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**Notification the Securities and Exchange Commission
No. KorChor. 1/2555**

**Re: Exclusion of Credit Rating Agency Business from Securities Business in
the Category of Securities Investment Advisory**

By virtue of Section 4 and Section 14 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 4) B.E. 2551 (2008) which contain certain provisions in relation to the restriction of rights and liberties of person 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 hereby issues the following regulations:

Clause 1. This Notification shall come into force as from 1 March 2012 except Clause 13, Clause 14, Clause 15, Clause 16, Clause 17 and Clause 18 which shall come into force as from 1 May 2012.

Clause 2. The following Notifications shall be repealed:

(1) Notification of Securities and Exchange Commission No. KorDor. 15/2552 Re: Exclusion of Credit Rating Agency Business from Securities Business in the Category of Securities Investment Advisory dated 3 August 2009;

(2) Notification of Securities and Exchange Commission No. KorDor. 9/2553 Re: Exclusion of Credit Rating Agency Business from Securities Business in the Category of Securities Investment Advisory (No. 2) dated 3 June 2010;

(3) Notification of Securities and Exchange Commission No. KorDor. 6/2554 Re: Exclusion of Credit Rating Agency Business from Securities Business in the Category of Securities Investment Advisory (No. 3) dated 23 March 2011;

Clause 3. In this Notification:

“credit rating” means an assessment of status and capacity of government, Ministry, Department, Office or any other business in repaying indebtedness according to any instrument or making full repayment or fulfilling obligations under preferred shares and use symbol to indicate the result of an assessment;

“credit rating agency” means business operator that issues credit rating in the normal course of business;

“debt instrument” means bonds, debentures, bills including sukuk;

“structured finance product” means financial instrument with all of the following characteristics:

(1) being instrument issued by special purpose juristic person under securitization project or any other financial project with similar characteristics;

(2) credit risk depends on quality of assets which generate income stream used for repayment of indebtedness according to such instrument, with or without guarantor;

(3) having structured income stream in such a way that credit risk cannot be assessed solely on quality of assets;

“derivatives” means derivatives under the Derivatives Act B.E. 2546 (2003);

“parent company” means:

(1) a company holding shares in debt instrument issuer exceeds fifty percent of the total number of shares with voting rights of debt instrument issuer;

(2) a company holding shares in company under (1) exceeds fifty percent of the total number of shares with voting rights of such company;

(3) a company holding shares beginning from company holding shares in company under (2) and those in all levels of upward shareholding, providing that shareholding of company in each immediate lower level exceeds fifty percent of the total number of shares with voting rights of such company;

(4) a company holding shares in debt instrument issuer directly or indirectly, in aggregate, exceeds fifty percent of the total number of shares with voting rights of shares of such debt instrument issuer.

Shareholding of company under (1), (2), (3) or (4) shall include shares held by related persons under the Notification of the Securities and Exchange Commission concerning determination of definitions in notifications relating to issuance and offer for sale of debt securities.

“management” means manager or the next four executives succeeding the manager, the persons holding equivalent position to the fourth executive and shall include the executive whose responsibility involves issuing credit rating and serving as departmental manager or equivalent.

Chapter 1

General Provisions

Clause 4. Giving advice to the public in the manner of issuing credit rating by the following credit rating agencies shall not be deemed as undertaking securities business in the category of investment advisory:

(1) credit rating agency established under Thai law approved by the SEC Office as specified in Chapter 2;

(2) credit rating agency established under foreign law having characteristics under the requirements as specified in Clause 5.

Clause 5. Credit rating agency established under foreign law in accordance with Clause 4(2) shall have the following characteristics:

(1) being credit rating agency that legally undertakes credit rating business in accordance with law of the country that such credit rating agency is established and subject to the supervision of supervisory agency which is a member of International Organization of Securities Commissions (IOSCO);

(2) not having any form of commercial presence in the Kingdom of Thailand except for holding of securities in credit rating agency approved under Clause 4(1);

(3) issuing credit rating within the scope as specified in Clause 6.

