship with a director, an executive, a major shareholder or a controlling person of a securities underwriter in the following manners:

(a) a spouse or a minor child of such person;

(b) an individual or a company holding majority shares of such person, which means:

1. an individual or a company holding shares of such person in the number of exceeding fifty percent of the total paid-up shares with voting rights of such person;

2. an individual or a company holding shares of the company under 1. in the number of exceeding fifty percent of the total paid-up shares with voting rights of such company;

3. a company holding shares in subsequent levels, beginning with the company under 2., provided that the shareholding in each level exceeds fifty percent of the total paid-up shares with voting rights of the company being held, or an individual holding shares of the company in any subsequent level in the number of exceeding fifty percent of the total paid-up shares with voting rights of the company being held;

The holding of shares by an individual under the first paragraph shall include shares held by a spouse and a minor child of such individual;

(c) a company in which such person holds majority shares, which means:

1. a company in which such person or the person under (a) holds shares in the aggregate number of exceeding fifty percent of the total paid-up shares with voting rights of such company;

2. a company in which the company under 1. holds shares in the number of exceeding fifty percent of the total paid-up shares with voting rights of such company;

3. a company being held in subsequent levels, beginning with the company under 2., provided that the shareholding in each level exceeds fifty percent of the total paid-up shares with voting rights of the company being held;

(3)<sup>123</sup> “securities” means shares, bonds, bills, sukuk, share warrant, bond warrants, derivative warrants, certificates representing interest from Thai securities underlying and REIT units;

(4) “securities underwriter” means a securities company licensed to undertake securities business in the category of securities underwriting;

(5) “executive” means a manager or an employee holding the position of department manager or higher who is responsible for the line of work which takes part in making decisions on securities allotment or the line of work which has an opportunity to obtain inside information relating to an offer for sale of securities or an issuer of underlying shares of underwritten securities, including a person holding a position whose authority is similar to such person;

(6) “offering closing date” means the day on which an offer for sale of securities is closed for a securities underwriter in general cases;

(7) “date of providing over-allotment shares in full” means the day on which a provider of over-allotment shares is able to provide over-allotment shares in a full amount required to be delivered or returned for a securities underwriter who is obliged to provide over-allotment shares in cases where the amount of shares allocated to subscribers exceeds the underwriting amount;

(8) “provider of over-allotment shares” means a securities underwriter who is obliged to provide over-allotment shares for delivering to allocated persons or returning to lenders according to the obligation of over allotment of shares;

(9) “over allotment of shares” means allotment of shares to subscribers in the amount exceeding the underwriting amount. Such over allotment of shares is made concurrently with the offering of underwritten shares;

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<sup>1</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.3/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.2) dated 10 January 2011.*

<sup>2</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.22/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.6) dated 28 March 2011.*

<sup>3</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.50/2555 Re: Rules, Conditions and Procedures for Securities Underwriting (No.7) dated 21 November 2012.*

(10) “related securities company” means:

(a) a securities company holding shares of a securities underwriter in the amount of twenty percent or more of the total paid-up shares with voting rights of such securities underwriter;

(b) a securities company being held by a securities underwriter in the amount of twenty percent or more of the total paid-up shares with voting rights of such securities company;

(c) a securities company having a shareholder holding shares of both such securities company and a securities underwriter in the amount of twenty percent or more of the total paid-up shares with voting rights of the securities company and the securities underwriter;

(11) “prospectus” means a prospectus which is identical to a draft prospectus filed with the Office;

(12) “market maker” means a person appointed by a mutual fund management company to perform duty in managing the trading price of investment units of an ETF fund in an organized market to proximately reflect the value of such investment units which is calculated from the net asset value of the fund, by trading investment units of the ETF fund and securities which are components of the underlying index of the ETF fund;

(13) “ETF fund” means an ETF fund pursuant to the Notification of the Office of the Securities and Exchange Commission governing establishment of mutual funds and execution of agreements for management of private funds;

(14) “mutual fund management company” means a securities company licensed to undertake securities business in the category of mutual fund management;

(15) “Stock Exchange” means the Stock Exchange of Thailand.

