

TRANSLATED VERSION

As of March 31, 2015

Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.

Notification of the Capital Market Supervisory Board

No. TorJor. 49/2555

**Re: Issuance and Offer for Sale regarding Units of
Real Estate Investment Trust**

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 67 and Section 69 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions relating to 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 Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 January 2013.

Clause 2 In this Notification:

“**REIT**” means a real estate investment trust.

“**unit**” means a trust certificate representing the rights of the holder as a beneficiary of a **REIT**.

“**property fund**” means a property fund established according to the *Notification of the Office of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for Establishment and Management of Property Funds*.

“**paid up capital**” means the total value of the **units** which are paid in full.

“**REIT manager**” means a person who performs the duty as **REIT manager** in accordance with the trust instrument.

“**registration statement**” means the registration statement of an offer for sale of securities in the category of *unit*.

“**financial advisor**” means a financial adviser whose name appears in the SEC’s approved list.

“**related person**” means a related person under *the Notification of the Capital Market Supervisory Board concerning the Rules on Related Party Transactions*.

“**Stock Exchange**” means the Stock Exchange of Thailand (SET).

“**sale promotion**” means providing incentive gifts, rights or other benefits to an investor in order to stimulate the investor to invest in *units*.

“**underwriter**” means a securities company of which license is allowed to underwrite *units*.

“**associated person**” means any person having one of the following relationships with others:

- (1) spouse or child who has not yet become *sui juris*;
- (2) relationship between a juristic person and its shareholder or partner who holds shares or partnerships directly or indirectly more than 50% of issued shares of or more than 50% of partnership interest in such juristic person;
- (3) private fund of any person in sub clause (1) or (2) above, but not including any provident fund.

Clause 3 The issuance and offer for sale of *units* shall comply with the following rules:

- (1) an application for an approval, granting an approval for offer for sale of *units*, and the conditions to comply after obtaining an approval shall be in accordance with the rules under Part 1;
- (2) the submission of the **registration statement** shall be in accordance with the rules under Part 2;
- (3) the issuance and offer for sale of *units* for the conversion from *property fund* to **REIT** shall be in accordance with the rules under Part 3.

Clause 4 Unless the provision indicates otherwise:

(1) the investment in, acquisition or disposal of, and taking advantage of a real estate by a **REIT** shall include such acts for the leasehold interest of the real estate;

(2) [i] the lease shall include permission of utilising area with a compensation and providing services relating to such lease or utilising area, as the case may be, and [ii] the rental fee shall include a compensation from utilising area and from a charged fee providing services thereof.

Part 1

Application for an Approval and Criteria for Granting

Approval regarding Offer for Sale of Units

Chapter 1

Submitting of an application

Clause 5 Any person who wishes to submit an application for offer for sale of newly issued **units** shall be the one of the following person:

(1) in case such offer for sale for the purpose of establishing a **REIT**, the applicant shall be a person who will set up the **REIT** (settlor) and will become a **REIT manager**;

(2) in case of issuing additional new **units**, the applicant shall be the **REIT manager** to whom the trust instrument specifies power and duty to submit the application thereof.

The **REIT manager** under the first paragraph shall be a person permitted by the SEC Office to be the **REIT manager**, including any person in the process of submitting an application for such permission.

Clause 6 An application for an offer for sale of newly issued *units* shall be submitted to the SEC Office in accordance with the procedures as prescribed in the Notification of the SEC Office¹ together with at least the following evidentiary documentations:

(1) draft trust instrument in case of such offer for sale for the purpose of establishing a **REIT**, or an amended trust instrument in case of issuing additional new *units*;

(2) draft contract for appointment of a **REIT manager** in case of such offer for sale for the purpose of establishing the **REIT**, or an amended contract for appointment of the **REIT manager**, if any, in case of issuing additional new *units*;

(3) a **registration statement**, or documentation indicating the essences in line with [the form of] the **registration statement**;

(4) report on the appraised value of the real estate to be invested by the **REIT** which is prepared in accordance with the rules under this Notification;

(5) letter of certification from the trustee or a person becoming trustee of the **REIT** indicating the following essences:

(a) in case of the first establishment of the **REIT**, there shall be a statement indicating that such person [i] agrees to perform the duties as the trustee of the **REIT** after having studied the evidentiary documentation submitted to the SEC Office by the applicant, [ii] certifies that the draft trust instrument complied with this Notification and other Notifications issued by virtue of the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)*, and [iii] is ready to perform the duties as the trustee of the **REIT**;

(b) in case of issuing additional new *units*, there shall be a statement indicating that the trustee has studied the evidentiary documentation submitted by the applicant to the SEC Office and certifies that the procedure for increasing capital of the **REIT** being rightfully in accordance with the trust instrument and this Notification and other Notifications issued by virtue of the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)*;

¹ The Notification of the Office of the Securities and Exchange Commission No. SorJor. 41/2556 Re: Additional Provisions relating to Issuance and Offer for Sale of Units of Real Estate Investment Trusts.

(6) any other evidentiary documentation as stipulated by the Notification of the SEC Office.

The application fee shall be paid at a rate as stipulated by the *Notification of the Securities and Exchange Commission concerning the Determination of Fees for Application regarding Offer for Sale of Newly Issued Securities and Application for Securitization Project* when the application is submitted to the SEC Office.