Clause 6. Credit rating agency established under foreign law shall issue credit rating within the scope as follows:

(1) issuing credit rating for instruments having any of the following characteristics:

(a) debt securities issued by juristic person established under Thai law whose parent company is juristic person established under foreign law;

(b) debt securities issued by juristic person established under Thai law in any of the following cases:

1. debt securities simultaneously issued and offered for sale domestically and overseas;

2. debentures denominated in foreign currency issued and offered for sale in the Kingdom of Thailand;

3. debt securities for securitization where person eligible to propose [securitization] project is agency or organization of foreign government or juristic person under foreign law;

(c) debt securities issued by juristic person established under foreign law, agency or organization of foreign government or international organization;

(d) derivatives warrants issued by foreign bank or foreign insurance company whose branch has been approved to undertake commercial bank business or insurance business in the Kingdom of Thailand, as the case may be;

(2) issuing credit rating for business having relationship with instruments in any one of the following manners:

(a) being guarantor or giver of an aval of debt securities where such person is juristic person established under foreign law or agency or organization of foreign government or international organization;

(b) being guarantor of derivatives warrants;

(3) in any case other than (1) and (2), credit rating agency established under foreign law shall issue credit rating for issuance of instruments or business related to instruments for international comparison, for instance, credit rating in form of international scale rating or regional scale rating.

Chapter 2

Application for Approval and Approval

Division 1

Filing Application for Approval

Clause 7. Any person who intends to operate credit rating agency approved by the SEC Office shall file application for approval with the SEC Office including supplementary documents according to the guideline and procedure as prepared on the website of SEC Office.

Clause 8. Person who files application for approval under Clause 7 shall, together with filing of such application, pay fees for filing an application in accordance with rate specified in the Notification of the Office of the Securities and Exchange Commission concerning determination of fees for filing, registration and other applications.

Clause 9. In considering application for approval, the SEC Office may notify applicant to clarify, undertake or submit additional documents within the period specified by that the SEC Office.

In case applicant fails to comply with the first paragraph, the SEC Office shall consider that such person no longer intends to file application for approval.

Clause 10. The SEC Office shall notify the result of the consideration of application within forty five days as from the date the SEC Office received complete document.

Part 2
Criteria for Approval

Clause 11. Any person eligible to obtain an approval to be credit rating agency under this Chapter shall comply with the following requirements:

- (1) being juristic person established under Thai law;
- (2) having paid-up capital no less than fifty million Baht;

(3) not having any reasonable ground to suspect that behaviors of director or executive indicate lack of responsibility, credibility or trustworthiness in any of the following manners:

(a) having record of being dismissed, removed, discharged or prosecuted as a result of dishonest act;

(b) having employment record indicating dishonesty;

(c) having record of management or any other action causing severe violation of law on securities and exchange indicating lack of responsibility or due care in management;

(4) having sufficient number of personnel with knowledge, capacity or work experience beneficial for undertaking credit rating agency business in order to support an undertaking of credit rating agency business;

(5) being able to demonstrate that work system shall be arranged for monitoring the operation of issuing credit rating to be in line with accepted and credible standard;

(6) having requirements related to stringent and reliable procedure in issuing credit rating which support independent operation and expression of impartial and fair opinions to related persons;

(7) having symbol used in issuing credit rating without the following characteristics:

(a) being used as generic term or lack of specific characteristics;

(b) being symbol or sign that is in contravention of law or public morals.

In considering prohibited characteristics of director and executive under (3) of the first paragraph, the SEC Office shall consider such person's behaviors not exceeding the previous ten years and taking into consideration severity of conduct or impact to credibility or trustworthiness in becoming director or executive of credit rating agency.

Clause 12. Credit rating agency approved under this Chapter shall undertake business within the scope as follows:

- (1) issuing credit rating;
- (2) providing clarification or rationale for consideration on issuing credit rating as well as information used for consideration;
- (3) providing service of news and information obtained in the course of issuing credit rating, for instance, information related to economics and industrial outlook;
- (4) [undertaking] business not causing conflicts of interest or not in the manner causing credit rating agency unable to express independent opinion.