**Clause 2** This Notification shall apply to securities underwriting made for a securities offeror who is obliged to file a registration statement and draft prospectus with the Office.

**Clause 3** A securities underwriter shall not make underwriting of the following securities, except being granted an exemption from the Office with an approval of the Capital Market Supervisory Board:

(1) shares issued or offered for sale by a parent company or a subsidiary company of the securities underwriter;

(2) certificates representing interest from Thai securities underlying, which have shares as underlying, issued or offered for sale by a parent company or a subsidiary company of the securities underwriter;

(3) certificates representing interest from Thai securities underlying, which have shares as underlying and such underlying shares are issued by a parent company or a subsidiary company of the securities underwriter;

**Clause 3/1<sup>4</sup>** The underwriting of REIT unit by a securities underwriter in the following cases shall be prohibited, except where such underwriter is able to demonstrate to the SEC Office a mechanism or measure which render the securities underwriter to perform duties independently:

- (1) in case the securities underwriter, or parent company or subsidiary company of the underwriter is the sponsor of the REIT;
- (2) in case it is underwriting for the benefit of the parent company or the subsidiary company of the securities underwriter where the company wishes to distribute the held REIT units.

**Clause 4** A securities underwriter shall make securities underwriting in accordance with procedures indicated in a prospectus.

**Clause 5** A securities underwriter shall not subscribe for securities of which it makes underwriting.

**Clause 6** Subject to Clause 8, a securities underwriter shall not allocate securities to the following persons:

- (1) itself or a co-underwriter;
- (2) a director, an executive, a major shareholder, a controlling person, a parent company, and a subsidiary company of the person under (1), and their related persons;
- (3) a mutual fund of which the person under (1) or (2) holds investment units in the amount of fifty percent or more of the total outstanding investment units;
- (4) a mutual fund of which the person under (1) or (2) holds investment units in the amount of not exceeding fifty percent of the total outstanding investment units and in which the person under (1) makes interference with the subscription or allotment of securities of the securities company which manages such mutual fund so that such mutual fund obtains benefits in such a manner that does not comply with the fair allocation principle; and
- (5) a person to whom an offeror of newly issued securities is not allowed to allocate securities under the Notification of the Capital Market Supervisory Board governing subscription, underwriting and allotment of newly issued securities.

**Clause 7** The prohibition of securities subscription under Clause 5 or the prohibition of securities allotment under Clause 6 shall not apply to the following cases:

- (1) underwriting of securities offered for sale to the following persons and the securities underwriter under Clause 5 or the person under Clause 6 is eligible for subscription of such securities:

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<sup>4</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor. ... Re: Rules, Conditions and Procedures for Securities Underwriting (No. ) dated....*

(a)<sup>5</sup> an offer for sale of the whole amount of securities made to the following persons, which is already disclosed in a registration statement and draft prospectus:

1. an institutional investor under the Notification of the Securities and Exchange Commission governing determination of definitions in notifications relating to issuance and offer for sale of securities;

2. a director and an employee of a securities issuer or its subsidiary company as approved by the board of directors or shareholders' meeting resolution of the securities issuer;

3. a creditor of a securities issuer according to the rehabilitation plan approved by the court under the bankruptcy law or the debt restructuring agreement;

4. a shareholder of a securities issuer in proportion to existing shareholding (rights offering);

5. a shareholder of an issuer of bonds which are issued to renew existing bonds;

6. any other person whom a securities offeror is able to demonstrate to the Office that such person is able to access and study information necessary for making decisions to invest in the offered securities by himself and the offer made to such person is not required to comply with the fair allocation principle;

(b) an offer for sale of securities in which a portion of securities to be offered to the person under (a) 2., 3., 4., or 5. is clearly separated from those to be offered to the public, which is already disclosed in a registration statement and draft prospectus;

(2) allotment of securities left from subscription of all subscribers;

