

## TRANSLATION

*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. Tor Jor. 11/2556**

**Re: Offer for Sale of Debenture Denominated in  
Foreign Currency in the Kingdom of Thailand  
(No. 5)**

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By virtue of Section 16/6 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* and Section 35, Section 67, Section 69, and Section 70 of the *Securities and Exchange Act B.E. 2535 (1992)*, which contain certain provisions relating to the restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44, and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

**Clause 1** The provisions under Clause 4 (1) of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provision:

“(1) “*institutional investor*”, “*high net worth investor*”, “*parent company*”, “*subsidiary company*”, “*credit rating*”, “*electronic data*”, and “*registration statement*” shall have the same meanings as those prescribed in the *SEC Notification concerning Determination of Definitions in the Notifications relating to Issuance and Offer for Sale of Any Kind of Debt Securities.*”

**Clause 2** The following provision shall be added as Clause 29/1 of Division 5: Conditions to be Fulfilled after Obtaining Approval to Offer for Sale of Debentures, Chapter 1: Application and Approval for Offer for Sale of Debentures, Part 1: Approval Criteria of the *Notification of the Capital Market Supervisory Board No. Tor Dor.26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010:

“Clause 29/1 In compliance with the guideline on foreign exchange control for the investors who have not been approved by the Bank of Thailand to directly make investment denominated in foreign currency or the investors who invest in debentures and are not defined as the investors under the Notification of the Bank of Thailand on the prescription of criteria and practices relating to Investment in securities and derivatives overseas, the approved entity shall arrange an offer for sale of debentures to such investors be carried out by a securities company in the category of securities underwriting or securities dealing.”

**Clause 3** The provision of the first paragraph (3) under Clause 34 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provision:

“(3) In compliance with the guideline on foreign exchange control for the investors who have not been approved by the Bank of Thailand to directly make investment denominated in foreign currencies or the investors who invest in debentures and are not defined as the investors under the Notification of the Bank of Thailand on the prescription of criteria and practices relating to investment in securities and derivatives overseas, the approved entity shall arrange an offer for sale of debentures to the investors under Clause 30(1) be carried out through a securities company in the category of the securities underwriting or securities dealing, unless the approved entity is a securities company under the prescribed category.”

**Clause 4** The following provision shall be added as (4) and (5) of the first paragraph under Clause 34 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010:

“(4) In the interest of the protection of investors to understand the risk features and return of debentures, the approved entity who intends to offer debentures for sale to the institutional investors incorporated under Thai law or high net worth investors under Clause 30(1) shall take the following action:

(a) For an offer for sale of debentures in the interest of the calculation of the capital under the requirements of the Bank of Thailand relating to the component of

capital of commercial banks issued in 2012, the approved entity shall arrange for solicitation, giving advice or selling debentures through a securities company in the category of the securities underwriting that is not restricted to debt securities and such securities company shall not be the parent company or a subsidiary company of the approved entity;

(b) An offer for sale of debentures other than (a), the approved entity shall arrange for solicitation, giving advice or selling debentures through a securities company in the category of the securities underwriting or securities dealing, unless any of the following conditions is satisfied:

1. The approved entity is a securities company under that particular category, provided that the approved entity shall comply with the criteria prescribed for solicitation, giving advice or selling debentures.

2. The offer for sale of debentures to the *institutional investors* incorporated under Thai law that meets the following conditions:

2.1 The term for repayment of principal and payment of interest is fixed in accordance with the predetermined period or rate, whether the rate is fixed or floating with reference to the interest rate of a financial institution or other interest rate; and

2.2 There is no condition that affects the right of the debt securities holders with respect to receipt of repayment of principal and payment of interest under 2.1, for example, subordination, conversion, early mandatory redemption, extension of debt repayment periods, or discharge of debt, etc., with the exception of the event of default prescribed in the terms and conditions of the debentures.”