Clause 7 In case of an application for an offer for sale of newly issued *units* with a guarantee of income, the applicant shall submit the evidentiary documentation as prescribed in Clause 6 together with the following documents:

(1) summary of the essences of the draft agreement on income guarantee;
(2) information relating to the income guarantor who is a juristic person and the latest credit rating of the guarantor which shall not be more than 1 year before the date of submitting the application and shall be conducted by a credit rating agency approved by the SEC Office;

(3) document demonstrating the opinion of the applicant relating to the capability of the income guarantor under sub clause (2) to comply with the agreement thereof. In this regard, in case the income guarantor is a *related person* of the applicant, a document demonstrating the opinion of a *financial advisor* on such matter shall be also submitted as well;

(4) audit report on the financial statement of the income guarantor under sub clause (2) for the past 3 fiscal years before submitting the application. In addition, the report on the latest financial year shall be audited by an auditor approved by the SEC Office.

The provision under sub clause (4) of the first paragraph shall not be applicable, in case the income guarantor has arranged either a letter of guarantee issued by a commercial bank or an equivalent collateral, which covers the same income amount within the period of time as guaranteed by the income guarantor.

Clause 8 The SEC Office shall notify the result of the deliberation of an application within 45 days as from the date of receiving the complete application and the evidentiary documentation.

In deliberating the application, the SEC Office is empowered to request the applicant in writing to provide explanation in person or to submit additional evidentiary documentation within a period specified by the SEC Office. In case the applicant has failed to proceed under the requisition thereof within the specified period, it shall be deemed that the applicant no longer wishes to apply for an approval of such offer for sale of *units*.

Clause 9 An application for an offer for sale of newly issued *units* shall be jointly prepared and certified the accuracy and completeness of the information by a *financial advisor* unless the applicant qualifies all of the following conditions, such applicant may not appoint the *financial advisor* to jointly prepare the application:

- (1) having license to undertake securities business in the category of mutual fund management and having already started the business;
- (2) not being a person or having relationship or having interest with a person who will dispose of, transfer, lease or transfer right in real estate to a *REIT* in the way that may affect the applicant to lack independent performance of duties to [i] conduct a due diligence of a real estate in which the *REIT* would invest and [ii] disclose the information relating to the offer for sale of *units*.

The *financial advisor* who jointly prepared the application under the first paragraph shall not be a person or have relationship or interest with a person who will dispose of, transfer, lease or transfer right in real estate to the *REIT* in the way that may cause the *financial advisor* unable to perform its duties independently as stipulated by the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Financial Advisor and Scope of Operating*.

Clause 9/1 An application for an offer for sale of newly issued *units* as prescribed in Clause 9 and the evidentiary documentation submitted in support of the application shall be signed to certify the accuracy and completeness of the information by the following person:

- (1) any director who has the power to sign on behalf of the applicant;
- (2) any director who has the power to sign on behalf of a *financial advisor*, in case such application has to be jointly prepared by the *financial advisor*.

Chapter 2

Criteria for granting an approval

Clause 10 An application for an offer for sale of *units* of a *REIT* shall be approved by the SEC Office upon compliance with the following rules:

(1) general characteristics of the *REIT*:

(a) the trust instrument or the draft trust instrument, as the case may be, shall be in accordance with [i] the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)*, the *Notification of the Office of the Securities and Exchange Commission concerning Provisions Relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust*, including Notifications, regulations and orders issued by virtue of such law, and [ii] the provisions as prescribed in this Notification;

(b) name or word indicating important characteristics of the *REIT* and not containing characteristics which may cause misunderstanding the investment policy of the *REIT*. Additionally, in case the investment policy involves investment in leasehold interest of real estate, it shall present characteristics of such investment as well;

(c) being demonstrated that the *REIT* has *paid up capital* not less than 500 million baht after the offer for sale of *units* in order to support the investment in assets in accordance with Clause 12 or Clause 13;

(d) having the objective to register *units* as listed securities on the *Stock Exchange*;

(e) complying with the rules as prescribed in Clause 11 in case of classification of unit classes;

(f) having the determination of unit redemption only by cash or others equivalent to cash;

(2) principal asset to be invested in:

(a) the principal asset to be invested in shall be real estate in accordance with the rules as prescribed in Clause 12, which may be direct investment, or indirect investment as prescribed in Clause 13;

(b) an applicant shall be able to identify the principal asset to be invested definitely and shall demonstrate that it is ready to acquire such asset within

60 days as from the date when the establishment of the **REIT** is completed or as from the closing date of the offer for sale of additional new **units**, as the case may be;

(3) taking advantage of the principal asset:

(a) the **REIT's** revenue mainly comes from rental paid for the lease of its real estate. Besides, the **REIT** shall not enter into operating any business, for instance, hotel or hospital business;

(b) in case the **REIT** will let a business operator to lease its real estate which is business premises, for instance, hotel or hospital, there shall be an agreement stipulating the mainly exact amount of the rental fee. In case of having extra rental fee referred to the operating results of the lessee's business, the maximum of the extra rental fee thereof shall not exceed 50% of such exact rental fee;

(c) there shall be a provision [in trust instrument or the draft] prohibiting the lease of the **REIT's** real estate to any person who has the suspicious ground of using the real estate for immoral or illegal business. Accordingly, [the applicant shall demonstrate for ensuring that] the **REIT** would be entitled to terminate the lease agreement if it appears that the lessee uses its real estate for such business;

(4) in case of borrowing money or making encumbrances, the trust instrument or the draft shall be as follows:

(a) a clearly stating provision for allowing the **REIT** to borrow money and incur encumbrances;

(b) restriction of borrowing proportion, regardless of any means, not exceeding the rates as prescribed in Clause 14;

(c) restriction of incurring encumbrances for the only cases as prescribed in Clause 15;

(5) for the management of the **REIT**:

(a) there shall be no reasonable suspicion that the mechanism for managing the **REIT** is unable to protect the rights of the unitholders or treat the unitholders fairly;