(3)<sup>6</sup> underwriting of securities which is generally offer for sale to the public in the category of debt securities, convertible bond, exchangeable bond or sukuk whereas a securities underwriter as prescribed in Clause 5 or a person as prescribed in Clause 6 would be able to subscribe such securities by complying with the following conditions;

(a)<sup>7</sup> in the book building process, the bidding price proposed by the underwriter shall not be calculated with the other prices of other bidders for discovery of offering price;

(b)<sup>8</sup> the amount of securities which the securities underwriter

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<sup>5</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.22/2555 Re: Rules, Conditions and Procedures for Securities Underwriting (No.6) dated 28 March 2012.*

<sup>6</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.24/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.4) dated 25 August 2011.*

<sup>7</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.24/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.4) dated 25 August 2011.*

<sup>8</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.24/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.4) dated 25 August 2011.*

allocate to itself and a person as prescribed in Clause 6 altogether shall not more than the total amount of securities allocated to bidders divided by the number of bidders;

(c)<sup>9</sup> the registration statement and prospectus shall be disclosed that the securities underwriter and a person as prescribed in Clause 6 would be able to subscribe and allocated the securities in accordance with conditions as prescribed in sub clause (a) and (b).

**Clause 8** In case of underwriting of shares or non-voting depository receipts which have shares as underlying, a securities underwriter shall not make an allotment to a subsidiary company of the issuer of such shares or underlying shares.

**Clause 9** A securities underwriter shall distribute to investors securities subscription forms concurrently with prospectus or information relating to securities offering in the similar form which an offeror of newly issued securities is allowed to distribute under the Notification of the Capital Market Supervisory Board governing subscription, underwriting and allotment of newly issued securities *mutatis mutandis*, except where investors voluntarily declare their intention not to obtain such information.

<sup>10</sup>In case of offering for sale of securities in the category of requiring the issuer to distribute the fact sheet, the securities underwriter shall circulate such document with the same material information of the registration statement in the form of printed document or compact disc together with the subscription forms under the first paragraph.

<sup>11</sup>In case of offering for sale of shares, the securities underwriter shall distribute the same substance information of the executive summary as provided in section 1 of the registration statement together with the subscription forms.

**Clause 10** A securities underwriter shall not disseminate information relating to securities offering which is not a registration statement or draft prospectus during the period from fifteen days prior to the first offering date to the offering closing date or the date of providing over-allotment shares in full, as the case may be, except for dissemination of information relating to securities offering which is prepared by an offeror under the Notification of the Office of the Securities and Exchange Commission governing dissemination of information relating to securities offering prior to the effective date of a registration statement and draft prospectus.

**Clause 11** A securities underwriter shall not disseminate an article or research paper prepared by itself, a co-underwriter or a related securities company which relates to underwritten securities or other securities relating to underwritten securities in

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<sup>9</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.24/2554*  
Re: *Rules, Conditions and Procedures for Securities Underwriting (No.4)* dated 25 August 2011.

<sup>10</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.40/2554*  
Re: *Rules, Conditions and Procedures for Securities Underwriting (No.5)* dated 29 December 2011.

<sup>11</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor55/2556*  
Re: *Rules, Conditions and Procedures for Securities Underwriting (No.8)* dated 26 December 2013.

such a manner that any change in such securities may directly impact the price of underwritten securities during the period from fifteen days prior to the first offering date to the offering closing date or the date of providing over-allotment shares in full, as the case may be.

The provision in the first paragraph shall not apply to an article or research paper which meets the following conditions and does not relate to shares being granted an approval from the Office for initial public offering for the purpose of listing such shares in the Stock Exchange or non-voting depository receipts which have such shares as underlying:

- (1) an article or research paper published in a document provided and disseminated to the public as normal business undertaking;
- (2) an article or research paper whose content is an update of or an addition to information previously disseminated;
- (3) an article or research paper whose content does not emphasize or focus specifically on underwritten securities or other related securities, compared to other general articles or research paper previously prepared and disseminated;
- (4) an article or research paper which contains a statement indicating the interest, whether directly or indirectly, of the person preparing such article or research paper in underwritten securities, provided that such statement shall be distinct, easy-to-read, and not smaller in size than the regular font used in such article or research paper, and shall be on the same page of the summary of such article or research paper or at a nearby position which can be seen clearly.