(5) The approved entity shall arrange for the distribution of the fact sheet of the debt securities to the *institutional investors* incorporated under Thai law or *high net worth investors* under Clause 30(1).”

**Clause 5** The provisions under Clause 35 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provision:

“Clause 35 In the case of the offer for sale of newly issued debentures to the *institutional investors* incorporated under Thai law or *high net worth investors*

under Clause 30(1), the approved entity shall comply with the criteria specified under Clause 36, Clause 37 and Clause 38, with the exception of the following offer for sale of debentures where the approved entity may not be required to comply with Clause 36 and Clause 37:

(1) The term for repayment of principal and payment of interest is fixed in accordance with the predetermined period or rate, whether the rate is fixed or floating with reference to the interest rate of a financial institution or other interest rate; and

(2) There is no condition that affects the right of the debt securities holders with respect to receipt of repayment of principal and payment of interest under (1), for example, subordination, conversion, early mandatory redemption, extension of debt repayment periods, or discharge of debt, etc., with the exception of the event of default prescribed in the terms and conditions of the debentures.”

**Clause 6** The provisions under Clause 45 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provision:

“Clause 45 Prior to offer for sale of debentures, the offeror shall file with the SEC Office the **registration statement** as prescribed in Chapter 2 of this Part and the draft prospectus prepared in the form prescribed in Section 72 as follows:

(1) To file the **registration statement** and the draft prospectus, as well as evidentiary documentation as specified on the website of the SEC Office in one set of printed documents and one copy of the registration statement;

(2) To transmit **electronic data** through the transmission system specified on the website of the SEC Office.

The information filed with the SEC Office under the first paragraph, whether in the form of printed documents or **electronic data** shall contain the correctly consistent statement.”

**Clause 7** The provision under Clause 48 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of*

*Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provision:

“Clause 48 Prior to the general offer for sale of debentures that has been approved under Chapter 1, Part 1, the offeror shall file with the SEC Office the **registration statement** with information specified under Clause 48/1 containing the details in Form 69-DEBT-PO attached to the *Notification of the Capital Market Supervisory Board concerning Filing Registration Statement for Offering for Sale of Debt Securities, mutatis mutandis*, or Form 69-FD attached to the *Notification of the Capital Market Supervisory Board concerning Offering for Sale of Foreign Bonds or Debentures Denominated in Foreign Currency in the Kingdom of Thailand*, provided that the offeror shall arrange for a financial advisor whose name is on the SEC Office’s approved list, to jointly prepare the information in the such form.

Prior to the offer for sale of debentures by means of a limited offer that has been approved under Chapter 2, Part 1, the offeror shall file with the SEC Office the **registration statement** with information specified under Clause 48/1 containing the details under Form 69-DEBT-II&HNW attached to the *Notification of the Capital Market Supervisory Board concerning Filing of the Registration statement for Offering for Sale of Debt Securities, mutatis mutandis.*”

**Clause 8** The provision under Clause 48/1 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 as amended by the *Notification of the Capital Market Supervisory Board No. Tor Dor 37/2554 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand (No. 2)* dated 29 December 2011 shall be repealed and replaced with the following provision:

“Clause 48/1 The offeror shall file with the SEC Office the **registration statement** containing completed and updated information with at least the following information as prescribed in sub-clause (1) to (3) shall be in accordance with the forms prescribed in Clause 48:

- (1) Fact sheet;
- (2) Company profile;

- (3) Information relating to subscription, underwriting, and allocation;
- (4) Other information having impact to investor's decision.

The fact sheet under sub-clause (1) of paragraph shall at least demonstrate the essence of the debt securities including characteristic and important risk of debt securities and the SEC Office may promulgate the notification stipulated relating to rules and procedures for preparation such fact sheet.”