Division 3

Duties to Perform after Approval

Clause13. Credit rating agency approved under this Chapter shall put in place clear, concise and sufficient system capable of supervising undertaking of credit rating agency to comply with the following requirements:

- (1) issuing credit rating systemically, with quality and credibility, providing that it shall at least comply with the requirements set out in Clause 14;
- (2) being capable of operating independently and providing impartial and fair opinions to related persons, providing that it shall at least comply with the requirements set out in Clause 15;
- (3) having sufficient information disclosure related to credit rating where such information shall be clearly communicated and not mislead result of credit rating in materiality, providing that it shall primarily take into account of information user and shall at least comply with the requirements set out in Clause 16;
- (4) having appropriately managed information obtained in the course of providing credit rating service and shall be in accordance with objective of information providing provided that it shall at least comply with the requirements set out in Clause 17;

Clause 14. In order to support systematic preparation of credit rating disseminated to the public (public rating) with quality and credibility, credit rating agency shall undertake the followings:

- (1) adopting credit rating methodology and procedure capable of screening and providing opinion on credit rating with quality and reflecting capability of repayment of indebtedness according to instruments or of businesses that have

been rated as well as consistently reviewing methodology and procedure used in issuing credit rating;

(2) using information from reliable and referable sources in issuing credit rating;

(3) assigning personnel with sufficient knowledge and understanding of instruments responsible for issuing credit rating for such instruments;

(4) reviewing result of publicly disclosed credit rating in order to ensure that such result reflects capability of repayment of indebtedness according to instruments or of businesses that have been rated;

(5) reviewing result of credit rating in case where former personnel who participated in issuing credit rating for any business, later works for such business (look-back review).

Clause 15. In order to ensure that credit rating agency is capable of issuing credit rating independently and providing impartial and fair opinion to related person, credit rating agency shall arrange to have measures to avoid conflicts of interest as well as undertake examination in order to comply with such measures providing that the following matters shall be covered:

(1) line of command and compensation structure are set out in the manner that avoid conflicts of interest as well as preventive measures to prohibit personnel responsible for issuing credit rating from using their positions to seek benefit for themselves and for others;

(2) credit rating for business with which credit rating agency has any of the following relationships shall not be provided:

(a) business in which credit rating agency is holder of securities issued by such business whether directly or indirectly or has position in derivatives where reference assets have been issued by such business except for holding of securities or derivatives position through appointed professional managing fund or investment for credit rating agency and such agency is unable to intervene or give instruction for trading of such securities or derivatives;

(b) business for which credit rating agency performs duty as advisor or giving advice related to business structure or instruments issued by such business;

(3) measures prohibiting executive and employee having any of the following relationships with the business from taking part in issuing credit rating for such business:

(a) business in which such person is holder of securities issued by such business whether directly or indirectly or business issuing securities which are reference assets of derivatives where such person is a counterparty except for holding of securities or becoming a counterparty of derivatives through appointed professional managing fund or investment for such person and such person is unable to intervene or give instruction for trading of such securities or derivatives;

(b) business that such person performs duty as advisor or giving advice related to business structure or instruments issued by such business;

(c) business to which such person is related in the manner that may be unable to issue credit rating independently or express impartial opinion;

(4) measures preventing credit rating agency, director, executive and employee related to issuance of credit rating from buying or selling securities issued by business where such credit rating agency issues credit rating for offer for sale of securities or becomes a counterparty in derivatives where such securities are reference assets except where trading of securities or becoming a counterparty in such derivatives is carried out through appointed professional managing fund or investment for such person and such person is unable to intervene or give instruction for trading of such securities or derivatives;

(5) information disclosure related to revenue of credit rating agency in annual report shall include proportion of revenue from undertaking credit rating agency business in comparison with revenue from other businesses. In case where revenue of credit rating agency obtained from providing credit rating service to any business accounts for ten percent or more of its total revenue during the accounting period, credit rating agency shall also disclose list of such businesses.

Clause 16. To ensure sufficient information, appropriate use and benefit of result of credit rating for the public, credit rating agency shall proceed as follows:

(1) announcing the latest result of credit rating to the public in a non-discriminatory and responsive manner as well as specifying reasons supporting consideration on credit rating. In case of change or revocation of the result of credit rating, credit rating agency shall announce to the public without delay;

(2) disclosing methodology and procedure adopted for issuing credit rating and other related information as well as clear and updated guideline for announcing result of credit rating;

(3) having clear and comprehensible symbols used in issuing credit rating as well as providing clear explanation for the definition of such symbols which shall also be disclosed to the investor.

In case of issuing credit rating for complex instruments, credit rating agency shall use symbols different from those used in issuing credit rating to general debt instruments and provide clear explanation for the definition of such symbols which shall also be disclosed to the investor.

(4) disclosing cash flow analysis on reference assets and impact on result of credit rating in specified scenarios (rating sensitivity) including any limitations in issuing credit rating;

(5) disclosing any error in previous evaluation of credit rating (historical default rate) by disclosing statistical information and past details for the period of ten years. In case of operating credit rating agency business less than ten years, disclosure of information shall be ranged from the commencement of business to present.

