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**Notification of the Securities and Exchange Commission  
No. KorDor. 18/2553  
Re: Regulations for Becoming Trustee in Sukuk Transactions**

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By virtue of Section 8, Section 11, Section 12(3), Section 13, Section 37(4), Section 54, Section 55(3), Section 56, Section 58 and the fourth paragraph of Section 59 of the Trust for Transactions in Capital Market Act B.E. 2550 (2007), which contain certain provisions in relation to restriction of rights and liberties of persons, which Section 29, in conjunction with Section 32, Section 33, Section 41 and Section 43 of the Constitution of the Kingdom of Thailand, so permits by virtue of law, the Securities and Exchange Commission hereby issues the following regulations:

**Clause 1.** In this Notification:

(1) “sukuk” means any financial instrument which contains the following characteristics;

(a) being a trust certificate issued by an asset trustee;

(b) determining the structure of trust transaction for the purpose of using the money from an issuance of a financial instrument to seek benefits in the forms that comply with the Islamic principles;

(c) determining clearly in advance the conditions for reimbursement of the investment capital and rate or proportion of benefits that the trust property is entitled to receive from the originator for the benefit of the financial instrument holders and there shall be a condition for reimbursement of the investment capital and rate or proportion of benefits that the trust property shall pay to the financial instrument holders. The determination of rate and proportion of such payment of benefits shall comply with the Islamic principles;

(2) “originator or obligor” means any business that benefits from the money received from the sale of sukuk, which may be the same person as the asset trustee;

(3) “sukuk holder” means any holder of securities in the form of trust certificate who receives the benefits from trust property as a result of issuance of sukuk;

(4) “asset trustee” means any trustee who issues and offers for sale of sukuk under the notification regarding issuance of sukuk and is the trusteeship or has

the rights to the assets in the trust property under the law for the benefits of sukuk holders;

(5) “sukuk trustee” means any trustee who has the duty to protect the rights and benefits of sukuk holders;

(6) “settlor” means any person who transfers property or creates real right or any right appertaining to asset to constitute trust property to asset trustee;

(7) “applicant” means any person who wishes to file an application for approval to become an asset trustee under this Notification;

(8) “notification relating to issuance of sukuk” means the Notification of the Capital Market Supervisory Board Re: Provisions on Issuance and Offering for Sale of Sukuk and Disclosure of Information;

(9) “notification on general approval to undertake trust business” means the Notification of the Securities and Exchange Commission Re: Regulations for Filing an Application for Approval and Approval for Undertaking Trustee Business;

**Clause 2.** This Notification shall apply to the following matters:

(1) approval for becoming an asset trustee shall comply with the regulations prescribed by Chapter 1;

(2) settlor and declaration of trust in relation to issuance of sukuk shall comply with the regulation prescribed by Chapter 2;

(3) performance of duties of sukuk trustee shall comply with the regulations prescribed by Chapter 3;

(4) preparation for a register of sukuk holders and particulars in sukuk certificate shall comply with the regulations prescribed by Chapter 4.

## **Chapter 1**

### **Approval of Asset Trustee**

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**Clause 3.** Any person intending to offer for sale newly issued sukuk but has not been approved to become a trustee may file an application for approval for becoming an asset trustee under this Notification with the SEC through the SEC Office in accordance with the guidelines and procedures disseminated on the SEC Office’s website, and the filing of application for approval shall comply with the following regulations:

(1) In case of public offering of newly issued sukuk or an offer for sale to investors in a foreign country under the Notification relating to issuance of sukuk, the application for approval for becoming an asset trustee shall be filed together with that for approval of offering for sale of newly issued sukuk under such Notification;

(2) In case of private placement of newly issued sukuk in Thailand under the Notification relating to issuance of sukuk, the filing of application for approval for becoming an asset trustee shall be filed together with that for registration of transfer restriction of sukuk under such Notification.

**Clause 4.** Any person who files an application under Clause 3 and has the following characteristics shall be deemed to have been approved by the SEC to become an asset trustee:

(1) being a juristic person incorporated under the Thai law;

(2) being a person who has received an approval for offering for sale of newly issued sukuk under the Notification relating to issuance of sukuk;

(3) having the following characteristics in cases where the applicant is not the originator:

(a) not having an objective to undertake any businesses other than issuance and sale of sukuk and undertaking of transactions in relation to issuance of sukuk only;

(b) being an asset trustee for the purpose of raising fund of only one originator whose name shall be clearly indicated in the application;

(4) having no less than five thousand Baht in equity and;

(5) having an operating system ready to perform the duty of asset trustee in accordance with the Notification relating to issuance of sukuk and in accordance with the trust instrument to be made in connection with an issuance of sukuk. Such operating system may be provided by the applicant or the assigned sukuk trustee;

**Clause 5.** The approval to become an asset trustee shall be terminated when the following cases occur:

(1) the asset trustee does not have the qualifications prescribed under Clause 4 (2), (3), (4) or (5);

(2) the asset trustee does not issue sukuk during the last two years from the maturity date of the last issue of sukuk;

(3) the originator ceases to be a juristic person regardless of reasons or is no longer a branch of a foreign commercial bank approved to undertake commercial bank business under the law on businesses of financial institutions (in cases where the asset trustee is not the originator).

## **Chapter 2**

### **Settlor and Declaration of Trust by Trustee in Relation to Sukuk Issuance**

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**Clause 6.** For the purpose of an issuance of sukuk, the following persons shall be deemed as the settlor owing to issuance of sukuk;

- (1) originator;
- (2) asset trustee;

(3) trustee who has received an approval under the Notification concerning general approval to undertake trust business, whether by itself or jointly with an asset trustee to allow such trustee to perform duty as sukuk trustee;

**Clause 7.** In cases where the trustee under Clause 6(2) and (3) is a settlor under the second paragraph of Clause 11, such trustee shall file a duplicate of the written declaration to create trust to the SEC Office prior to offer for sale of newly issued sukuk.