**Clause 9** The provision under Clause 52 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provision:

“Clause 52 The SEC Office shall be empowered to grant a waiver to the disclosure of the information specified under this Notification where the offeror is able to demonstrate that it is proper not to disclose such information in the registration statement, providing that such information shall not significantly affect the investor's decision and it is reasonable to not disclose the details of such information in the registration statement or other action has been taken.”

**Clause 10** The provision under Clause 54 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 as amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor.18/2555 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand (No. 3)* dated 28 March 2012 shall be repealed and replaced with the following provision:

“Clause 54 The affixing of signature to certify the correctness and completeness of the information in the **registration statement** and draft prospectus shall be in compliance with the following criteria:

(1) For an offer for sale of debentures, in any case, by an issuer that is a branch of a foreign commercial bank, a business under foreign law or a juristic financial institution established by specific law, the authorized person shall affix his signature;

(2) For the general offer for sale of debentures other than in (1), the following criteria must be complied with:

(a) If the issuer is not a listed company, all directors, the person holding the highest position in the management, and the person holding the highest position in the accounting, shall affix their signatures;

(b) If the issuer is a listed company, either the authorized director or the person holding the highest position in the management who is authorized by such director shall affix his signature. In this regard, if the authorized director is not the person holding the highest position in the management or the person holding the highest position in the accounting, the person holding the highest position in the management or the person holding the highest position in the accounting shall also affix his signature;

(3) For the limited offer for sale of debentures by any issuer other than in (1), either the authorized director or the person holding the highest position in the management who is authorized by the such director shall affix his signature;

(4) For the offer for sale of debenture by the debenture holder, the debenture holder shall affix his signature. If the debenture holder is a juristic person, the authorized person of the juristic person shall affix his signature.

If a financial advisor is appropriated for the offer for sale of debentures under the first paragraph, the authorized person of the financial advisor shall affix his signature.

For the purpose of the first paragraph (2), the term, “*listed company*” means a company whereby its shares are listed on the Stock Exchange of Thailand.”

**Clause 11** The provisions under Clause 56 of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be repealed and replaced with the following provisions:

“Clause 56 Subject to Section 75, the *registration statement* and draft prospectus shall become effective when the following criteria have been met:

(1) In the case of the offer for sale of newly issued debentures, the offeror must have been granted approval under Section 33;

(2) The offeror has paid the filing fee for the registration statement;

(3) Upon the lapse of one business day or ten business days from the receipt of the latest amended of *registration statement* by the SEC Office (excluding any

information relating to the offer for sale of debentures or other immaterial information where the SEC office permits to amend) as prescribed in the table attached hereto;

(4) The offeror has amended the information in the **registration statement** and disclosed the information of the third paragraph under Clause 53 (if any);

(5) The offeror has disclosed the complete information.

For the purpose of the first paragraph (3), the term, “**information relating to the offer for sale of debentures**” shall refer to the following information:

(1) Amount and price of the debentures offered for sale;

(2) Offering period;

(3) Rate of return;

(4) Details relating to subscription, underwriting, and allocation;

(5) **Credit rating** (if any);

(6) Any other information relating to trading of debentures or similar information or information relating to the information under (1), (2), (3), (4) and (5).

If the SEC Office receives the latest amended of **registration statement** and draft prospectus after 10.00 A.M. of any business day, it shall be deemed that the SEC Office receives such **registration statement** and draft prospectus on the following business day.”

**Clause 12** If the SEC Office receives the **registration statement** and draft prospectus for the offer for sale of the debentures filed under the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 prior to the date on which this Notification comes into force, such **registration statement** and draft prospectus shall remain in full force under aforementioned Notification.

**Clause 13** All notifications of the Office of the Securities and Exchange Commission, orders and circulars issued by virtue of the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Debentures Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are neither inconsistent with nor contrary to

the provisions of this Notification until notifications, orders and circulars issued in virtue of this Notification come into force.

**Clause 14** This Notification shall come into force as from 1 April 2013.

Notified this 11<sup>th</sup> day of March 2013.

(Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board