**Clause 12** During the period of thirty days from the offering closing date or the date of providing over-allotment shares in full, as the case may be, a securities underwriter shall disseminate an article or research paper prepared by itself, a co-underwriter, or a related securities company, which relates to underwritten securities or other securities relating to underwritten securities in such a manner that any change in such securities may directly impact the price of underwritten securities upon complying with the following conditions:

- (1) an article or research paper shall contain a statement indicating the interest, whether directly or indirectly, of the person preparing such article or research paper in underwritten securities, including the amount of securities which the securities underwriter is obliged to purchase according to the securities underwriting agreement;
- (2) the statement under (1) shall be distinct, easy-to-read, and not smaller in size than the regular font used in such article or research paper, and shall be on the same page of the summary of such article or research paper or at a nearby position which can be seen clearly.

**Clause 13** In making securities underwriting, a securities underwriter shall proceed as follows:

- (1) deposit subscription money into a securities subscription account of an offeror or segregate subscription money from an asset account of the securities underwriter within the next business day from the date on which the securities underwriter collects money from subscribers. Such subscription money shall not be used for any other business;
- (2) make an agreement with an offeror in the following matters:
  - (a) returning of subscription money to unallocated subscribers within fourteen days from the offering closing date. In cases where such money cannot

be returned within such period of time, there shall be an entitlement of unallocated subscribers' rights to receive interest at the rate of not less than seven point five percent per annum from the date after such period ends;

(b) prohibition of using subscription money in excess of the total amount expected to obtain from the offering for any other business before returning money to unallocated subscribers completely;

(3) report securities allotment results to the Office jointly with an offeror as per rules prescribed in the Notification of the Office of the Securities and Exchange Commission governing report on results of securities sales to the public;

(4) In case of initial public offering of shares for the purpose of listing such shares in the Stock Exchange, if any securities underwriter does not follow the fair allocation procedures, such securities underwriter shall also proceed as follows:

(a) prepare a name list of the top one hundred largest allocated persons, together with the reason for allocating securities to each person, categorized by underwriters, and submit it to the Office together with reports on securities sales results.

The name list of the largest allocated persons under the first paragraph shall not include persons who are allocated as a result of their position as director, employee, or patron of the issuer.

(b) prepare a summary report of securities allotment categorized by client groups, that are, those who have trading accounts and transactions with the securities underwriter prior to this offering and those who have not, showing the number of allocated persons, the amount and value of shares allocated to the persons in each group;

(c) keep documentary evidence or information supporting the reason for allocating shares to any persons in the value of one hundred million baht or more at a main office of the securities underwriter for the period of at least one year from the offering closing date in such a manner that can be promptly presented to the Office upon request.

The fair allocation under the first paragraph shall not include allocation of shares in a portion which is separated for institutional investors, directors or employees of the issuer, clients who have trading accounts and transactions with the securities underwriter prior to this offering, or patrons of the issuer (if any).

For the purpose of the first paragraph, the "fair allocation procedures" means the procedures in which a securities underwriter sets a subscription board lot and allocates shares to all subscribers equally once in a subscription board lot until the underwritten shares are completely allocated or any other procedures approved by the Office.

(5) not make an offer for sale of any securities together with other securities, unless specifically indicated in the prospectus;

(6) In case of underwriting of securities offered for sale by a director, an executive, a major shareholder, a controlling person, a parent company, or a subsidiary company of any securities underwriter, or their related persons, which does not fall into the prohibited underwriting under Clause 3, such securities underwriter shall also disclose a relationship between itself and such person to investors;

(7) notify a related securities company of the obliged duty under Clause 16;

(8) provide a name list of persons to whom the securities underwriter is not allowed to allocate securities under Clause 6 to a securities company licensed to



undertake securities business in the category of mutual fund management or private fund management which shows interest to subscribe for securities.