(b) there shall be no reasonable suspicion that the applicant lacks a sufficient system to manage the **REIT** reliably in accordance with the trust instrument;

(c) it shall be demonstrated that the applicant has conducted a due diligence on the real estate to be invested in accordance with the rules as prescribed in Clause 16, and has disclosed information and risks in the **registration statement**

completely and sufficiently;

(d) it shall be demonstrated that there is a management of conflicts of interest which may occur from management of the **REIT** in compliance with the rules under Clause 17;

(e) it shall be demonstrated that the trustee has the availability to perform duties and not lack of independence as prescribed in the *Notification of the Securities and Exchange Commission concerning Rules for Being Settlor and Trustee of Real Estate Investment Trust*;

(6) disclosure of information:

(a) there shall be no reasonable suspicion that the information disclosed to investors is incomplete or insufficient for making a decision to invest or contains any statement that may mislead investors;

(b) there shall be no reasonable suspicion that a **REIT manager** and the trustee lack a sufficient system to prepare and disclose information continuously and reliably in accordance with the trust instrument and the Notification relevant to disclosure of information of **REIT**;

(7) other provisions:

(a) in case the applicant is in the process of applying for an approval to become the **REIT manager**, such person will be authorized to offer for sale of **units** on condition that the applicant has obtained an approval to be the **REIT manager**;

(b) in case of the application for an offer for sale of additional new **units**, the applicant shall have undergone the procedure for issuing such **units** rightfully, for instance, obtaining the resolution of the unitholders as specified in the trust instrument;

(c) in case the **REIT** has guaranteed income, such guarantee shall be complied with the rules as prescribed in Clause 18.

Clause 11 In case the **units** are categorized into classes, the following rules shall apply:

(1) **units** in the same class shall have equal rights and benefits;

(2) **units** in each class may have different rights and benefits only in the following matters:

(a) determination of benefits or return of investment to the unitholders;

(b) fees or expenses collected from the unitholders;

(c) any other possibly different rights or benefits which the applicant has taken into account benefits of the unitholders as a whole and impacts on the unitholders of each class.

Clause 12 The investment of a **REIT** in real estate shall be in accordance with the following rules:

(1) being an investment to obtain ownership or possession of such real estate. In this regard, obtaining possession of real estate shall be any of the following cases:

(a) acquisition of a real estate for which Nor.Sor. 3 Kor. [which is the certificate of utilization] has been issued;

(b) acquisition of the leasehold interest of a real estate for which an title deed or possession right in the category of Nor.Sor. 3 Kor. [which is the certification of utilization] has been issued;

(2) the acquired real estate shall not be under enforcement of real right or any dispute unless a **REIT manager** and the trustee have considered and expressed their opinion in writing that such enforcement or dispute does not affect the taking advantage of such real estate materially, and the conditions for acquiring such real estate are beneficial to the unitholders as a whole;

(3) the contract for the acquisition of the real estate shall not contain any agreement or commitment which may cause [i] the **REIT** being unable to dispose of the real estate at a fair value (at the time of disposal), for instance, the agreement relating to right of first refusal with a price specified in advance, or [ii] the **REIT** having more than normal duties which a lessee should have at the end of the lease;

(4) the acquired real estate shall be ready to be used for taking advantage and the real estate shall have an aggregate value of not less than 75% of the total value of the **units** offered for sale including the amount of loan (if any). In this regard, the **REIT** may invest in a project under construction provided that [i] the value of the investment for the acquisition and completion of the development project of the real estate shall not [totally] exceed 10% of the total asset value of the **REIT** (after the offer for sale of **units**), and [ii] sufficient working capital could be afforded for the rest of development without affecting the going concern issue of the **REIT**;

(5) the real estate being appraised the value in accordance with the following rules:

(a) being a full appraisal with the verification of entitled rights evidence, for the purpose of public use for disclosure to investors. Such appraisal shall perform by at least two appraisers and their valuation reports having been made not more than 6 months before the date of submitting application;

(b) the appraisers under sub clause (a) shall be approved by the SEC Office;

(6) the acquired real estates shall have an aggregate value of not less than 500 million baht, and in case the amount of fund raised from the offer for sale of *units* is less than the value of the real estates, the applicant shall demonstrate that there are other sufficient sources of fund for supporting the acquisition of such real estates.

Clause 13 The indirect investment in the principal asset of a *REIT* shall be an investment in the real estate as prescribed in Clause 12 through shareholding in a company established for the purpose of operating in the same manner as the *REIT* in accordance with this Notification, and such investment shall also comply with the following rules:

(1) the *REIT* shall hold not less than 99% of the outstanding shares and of the total voting rights of such company;

(2) it shall be demonstrated that there is a measure or mechanism which allows the trustee and a *REIT manager* to supervise and control such company to operate business in accordance with the trust instrument and the rules in this Notification and other related Notifications in the same manner as direct investment in the principal asset by the *REIT*.

For the purpose of compliance with the first paragraph, the SEC Office is empowered to issue the Notification relating to minimum measures or mechanism which are required under sub clause (2) of the first paragraph.

Clause 14 A *REIT* may procure a loan at an amount not exceeding any of the following proportions unless such exceeding proportions do not occur from additional loans:

(1) 35% of the total asset value of the *REIT*;

(2) 60% of the total asset value of the *REIT* in case the *REIT* has the latest rating level in the investment grade, determined not more than 1 year before the date of applying for the loan by a credit rating agency approved by the SEC Office.

The procuring of loan under the first paragraph shall include the issuance of instruments or entering into contracts, in whatever form, whose real objective or substance has the characteristics of a loan.

