

## 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. TorJor. 50/2556**

#### **Re: Conversion of Property Fund into 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 117, and Section 130 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 16 December 2013.

**Clause 2** The conversion of property fund into real estate investment trust shall comply with the rules prescribed in the *Notification of the Capital Market Supervisory Board concerning Issuance and Offer for Sale of Units of Real Estate Investment Trust* and this Notification.

**Clause 3** In this Notification:

“**conversion**” means the conversion of a property fund into a real estate investment trust;

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

“**unit**” means a trust certificate representing the rights of the holder as the beneficiary of a real estate investment trust;

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

“**management company**” means a securities company that is licensed to undertake securities business in the category of **mutual fund** management;

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

“**financial advisor**” means a financial advisor on the list approved by the SEC Office;

“**commitment**” means the commitment between the unitholders and the **management company**;

“**assets and obligations of a mutual fund**” means the assets, debts, and liabilities of a *mutual fund*, excluding the reserved items as follows:

- (1) assets or funds reserved for debt repayment;
- (2) dividends or the distribution from the decrease of the registered capital of a *mutual fund* that the unitholders have not collected or deposited checks at banks for that payment;
- (3) fees and expenses in the liquidation of a *mutual fund*.

## Chapter 1 General Provisions relating to Conversion

---

**Clause 4** A *conversion* of a *mutual fund* into a *REIT* is permissible only in the case of converting one *mutual fund* into one *REIT*, provided that the switching ratio of the investment units of a *mutual fund* and the *units* of a *REIT* are set at the rate of one investment unit of a *mutual fund* to one unit of a *REIT* only, and the *conversion* shall comply with the following criteria:

- (1) The *management company* shall be granted an approval at a meeting of the unitholders of the *mutual fund*, provided that the calling of the meeting, the notice of meeting, and the resolutions of such meeting shall comply with the provisions under Chapter 2;
- (2) The person who wishes to act as the *REIT manager* shall be approved to offer newly issued *units* of the *REIT* that have been converted from a *mutual fund* by the SEC Office upon compliance with the rules and conditions in Chapter 3;
- (3) The *management company* and the *REIT manager* shall implement the plan of *conversion*, dissolution and liquidation of the *mutual fund* that has been approved at a meeting of the unitholders of the *mutual fund* upon compliance with the minimum criteria specified in Chapter 4;
- (4) The *REIT manager* shall undertake to register the *units* of the *REIT* converted from the *mutual fund* as listed securities in place of the investment units of such *mutual fund* without delay.

## Chapter 2 Calling Meetings, Notices of Meetings, and Resolutions of Meetings of Unitholders of Mutual Funds

---

**Clause 5** In calling a meeting of the unitholders to seek approval for the conversion, the *management company* shall comply with the following criteria:

- (1) a notice of the meeting to the unitholders shall be delivered at least fourteen days in advance of the meeting date;

(2) The notice of the meeting delivered to the unitholders under (1) shall contain the material information for decision-making of the unitholders and the following information shall be included at a minimum:

(a) the latest information relating to the investment of the *mutual fund*; the value of the real estates of the *mutual fund*; the net asset value, and the value of the investment units of the *mutual fund*; as well as the total number of investment units of the *mutual fund*, and such information shall have been completed no later than sixty days before the date of the meeting of the unitholders;

(b) a brief summary of the agreements that the *mutual fund* has entered into with other persons and that are in full force and effect at the time, and the operating status for the other party to agree or give consent to the change of the contractual party from a *mutual fund* to an *REIT*;

(c) a summary of the comparison of the material information between the *mutual fund* and the *REIT*, and the features that will be changed after the **conversion**, and this shall include the following information at a minimum:

1. the type and objective of the mutual fund project of the *mutual fund* and the *REIT*;
2. the policies for investment and seeking benefits from real estate, as well as for borrowing loans (if any);
3. the policy to pay dividends of the *mutual fund* and the benefits of the *REIT*;
4. charging fees and expenses;
5. the related persons in the **conversion**, as well as the related persons in the establishment and management of the *mutual fund* and the *REIT*, as well as the rights, duties, and liabilities of such persons;

In presenting the information under the first paragraph, the *management company* shall enclose a summary of the material information of the draft trust instrument comprising:

(d) implications in respect of the unitholders arising out of the **conversion** and the tax implications shall be included;

(e) the plan for **conversion**, dissolution and liquidation of the *mutual fund* shall include information, at a minimum, relating to the **conversion** steps, material information, conditions (if any), dissolution, liquidation, and the estimated period of time for the implementation on each step;

The presentation of the information under the first paragraph shall also include the information relating to the action in the following matters:

1. the closing of the register for suspension of unit transfer to determine the right to switch the investment units with the *units* of the *REIT*;
2. the post of an “H” (Trading Halt) sign on the Stock Exchange of Thailand for a temporary suspension of the trading of the investment units;