Clause 17. In order for credit rating agency to appropriately treat information obtained in the course of providing credit rating service and in accordance with the objective of information provider, credit rating agency shall prohibit related persons from misusing such information or using for any purpose other than for issuing credit rating for the client or disclosing such information to any other person, without complying with agreement or covenant made with information provider or client except it is subject to legally enforceable demand.

Clause 18. In case of unsolicited rating, credit rating agency shall undertake the followings:

(1) adopting clear policy and procedure for issuing credit rating in such case;

(2) in disseminating result of credit rating to the public, the following shall be disclosed correctly and completely :

(a) whether it is unsolicited rating and whether instrument issuer has jointly provided the information for issuance of credit rating;

(b) sources of the information used in issuing credit rating.

Clause 19. Credit rating agency approved under this Chapter shall comply with the following requirements:

(1) submitting to the SEC Office result of credit rating disseminated to the public within the business day following the dissemination of result of such credit rating;

(2) preparing and submitting to the SEC Office financial statements for the fiscal year and annual report related to financial condition and operational result of credit rating agency within four months as from the ending date of fiscal year;

(3) notifying the SEC office of any change, modification or additional symbol or definition of symbols used in issuing credit rating prior to the use of symbol or definition of such symbol that have been changed, modified or added;

(4) notifying the SEC office of any change of director and executive or qualifications of director and executive as well as submitting details related to qualifications and employment record of director and executive appointed or newly elected including certification of qualifications of such director and executive without delay;

(5) notifying the SEC office of any material change of shareholding structure or requirements related to procedure in issuing credit rating without delay;

(6) keeping of information used in considering credit rating in the manner that is ready for the SEC Office to make a request or examine information (audit

trail) immediately for the period of at least two years as from the date of dissemination of credit rating.

(7) filing a report or demonstrating documents related to credit rating in accordance with the period of time or sporadically as specified by the SEC Office and preparing a letter to explain or supplement the report or documents filed as specified by the SEC Office.

Clause 20. Credit rating agency shall agree to have officer designated by the SEC Office to enter the premises of credit rating agency or location for collecting or processing information of credit rating agency during business hours of such location in order to examine its compliance under this Notification.

Division 4

Termination of Approval and Other Sanctions

Clause 21. The SEC Office may issue a suspension or revocation order against credit rating agency as deemed appropriate when any of the following is apparent:

(1) credit rating agency is unable to maintain the characteristics as specified in Clause 11;

(2) credit rating agency undertakes the business outside the scope as specified in Clause 12;

(3) credit rating agency fails to comply with the requirement as specified in Division 3 and such non-compliance may impact confidence in issuing credit rating or may cause damage to client or any person using such credit rating information.

In case of circumstances under the first paragraph, the SEC Office may order credit rating agency to proceed with rectification in order to comply with the requirements within specified period of time or order to act or refrain from any action.

Clause 22. In issuing revocation order against credit rating agency approved under this Chapter, the SEC Office may specify period of time and conditions for considering such person's subsequent application for approval, providing that the period so specified shall not exceed ten years as from the date the SEC Office issues revocation order.

Chapter 3

Transitional Provisions

Clause 23. Credit rating agency established under Thai law approved by the SEC Office under the Notification of the Securities and Exchange Commission concerning exclusion of giving advice to the public from securities business in the category of investment advisory dated 18 March 1993 or the Notification of Notification of Securities and Exchange Commission No. KorDor. 15/2552 Re: Exclusion of Credit Rating Agency Business from Securities Business in the Category of Securities Investment Advisory dated 3 August 2009 prior to an effective date of this Notification shall be credit rating agency approved by the SEC Office under this Notification and such credit rating agency shall be subject to this Notification.

Clause 24. Any reference made in any other Notification to the Notification of the Securities and Exchange Commission concerning exclusion of giving advice to the public from securities business in the category of investment advisory dated 18 March 1993 or the Notification of Securities and Exchange Commission No. KorDor. 15/2552 Re: Exclusion of Credit Rating Agency Business from Securities Business in the Category of Securities Investment Advisory dated 3 August 2009, shall mean reference to this Notification.

Notified this 20th day of February 2012.

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(Nawaporn Ruengsakul)
Chairman
Securities and Exchange Commission