Clause 15 Encumbrances incurred by a *REIT* shall be limited only to necessary cases and shall relate to the management of the assets of the *REIT* as follows:

(1) the incurring of encumbrances relating to the main agreement, in which the *REIT* may enter, in accordance with the provisions under this Notification, for instance, using the assets of the *REIT* as collateral of loan as prescribed in Clause 10(4);

(2) the incurring of encumbrances which are normal commercial practice or normal practice for such type of transaction.

Clause 16 In conducting a due diligence of the real estate before investment, the applicant shall perform professionally by at least examining and reviewing the following matters:

(1) characteristics of the real estate, for instance, location, entrance and exit, opportunities for generating income and various encumbrances of such real estate;

(2) the ability of the counterparty to perform a juristic act along with the completeness, accuracy and enforceability of the documents of entitled right or relevant contracts;

(3) other appropriate reasons for investing in such real estate;

(4) in case the real estate to be invested by the *REIT* is in a foreign jurisdiction, a due diligence shall be conducted on the ability of the *REIT* to acquire and hold the real estate in compliance with the law of such foreign jurisdiction, and the opinion of a legal advisor who is an expert in the law of such foreign jurisdiction shall accompany the due diligence.

Clause 17 The management of conflicts of interest which may occur from management of a **REIT** shall be at least conformed to the following rules:

(1) the applicant shall be demonstrated that there is a measure or mechanism which may support the management of the **REIT** with fairness to and no exploitation of the **REIT** and such management is in accordance with the rules as specified in the *Notification of the Office of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for the Approval of REIT manager and Standard Conduct* and the *Notification of the Securities and Exchange Commission concerning the Rules for Being Settlor and Trustee of Real Estate Investment Trust*;

(2) in case a **REIT manager** also manages the other **REIT**, the principal asset of the **REIT** stated in the application for an offer for sale of **units** shall not be in the same category as the principal asset of the other **REIT** unless such **REITs** are converted from **property fund** in accordance with the rules under Part 3.

Clause 18 In case of having guarantee of income, such guarantee shall be in compliance with the following rules:

(1) a **REIT** would receive a guarantee of income from any lessee of real estate at the amount specified in the contract of income guarantee;

(2) at least 1 guarantor of income shall be a juristic person;

(3) there shall be a provision specifying that the guarantor of income agrees to bind as the guarantor of income and as a joint debtor with the lessee;

(4) there shall be a tripartite agreement among the guarantor of income, the lessee and the **REIT** that in case the guarantor of income fails to comply with the contract of income guarantee, it shall be deemed that the lessee has breached the lease contract. In this regard, such agreement shall not have terms or conditions in the following manners:

(a) terms which exempt liability of the guarantor of income except in case of force majeure or it is not a fault of the guarantor of income;

(b) conditions beyond necessity with characteristics which would cause the **REIT** make a claim with difficulty or excessive burden.

Chapter 3

Powers of the SEC Office

Clause 19 In case the SEC Office considers that [i] the documentation or information received from the applicant is incomplete, ambiguous, or unclear, or [ii] there is a necessary ground or any other case which would affect the right and interest of the investors or the decision to invest, the SEC Office may order the applicant to proceed as follows:

- (1) disclose additional information relating to a **REIT** to the investors;
- (2) appoint another appraisal for valuation of the real estate to be invested by the **REIT**;
- (3) make an additional due diligence or provide an additional opinion relating to the real estate to be invested by the **REIT**;
- (4) provide legal opinion on important legal issues or on legal ambiguity relating to the **REIT**.

In case the applicant fails to comply with the first paragraph, it shall be deemed that the applicant is no longer wish to apply for an approval of an offer for sale of the **units** of such **REIT**.

Clause 20 In case there is a certain fact appeared to the SEC Office leading to any of the following reasonable suspicions, the SEC Office may reject an application:

- (1) an applicant or the offer for sale of **units** has the characteristic or meets the rules and conditions to obtain an approval according to this Notification, but there is a certain fact indicating that the purpose or the substance of such offering is to avoid any provisions of the *Securities and Exchange Act B.E. 2535 (1992)* or the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)* or the rules issued by virtue of such Acts or this Notification;
- (2) the offer for sale of **units** may be in contrast with the public interest or national policies;
- (3) the offer for sale of **units** may cause an adverse effect to the credibility of the Thai capital market as a whole, or;

(4) the offer for sale of *units* may cause [i] any damages or an unfair treatment to the investors as a whole or [ii] the investors not obtain correct and sufficient information for supporting the decision to invest.

Clause 21 In case of any of the following circumstances, the SEC Office would render a waiver on certain rules under this Notification in deliberating an application or may not apply certain conditions under this Notification with an offer for sale of *units* of the approved *REIT*:

(1) there is clearly a ground to consider that such rules or conditions to be waived are immaterial to the consideration of such approval, and costs outweigh benefits derived from compliance with the rules or conditions;

(2) an applicant is subject to restrictions under other laws which constrain it from compliance with the rules or conditions to be waived;

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

For rendering a waiver under the first paragraph, the SEC Office shall mainly consider the appropriateness and the sufficiency of the information for supporting the investors to make decision for investing, and measures for protecting the investors. In this regard, the SEC Office may determine an additional requirement for compliance by the applicant.

Chapter 4
Conditions for approval

Division 1
General provisions

Clause 22 An approved person under Chapter 2 of this Part shall comply with the conditions in this Chapter.