3. the transfer of the assets and obligations of the *mutual fund* to the *REIT*, the switching of the investment units with the *units*, the dissolution of the *mutual fund*, and the liquidation of the *mutual fund*, subject to the criteria in Chapter 4;

4. surrendering of investment unit certificates (if any);

5. action to be taken in the case that the unitholders place the investment units as collaterals against debt repayment (if any);

6. the revocation of the investment units from being listed securities and listing the *units* on the Stock Exchange of Thailand;

(f) expenses incurred in the conversion, dissolution, and liquidation to be collected from the unitholders of the *mutual funds* or the *REIT* (if any);

(g) opinion of an independent *financial advisor* on the *conversion* which states the possible impact upon the unitholders from passing a resolution on that particular matter, as well as the advantages and disadvantages of the *conversion*;

(h) other information prescribed and notified by the SEC Office;

(3) The independent *financial advisor* who gives an opinion on the *conversion* in the notice of meeting under (2) (g) shall attend the meeting of the unitholders to clarify and give information to the unitholders.

**Clause 6** The meeting of the unitholders expressly resolves to approve the following matters:

(1) *Conversion* and *conversion* plan;

(2) Alteration or modification of the *commitment* and the mutual fund project (if any);

(3) Dissolution of the *mutual fund*;

(4) Appointment of another person as the *REIT manager* in place of the *management company* or the appointment of another person as the trustee of the *REIT* in place of the custodian of the *mutual fund* (if any).

The resolution of the unitholders under the first paragraph in respect of sub-clauses (1), (2), and (3) shall be passed by votes of no less than half of the total investment units sold and in respect of sub-clause (4), the resolution shall be passed by votes of no less than half of the number of the investment units of the unitholders who attend the meeting and are entitled to vote, provided that the votes of the unitholders who have special interest in the relevant matter shall not be counted.

### Chapter 3

#### Application for and Approval of Offer for Sale of Newly Issued Units of REIT Converted from Mutual Fund

---

**Clause 7** Application for and approval of the offer for sale of newly issued *units* of a *REIT* converted from a *mutual fund* shall comply with the rules, conditions and procedures prescribed in this Chapter and the person who files an

application for approval under this Notification shall be a settlor of an **REIT** who will be the **REIT manager** once the **REIT** has been settled.

**Part 1**  
**Application for Approval**

---

**Clause 8** In the application for approval of the offer for sale of the **units**, the applicant shall file the application with the SEC Office in accordance with the procedures prescribed and notified by the SEC Office, and the evidentiary documentation in support of the application shall include the following documents at a minimum:

- (1) The minutes of the meeting of the unitholders incorporating the resolutions of the matters under Clause 6;
- (2) A confirmation letter from the applicant and the **management company** confirming that the calling of the meeting, the notice of the meeting, and the resolutions of the unitholders meet the criteria in Chapter 2;
- (3) The draft trust instrument;
- (4) The draft agreement appointing the **REIT manager**;
- (5) The registration statement or documentation indicating the material information under the registration statement;
- (6) A confirmation letter from the person who will act as the trustee of the **REIT** containing the statement that such person accepts to perform the duties as the trustee of the **REIT**, has explored the evidentiary documentation filed by the applicant to the SEC Office and certifies that the trust instrument is in compliance with the notification issued under the *Trust for Transactions in the Capital Market B.E.2550 (2007)*, and that the person is prepared to perform the duties as the trustee of that **REIT**;
- (7) Other evidentiary documentation prescribed and notified by the SEC Office.

The application and supporting documents under the first paragraph shall be signed by the authorized persons of the applicant to certify the correctness and completeness of the information relating to the performance of its duties.

The applicant under the first paragraph shall pay the fee for filing the application in accordance with the rates prescribed in the *Notification of the Securities and Exchange Commission concerning the Determination of Fees for the Application for Offer for Sale of Newly Issued Securities and the Application for Securitization Projects* when filing the application.

**Clause 9** The SEC Office shall notify the result of the consideration of the application within forty-five days from the date on which the SEC Office receives the application and a complete set of documents.

In considering the application, the SEC Office shall be empowered to request the applicant in writing to give clarification or submit the documents within the period specified by the SEC Office. If the applicant fails to give clarification or submit the

documents within the period specified by the SEC Office, it shall be deemed that the applicant no longer intends to apply for approval of the offer for sale of the *units* of that *REIT*.

## Part 2 Approval Criteria

---

**Clause 10** An application for the offer for sale of the *units* shall be approved by the SEC Office when the following criteria have been met:

- (1) The resolution is expressly passed at the meeting of unitholders in compliance with the criteria in Chapter 2;
- (2) There is no reason to doubt that the *conversion* will not be able to be carried out in accordance with the *conversion* plan specified in Chapter 4;
- (3) It can be demonstrated that there is no dispute in court pending consideration proceedings or legal execution or pending any dispute settlement by means of arbitration or the enforcement of the arbitration award or legal execution.