**Clause 14<sup>12</sup>** A securities underwriter shall not purchase or sell the following securities during the period from five days prior to the first offering date to the offering closing date or the date of providing over-allotment shares in full, as the case may be.

(1) shares of the issuer of such securities or non-voting depository receipts which have such shares as underlying, in case of underwriting of shares, convertible bonds or share warrants;

(2) underlying shares of derivative warrants or structured notes, or non-voting depository receipts which have such underlying shares as underlying, in case of underwriting of derivative warrants or structured notes;

(3) underlying shares of non-voting depository receipts or such non-voting depository receipts, in case of underwriting of non-voting depository receipts which have shares as underlying.

The provision in the first paragraph shall not apply to a purchase or sale in the following cases:

(1) a purchase from the offeror or a sale to an investor according to the securities underwriting agreement;

(2) a purchase or sale according to a client's order which is not guided or solicited by the securities underwriter (unsolicited purchase or sale);

(3) a purchase for its own proprietary portfolio resulted from an error in making trading orders for clients;

(4) a purchase for its own proprietary portfolio in compliance with the requirement of purchase of shares in the Stock Exchange for delivering to subscribers who is allocated over-allotment shares or returning to lenders under the Notification of the Capital Market Supervisory Board governing over-allotment shares;

(5) a purchase for its own proprietary portfolio in which case the securities underwriter perform duty as market maker for an ETF fund, provided that such securities underwriter has put in place a system for prevention of conflicts of interest under the Notification of the Office of the Securities and Exchange Commission governing providing of work systems for proprietary securities investment;

(6)<sup>13</sup> a purchase or sell for its own proprietary portfolio for risk management in case the securities underwriter issues an instrument in category of its underlying regarding underwritten securities only if such underwriter has provided a system to prevent conflict of interest under the *Notification of the Office of the Securities and Exchange Commission concerning Providing of Operational Systems for Proprietary Trading*.

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<sup>12</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor.11/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.3) dated 13 May 2011*.

<sup>13</sup> Repealed and replaced by the *Notification of Capital Market Supervisory Board No. TorThor. 11/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No.3) dated 13 May 2011*.

**Clause 15** In cases where underwritten securities are shares and the securities underwriting agreement indicates an obligation of over allotment of shares, a securities underwriter who is a provider of over-allotment shares shall monitor and prohibit its employees who take part in providing over-allotment shares from purchasing or selling shares under the first paragraph of Clause 14 *mutatis mutandis*.

**Clause 16** The provisions in Clause 11, Clause 12, and Clause 14 shall apply to a related securities company *mutatis mutandis*.

**Clause 17** All notifications of the Office of the Securities and Exchange Commission, orders and circular letters issued under or prescribing guidelines for compliance with the Notification of the Securities and Exchange Commission No. KorThor. 14/2546 Re: Rules, Conditions and Procedures for Securities Underwriting dated 11 July 2003 which are in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with nor contrary to the provisions of this Notification until notifications, orders and circular letters issued under or prescribing guidelines for compliance with this Notification come into force.

**Clause 18** Any reference made in any other notifications to the Notification of the Securities and Exchange Commission No. KorThor. 14/2546 Re: Rules, Conditions and Procedures for Securities Underwriting dated 11 July 2003 shall mean reference to this Notification.

**Clause 19** This Notification shall come into force as from 1 September 2009.

Notified this 3<sup>rd</sup> day of August 2009.

-Signature-  
(Vijit Supinij)  
Chairman

The Securities and Exchange Commission

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**Remark:** The rationale for issuing this Notification: As the Securities and Exchange Act (No. 4) B.E. 2551 (2008) stipulates that the issuance of rules, conditions and procedures for securities underwriting is under the authority of the Capital Market Supervisory Board, it is therefore deemed appropriate to issue this Notification as replacement for the Notification of the Securities and Exchange Commission No. KorThor. 14/2546 Re: Rules, Conditions and Procedures for Securities Underwriting dated 11 July 2003.