Clause 23 In case there is certain fact or demeanor appeared to the SEC Office after an applicant has obtained an approval to offer for sale of *units* that the deliberation of the SEC Office would be changed, if such fact or demeanor has arisen prior to the approval, the SEC Office is empowered to:

(1) order the approved person, [or] director or executive [of the approved person] to elucidate or disclose additional information within a specified period and suspend the approval of the offer for sale of *units* until clarification or correction has been made within the specified period;

(2) order the approved person to suspend the offer for sale of the newly issued *units* in the portion which has not been offered or subscribed yet and order to discharge the approval in such portion.

In issuing the orders under the first paragraph, the SEC Office shall take into account the following factors:

- (1) the severity of the facts or demeanors which have changed;
- (2) the impact on the investors who have subscribed such *units*.

Division 2
Offer for sale and allocation of units

Clause 24 An approved person shall complete the offer for sale of the *units* within 6 months as from the date on which the SEC Office notifies the approval. In case the approved person is unable to complete the offer within such period, the approval shall be deemed terminated.

Clause 25 In offering for sale of the *units*, an approved person shall:

(1) comply with the rules specified for offer for sale of shares under the *Notification of the Capital Market Supervisory Board concerning Subscription, Underwriting and Allocation of Newly Issued Securities*,² *mutatis mutandis*, unless the provisions of this Division specify otherwise.

For the purpose of complying with the rules specified under the first paragraph, the SEC Office may announce a detailed guideline for the clarity in the operation, by taking into account the principle of fair allocation of securities and the prevention of conflicts of interest;

(2) appoint an *underwriter* for making underwriting process unless the approved person is the *underwriter*, in which case the approved person may perform such underwriting in accordance with the *Notification of the Capital Market Supervisory Board concerning the Rules, Conditions, and Procedures for Securities Underwriting*, *mutatis mutandis*;

(3) in case of assigning another person to be the *underwriter*, the approved person shall:

(a) supervise the *underwriter* to allocate *units* in accordance with the rules in this Notification and the *Notification of the Capital Market Supervisory Board concerning the Rules, Conditions and Procedures for Securities Underwriting*;

² This Notification is repealed and substituted by the *Notification of the Capital Market Supervisory Board concerning Underwriting of Newly Issued Securities in the Category of Shares and Share Warrant*.

(b) have an agreement with the *underwriter* regarding refund of *units* subscription;

(4) provide a statement in the subscription form indicating that the subscription, cancellation and allocation of *units* are as disclosed in the *registration statement* and the prospectus;

(4/1) comply with the rules as specified under Clause 25/1, Clause 25/2 and Clause 25/3 in case of [i] an *advertisement* for offer or being going to offer for sale of *units* by a method apart from a delivery or distribution of the prospectus and [ii] *sale promotion*. In this regard, for the purpose of complying with such rules, the SEC Office is empowered as follows:

(a) to issue detailed rules for the purpose of sufficient clearness in order that any approved person would be able to comply with those rules relating to the *advertisement* and *sale promotion*;

(b) to announce a detailed guideline for the benefit of compliance with the rules relating to the *advertisement* and *sale promotion* in order to instruct appropriate and corresponding practicality. In case of having complied with such guideline, it shall be deemed that the approved person has already complied with the rules under this Notification;

(c) to specify some cases of the *advertisement* or *sale promotion* which shall be approved by the SEC Office before making the *advertisement* and *sale promotion* in order to inspect the conformity of such *advertisement* and *sale promotion* with the rules as specified in this Notification;

(4/2) comply with one or more of the following SEC Office's order in case the approved person has not complied with the rules under sub clause (4/1):

(a) wholly or partly cease the *advertisement* or *sale promotion*;

(b) amend the information or the statement in the *advertisement* or *sale promotion*;

(c) elucidate complete, accurate or not misleading information to investors;

(d) act or refrain from acting within the specified period in order to provide period for investors to make decision on the complete, accurate, or not misleading information;

(5) entirely cancel the offer for sale of *units* and refund the money to the subscribers at the end of the initial offer for sale of *units*, if there appears any of the following cases:

(a) there are less than 250 subscribers or the distribution of *units* does not comply with the *Regulation of the Stock Exchange of Thailand concerning Listing of Units as Listed Securities*;

(b) the value of the subscribed *units* combined with the value of the loan from other persons (if any) are insufficient to invest in the real estate or less than the amount specified in the *registration statement* and the prospectus;

(c) the allocation of *units* to any person, *associated persons*, *underwriter*, settlor, trustee, a *REIT manager* or foreign investors does not conform to the rates or rules as specified in this Division and the rectification has failed;

(d) the transfer of the money received from the sale of *units* to the trustee for the establishment of a *REIT* fails to be completed within 15 business days as from the closing date of the offer for sale of *units*;

(6) cancel the offer for sale of additional new *units* of an already established *REIT* and refund the money to the subscribers, if there appears any of the following cases:

(a) the value of the subscribed *units* combined with the money reserved by the *REIT* for investing in real estate and the money borrowed from other persons (if any) are insufficient to invest in the real estate as specified in the *registration statement* and the prospectus. In this regard, the offer for sale of all *units* shall be cancelled;

(b) the allocation of *units* to any person, *associated persons*, *underwriter*, settlor, trustee, the *REIT manager* or foreign investors which causes the unitholding of such person or such group of person when combined with *units* already held (if any), does not conform to the rates or rules as specified in this Division. In this regard, the offer for sale shall be cancelled only for the part in excess of the specified rates or rules;

(7) proceed or assign the *underwriter* to proceed as follows, in case of the cancellation of the offer for sale for whatever reason:

(a) return money paid for subscription of *units* to the subscribers within 14 days as from the date when there is a certain fact appeared that causes

the cancellation of the offer for sale and also pay interest at the rate no less than 7.5% per annum, if there is no return of money thereof within such specified period;

(b) shall not use the money paid for subscription of *units* as prescribed in sub clause (a) for any purpose of the approved person except for return to the subscribers;

(8) notify the SEC Office within 15 days as from the date of cancellation of the offer for sale of the *units*. In this regard, in case of the cancellation of the offer for sale under sub clause (5) or (6)(a), it shall be deemed that the approval of such offer for sale is ceased.