## **Chapter 3**

### **Performance of Duties of Sukuk Trustee**

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**Clause 8.** Any person approved to undertake trust business in accordance with the Notification concerning general approval to undertake trust business can accept to become a sukuk trustee only when such trustee has no relationship with the asset trustee or the originator, as the case may be, while having any of the following characteristics, except in the cases under Clause 9:

(1) being a guarantor of debt payment of the asset trustee or the originator in relation to an issuance of sukuk who will perform duties as the sukuk trustee;

(2) being a shareholder of the asset trustee or the originator who has more than five percent of the total number of the voting shares sold of the asset trustee or the originator, providing that the shares of such sukuk trustee held by a partnership or the following companies shall be counted as those held by the sukuk trustee:

(a) ordinary partnership of which a director or management of the sukuk trustee is a partner;

(b) limited partnership of which a director or management of the sukuk trustee is an unlimited liability partner or a limited liability partner with more than ten percent of the total capital of the limited partnership;

(c) company whose shares are held by the sukuk trustee, director or management of the sukuk trustee or the partnership under (a) or (b) in the aggregate amount of more than thirty percent of the total number of the voting shares sold;

(d) company whose shares are held by the sukuk trustee, director or management of the sukuk trustee or the partnership under (a) or (b) or the company under (c) in the aggregate amount of more than thirty percent of the total number of voting shares sold;

(e) company whose directors and management are the same person as those of the sukuk trustee;

(3) having the asset trustee or the originator hold more than five percent of the total number of the voting shares sold, providing that shares of the sukuk trustee held by the partnership or the company under (2) (a) to (e) shall be, *mutatis mutandis*, counted as those held by the asset trustee or the originator;

(4) having the same shareholders who have five percent or more of the total number of the voting shares sold of both the sukuk trustee and the asset trustee or the originator, except when such shareholding is of governmental agencies, state owned enterprise established under the law on budgetary procedure, fund for rehabilitation and development of the financial institution system or any juristic person established under specific law;

(5) having the same director or management as that of the asset trustee or the originator except where there is only one person in common and such person is the director without the authority to manage the sukuk trustee and the asset trustee or the originator, and only in the case where the sukuk trustee and the asset trustee or the originator has no less than nine directors;

(6) having any relation to or any interest in the asset trustee or the originator, whether directly or indirectly, in a manner which may cause the sukuk trustee to lack independence in the operation;

For the purpose of the first paragraph, the term "management" shall mean a manager or the next four executives succeeding the manager, persons holding equivalent positions to the fourth executive, including a person holding the position of manager or equivalent in accounting or finance departments.

**Clause 9.** Sukuk trustee who has a relationship with the asset trustee or the originator in the manner that may cause conflicts of interest under Clause 8 shall receive a waiver from the SEC Office to become the sukuk trustee in case of private placement of newly issued sukuk in Thailand as specified under the Notification relating to issuance of sukuk.

The waiver under the first paragraph shall cease if, in the offering for sale of newly issued sukuk, the asset trustee did not disclose any relationship that may cause conflicts of interest to investors before purchasing such sukuk.

**Clause 10.** Sukuk trustee shall ensure that an amendment to a trust instrument complies with the specified terms and conditions set forth in the trust instrument and in accordance with the law on trust for transactions in the capital market.

In cases where the amendment to the trust instrument fails to comply with the trust instrument or the law, the sukuk trustee shall proceed in accordance with the power and duties prescribed in the trust instrument to protect the rights and benefits of sukuk holders.

**Clause 11.** In cases where a sukuk trustee and an asset trustee jointly create a trust in connection with an issuance of sukuk, if the sukuk trustee intends to be the beneficiary of the trust property so created by holding such sukuk, the sukuk trustee shall be allowed to hold sukuk not exceeding twenty five percent of the total number of sukuk sold.

**Clause 12.** In cases where a sukuk trustee also holds sukuk issued on the trust property where it performs the duty as the sukuk trustee under Clause 11, its exercising of voting right or undertaking of any actions as a sukuk holder shall take into consideration and protect the best interest of the sukuk holders and shall be based upon the principle of integrity and prudence, and shall not cause conflicts of interest or any impacts on the performance of duty as the sukuk trustee of such trust property.

**Clause 13.** In cases where any issuance of sukuk requires declaration of trust in order to perform duty as a sukuk trustee, such sukuk trustee shall be exempted from the requirement to prepare the financial statements for such trust property in accordance with the Notification of the Securities and Exchange Commission concerning work system, investor contact and undertaking of trust business.

#### **Chapter 4**

#### **Preparation of Register of Sukuk Holders and Particulars in Sukuk Certificates**

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**Clause 14.** Asset trustee is required to prepare the register of sukuk holders or assign any other person to perform such duty in accordance with the rules, conditions and procedures prescribed by the SEC Office.

**Clause 15.** In cases where there is an issuance of certificate representing right in sukuk to a holder, such sukuk certificate shall have minimum particulars as prescribed by the Notification of the SEC Office.

## **Chapter 5**

### **Effective Date of this Notification**

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**Clause 16.** This Notification shall come into force as from 16 December 2010.

Notified this 26<sup>th</sup> day of November 2010.

- Signature -  
(Vijit Supinit)  
Chairman

Securities and Exchange Commission

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**Remark:** The rationale for issuing this Notification is to allow use of trust as a mechanism for the development of financial instruments in compliance with the Islamic principles and allow a trustee to perform the duty to protect the rights and benefits of investors.