The approved person shall also declare the conditions for cancellation of the offer for sale under sub clauses (5) and (6) of the first paragraph in the *registration statement* and the prospectus.

Clause 25/1 An approved person who wishes to arrange for an *advertisement* shall manage the *advertisement* in the appropriate manner of content, proportion of content and form of presentation, in order that an investor would be able to receive necessary and useful information for making a decision of investment in *units*. Additionally, the approved person shall arrange the *advertisement* in accordance with the following criteria:

(1) the *advertisement* shall not contain false, overstated, distorted, concealed or misleading information;

(2) the *advertisement* shall contain material information not different from information presented in the *registration statement* and draft prospectus submitted to the SEC Office under Part 2 and 3 of this Notification;

(3) the *advertisement* shall not urge the investor to invest in *units*;

(4) the *advertisement* shall not imply or guarantee returns earned from investment in *units*, unless [i] the SEC Office has rendered a waiver or [ii] the estimated future returns has referred with all of the following information:

(a) reasonable information used for a factor of estimation;

(b) risk factors which may arise from each condition of estimation;

(c) information under sub clause (a) and (b) arranged in form which the investors would be able to understand correctly and not misleading;

(5) the **advertisement** shall have appropriate caution regarding risks of investment in **units** and shall notify a place for enquiring additional information about investment in **units**;

(6) in case of using or referring other information provided by other persons, such information shall be credible sources and current, and shall identify such sources obviously;

(7) in case it is the **advertisement** for a **sale promotion**, the main information in the **advertisement** shall be the information relating to **units** whilst the information relating to **sale promotion** is minor substance;

(8) the advertising expenses could be charged from a **REIT** only when the **advertisement** has been acted on behalf of or is useful for the **REIT**;

(9) the approved person shall supervise the advertiser, who jointly arranged for the advertisement together with the approved person or representative of the approved person, to comply with the rules as specified in sub clause (1) to (8).

In case the **advertisement** under the first paragraph has proceeded prior to the effective date of the **registration statement** and draft prospectus, the approved person shall comply with the rules under the *Notification of the Office of the Securities and Exchange Commission concerning Dissemination of Information relating to Offer for Sale regarding Units of a Real Estate Investment Trust prior to the Effective Date of the Registration Statement and Draft Prospectus* aside from the rules under the first paragraph.

Clause 25/2 An approved person shall arrange any statement, caution or information for an **advertisement** clearly heard or obviously seen, and suitable for presented form. In addition, the approved person shall attend the importance of expressing any caution in the same manner of mostly other statements or information in the **advertisement**.

Clause 25/3 An approved person may arrange *sale promotion* by complying with the following rules:

(1) shall not entice or urge an investor by using *sale promotion* in order that the investor will decide to invest in *units* without awareness of necessarily fundamental information for investment;

(2) shall not make such promotion to be a lucky draw or a manner of drawing lots for finding the investors who gets a gift, a right or any benefit;

(3) shall have explicit rules and conditions for allowing a gift, a right or any benefit which is easy to understand, not misleading, proper and fair;

(4) shall notify publicly about *sale promotion* in advance within appropriate period;

(5) shall not charge expenses of the *sale promotion* from a *REIT*.

Clause 26 In allocating the *units* of a *REIT*, an approved person shall perform in accordance with the *registration statement* and the prospectus including the rules as prescribed in Clause 27 to Clause 30.

Clause 27 An approved person shall allocate the *units* of the *REIT* to any person or *associated persons* at an amount not more than the following rates:

(1) 50% of the total number of sold *units* of the *REIT*;

(2) 50% of the total number of sold *units* of each tranche in case the *units* are classified into classes.

Clause 28 This Clause is repealed.

Clause 29 In case the person to whom the *units* are allocated is the settlor, the trustee or a *REIT manager*, the allocation of the *units* to such person shall be in accordance with the rates and rules as specified in the *Notification of the Securities and Exchange Commission concerning Rules for Being Settlor and Trustee of Real Estate Investment Trust* and the *Notification of the Office of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for the Approval of REIT manager and Standard of Conduct*, as the case may be.

Clause 30 In case a **REIT** has invested in real estate in the Kingdom of Thailand, and the laws, rules or regulations relating to such real estate has specified the proportion of investment by foreign investors, the approved person shall also allocate the **units** to the foreign investors in accordance with such laws, rules or regulations.

In case the **REIT** has invested in the real estate under the first paragraph through many projects and according to many laws, rules or regulations specifying different proportions of investment by foreign investors, the approved person shall allocate the **units** according to the minimum proportion as stipulated by such laws, rules or regulations.

Clause 31 In case there is a certain fact appeared to the approved person that the unitholding of any person, **associated persons**, **underwriter**, settlor, trustee, a **REIT manager** or foreign investors does not conform to the rates or rules as specified in this Notification, the approved person shall:

(1) notify such person immediately about the limitation of the voting right and dividend payment as prescribed in the trust instrument which has been prepared in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Provisions relating to Particulars, Terms and Conditons in a Trust Instrument of Real Estate Investment Trust*;

(2) report to the SEC Office within 5 business days as from the date when the approved person is aware or should be aware of the incident.

Clause 32 An approved person shall perform as necessary to ensure that the unitholding of any person, **associated persons**, **underwriter**, settlor, trustee, a **REIT manager** or foreign investors complies with the rates or rules as specified in this Notification. In this regard, the performing thereof shall include [i] the arrangement of an operating system which is able to detect the excessive unitholding or [ii] the appointment of a registrar who has such system.

Division 3
Conditions after offer for sale

Clause 33 An approved person shall act in accordance with the obligations given in an application, the *registration statement* and the prospectus as well as the provisions in the trust instrument.

Clause 34 An approved person shall prepare a trust instrument, which contains substances not different from the draft one having passed the deliberation of the SEC Office, before or on the date of vesting the property in the trustee for establishment of a *REIT* as prescribed in Clause 35, and shall submit a copy of the signed trust instrument to the SEC Office within 15 days as from the execution of the trust instrument.

Clause 35 An approved person, as the settlor, shall arrange for the *underwriter* to transfer the money received from the sale of the *units* to the trustee for establishing a *REIT* or for raising the capital of the *REIT*, as the case may be, within 15 business days as from the closing date of the offer for sale of the *units*, and shall submit to the SEC Office the evidentiary documentation, which demonstrates that such transfer of money has been made, together with the report of the result of the offer for sale of the *units*.

Clause 36 After an initial offer for sale of the *units*, an approved person shall perform the duties of a *REIT manager* under the scope as specified in this Notification, and in accordance with the trust instrument once the *REIT* has been established.

The approved person shall provide the trust instrument containing a provision indicating in essence that the new *REIT manager* has to comply with the rules prescribed for the approved person in this Notification, *mutatis mutandis*, in case of changing the *REIT manager*.

Clause 37 An approved person shall proceed for the newly issued *units* to be registered as listed securities [on *Stock Exchange*] within 45 days as from the closing date of the offer for sale of the *units*.

Clause 38 An approved person shall disclose the information relating to a *REIT* after the offer for sale of the *units* in accordance with the Notification concerning disclosure of information on real estate investment trusts.³

Clause 39 In case of the amendment to the trust instrument, an approved person shall provide such amendment being in accordance with the conditions as prescribed in the trust instrument and not violating or contradicting the provisions of this Notification, and shall submit a copy of the amended trust instrument to SEC Office within 15 days as from the date of affixing signature or making the amendment, as the case may be.

Clause 40 In case of change of trustee according to the trust instrument or as prescribed by law, an approved person shall notify the change to the unitholders within the period as specified in the trust instrument and shall notify the SEC Office within such period.

Part 2

Submitting of the Registration Statement

Chapter 1

submitting and fee

Clause 41 Before each offer for sale of *units*, the offeror shall submit the *registration statement* in accordance with Form 69-REIT attached to this Notification together with the draft prospectus and shall proceed as follows:

(1) submit a set of the *registration statement* and the draft prospectus in a printed document together with 2 sets of copies of such documents;

(2) submit the information [stated in the *registration statement*] in an electronic form through the transmission system as provided on the website of the SEC Office.

³ This clause means Notification of the Capital Market Supervisory Board No. KorJor 51/2555 Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non – Financial Information of Real Estate Investment Trust.

The information which the offeror submits to the SEC Office, both in printed document and electronic forms, shall be correct and identical.

After the closing date of the offer for sale of the *units* as stated in the *registration statement*, if the offeror wishes to offer for sale of the remaining *units* from the previous offer, the offeror shall submit another *registration statement* with the SEC Office.

The offeror shall pay the fee for submitting the *registration statement* in accordance with the rules and procedures prescribed by the SEC Office under Section 19⁴ [of the *Securities and Exchange Act B.E. 2535 (1992)*].

Clause 42 The *registration statement* and the draft prospectus submitted to the SEC Office shall be jointly prepared and certified the accuracy and completeness of the information by *financial advisor*.

The provision under the first paragraph shall not be applicable to the offeror who possesses the characteristic under the first paragraph of Clause 9.

Clause 43 In case a *REIT* has an income guarantee, the *registration statement* and the draft prospectus submitted to the SEC Office shall contain information relating to the income guarantee as prescribed in Clause 7, *mutatis mutandis*. Additionally, in case the guarantor of income is a *related person* of the approved person, the authorized person who has power to sign on behalf of the *financial advisor* shall verify and certify on the *registration statement* and the prospectus for the accuracy and completeness of [i] the information relating to the opinion of the *financial advisor* on the ability of the guarantor of income and [ii] the information used for rendering such opinion.

Clause 44 The financial statements and the consolidated financial statements of the *REIT* as disclosed in the *registration statement* and the draft prospectus (if any) shall be in accordance with the rules as prescribed in the Notification of the Capital

⁴ This clause means *Notification of the Office of the Securities and Exchange Commission No. SorBor. 28/2547 Re: Fees for Filing Registration Statement, Permission by Registration and All Applications for Obtaining Approval*.

Market Supervisory Board⁵ issued by virtue of Section 56 [of *the Securities and Exchange Act B.E. 2535 (1992)*], *mutatis mutandis*.

Clause 45 Before the closing date of the offer for sale of the approved *units*, if an offeror has disclosed material facts, which are not demonstrated in the *registration statement* and the prospectus, to any specific person for the benefit of analyzing the suitability for investment in the offered *units* or for the decision to invest in the offered *units*, the offeror shall immediately disclose such facts in the *registration statement* and the prospectus as well. In this regard, such disclosure shall be made not later than the effective date of the *registration statement*, or in case the *registration statement* has already been effective, the disclosure shall be made not later than the next business day following the disclosure of such facts to such person.

Clause 46 In case the *units* have been offered for sale in a foreign jurisdiction, the offeror shall disclose the details of the information in the *registration statement* and the draft prospectus not less than the details of the information which have been disclosed for the offer for sale of such *units* according to the law of the foreign jurisdiction.

Chapter 2

Power of the SEC Office

Clause 47 The SEC Office is empowered to render a waiver for disclosure of the details of the information under this Notification, in case the offeror of a *REIT* would be able to demonstrate that [i] such information shall not materially affect the investment decision of the investors and [ii] there is a reasonable ground not to disclose the details of such information in the *registration statement* or there are other sufficient measures having already been replaced such disclosure.

⁵ The *Notification of the Capital Market Supervisory Board No. TorJor. 51/2555 Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non-Financial Information of Real Estate Investment Trust*.

Clause 48 In deliberating the information in the *registration statement* and the draft prospectus, in case the SEC Office deems that it is necessary and appropriate for the investors to have material information sufficiently for making a decision to invest, the SEC Office is empowered to order a person, submitting the *registration statement*, to proceed as follows within a period as specified by the SEC Office:

(1) elucidate or amend information or submit additional evidentiary documentation;

(2) arrange to have an independent expert to express an opinion on the accuracy, completeness or credibility of the information which appears in the *registration statement* and the draft prospectus.

In case the offeror fails to comply with the order of the SEC Office under the first paragraph, it shall be deemed that the offeror no longer wishes to submit the *registration statement* and the draft prospectus to the SEC Office.

In ordering the offeror to proceed in accordance with the first paragraph, the SEC Office may also order the offeror to disclose the order thereof, the action of the offeror, the comment of the SEC Office or the elucidation of the offeror through the website of the SEC Office according to guidance of the SEC Office.

Chapter 3

Effective date of registration statement and draft prospectus

Clause 49 Subject to Section 75 [of the *Securities and Exchange Act B.E. 2535 (1992)*], the *registration statement* and the draft prospectus shall become effective upon compliance with the following rules:

(1) in case of an offer for sale of newly issued *units* of a *REIT* which shall be approved under Section 33 [of the *Securities and Exchange Act B.E. 2535 (1992)*], an offeror shall obtain an approval prior to the offer for sale of the newly issued *units* thereof;

(2) the offeror of the *units* of the *REIT* shall pay the fee for submitting the *registration statement* in accordance with the rules and procedures as specified by the SEC Office under Section 19⁶ [of the *Securities and Exchange Act B.E. 2535 (1992)*];

(3) the offeror of the *units* shall amend the information in the *registration statement* and disclose such information as prescribed in the third paragraph of Clause 48 (if any);

(4) upon the lapse of the following periods as from the date when the SEC Office receives the latest amended *registration statement* as prescribed in Clause 41 (excluding *the information relating to the offer for sale of the units of the REIT* or other immaterial information for which the SEC Office has rendered a waiver):

(a) 14 days in general cases;

(b) 3 business days in case of submitting the *registration statement* and the draft prospectus [for remaining units] within 3 months as from the effective date of the previous *registration statement* and the draft prospectus of the *units* under the same *REIT*;

(5) the offeror of the *units* of the *REIT* has fully specified the information as described in the *registration statement* form.

For the purpose of the consideration under sub clause (4) of the first paragraph, *the information relating to the offer for sale of the units of the REIT* means:

(1) number of the *units* and offering price;

(2) offering period;

(3) details relating to subscription, underwriting and allocation of *units*;

(4) any other information relating to the trading of the *units* of the *REIT* or the information with the similar characteristics or relevant to the information under sub clauses (1), (2) and (3).

⁶ The Notification of the Office of the Securities and Exchange Commission No. SorBor. 28/2547 Re: Fees for Filing Registration Statement, Permission by Registration and All Application for Obtaining Approval.

Part 3
Issuing and Offering for Sale of Units
for Conversion from Property Fund to REIT

Clause 50 Issuing and offering for sale of *units* for conversion from *property fund* to a *REIT* shall be in accordance with the rules as stipulated in the *Notification of the Capital Market Supervisory Board concerning Conversion from Property Fund to a Real Estate Investment Trust* and the following rules:

(1) the rules for granting an approval under Chapter 2 and powers of the SEC Office under Chapter 3 of Part 1 in this Notification shall be applicable excluding the rules under Clause 12(5) and Clause 17(2);

(2) the conditions after offer for sale in Division 3 of Chapter 4 under Part 1 of this Notification shall be applicable excluding the rules under Clause 35 and Clause 37;

(3) the offeror of the newly issued *units* for conversion from *property fund* to a *REIT* shall submit the *registration statement* in accordance with Form 69-REIT (Conversion) attached to this Notification together with the draft prospectus by complying with the rules relating to submitting the *registration statement* and the draft prospectus under Part 2 in this Notification excluding the rules under Clause 42 and Clause 49(4). In this regard, such *registration statement* and draft prospectus shall become effective on the next day after the SEC Office has received the latest amended *registration statement* (excluding *the information relating to the offer for sale of units of the REIT* or other immaterial information which the SEC Office has rendered a waiver).

For the purpose of the deliberation under sub clause (3) of the first paragraph, *the information relating to the offer for sale of units of the REIT* means:

- (1) amount of *units* and offer price;
- (2) offer period;
- (3) details relating to subscription, underwriting and allocation of *units*;

(4) any other information relating to the trading of the *units* of the **REIT** or the information with the similar characteristics to or relevant to the information under sub clauses (1), (2) and (3).

Notified this 21st day of November 2012.

-Signature-

Vorapol Socratyanurak

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

Note: please note that contents added in brackets [...] has only been provided in the English version for clear understanding.