## Part 3 Post-Approval Conditions

---

**Clause 11** The approved person under Part 2 of this Chapter shall comply with the post-approval conditions applicable to the approved person who offers the newly issued *units* from the *conversion* of a property fund into a *REIT* under the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust* and the additional conditions in this Chapter.

**Clause 12** The approved person as the settlor shall undertake to establish the *REIT* by means of the creation of the rights with respect to the assets to the trustee within three days from the approval date.

The rights with respect to the assets under the first paragraph shall be created by means of entering into an agreement containing the *commitment* that the approved person shall undertake action in order for the *REIT* to acquire the assets of the *mutual fund* that has been converted in exchange for all newly issued *units* by the *REIT* to such *mutual fund*.

**Clause 13** Once the *REIT* has been established, the approved person shall implement the plan for conversion, dissolution and liquidation of a *mutual fund* in accordance with the minimum criteria prescribed in Chapter 4.

**Part 4**  
**The SEC Office's Authority on Approval**

---

**Clause 14** If the SEC Office is of the view that the documentation or information provided by the applicant is incomplete or ambiguous or unclear, or if it is necessary or there is any other event that will affect the benefits of the investors or investment decision-making, the SEC Office may instruct the applicant to undertake the following action:

- (1) Disclose additional information on the *conversion* or the *REIT* to inform the investors;
- (2) Arrange for a revaluation of the real estate in which the *REIT* will invest;
- (3) Arrange for due diligence to be conducted or an additional opinion on the real estate which the *REIT* plans to invest;
- (4) Procure a legal opinion on legal issues that are important or unclear, and that are related to the *conversion* or the *REIT*.

If the approved person fails to comply with the first paragraph, it shall be deemed that that person no longer intends to apply for approval of the offer for sale of the *units* of that *REIT*.

**Clause 15** In cases where any of the following grounds for suspicion becomes apparent to the SEC Office; the SEC Office may not approve the offer for sale of the *units* of the *REIT* in the application:

- (1) The applicant or the offer for sale of *units* has the characteristic or is of the format in compliance with the approval criteria or conditions under this Notification, but certain facts lead to the consideration that the true objective or the substance of that offer for sale of *units* constitutes an avoidance of the 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 criteria issued pursuant to such laws or this Notification;
- (2) The offer for sale of the *units* may contradict the public or governmental policy;
- (3) The offer for sale of the *units* may have an impact upon the overall creditability of the Thai capital market; or
- (4) The offer for sale of the *units* may cause damage to investors in general, or may lead to unfair treatment of investors in general, or the investors may not have obtained correct or sufficient information to support their investment decision-making.

**Clause 16** In the case that additional facts become apparent to the SEC Office after the approval of the offer for sale of *units* to show that the facts and

circumstances the SEC Office used in its consideration for approval of the offer for sale of newly issued *units* were inaccurate or have changed, and if such facts and circumstances had been known to the SEC Office prior to the approval of that offer for sale, the SEC Office might not grant approval of the offer for sale of those *units*, the SEC Office shall be empowered:

(1) To instruct the approved person, its directors or executives to clarify or disclose additional information within a specified period and suspend the approval of the issuance of the *units* or instruct the approved person to suspend the offer for sale of the *units* until clarification or correction has been made within the specified period;

(2) To revoke the approval of the offer for sale of the newly issued *units*.

In order to give the instructions under the first paragraph, the SEC Office shall give regard to the following factors in support of its consideration:

(1) The seriousness of the facts or circumstances that have been changed;

(2) Implications in respect of the affect upon the unitholders of the *mutual fund* after the *conversion* to *REIT*.

#### Chapter 4 The Plan of Conversion, Dissolution and Liquidation of Mutual Fund

---

**Clause 17** In the *conversion*, dissolution and liquidation of a *mutual fund*, the *management company*, the *REIT manager* approved under Chapter 3, and the liquidator shall comply with the resolution of the meetings of the unitholders that are in compliance with Chapter 2 and shall comply with the minimum criteria as follows:

(1) The transfer of the assets and obligations of the *mutual fund* to the *REIT* shall comply with Clause 18;

(2) The switching of the investment units of the *mutual fund* with the *units* of the *REIT*, and the dissolution and liquidation of the *mutual fund* shall comply with Clause 19 to Clause 20.

**Clause 18** In the transfer of the assets and obligations of the *mutual fund* to the *REIT*, the *management company* and the *REIT manager* shall procure the following action within three business days from the date on which the *REIT* is established under Clause 12;

(1) The *management company* shall procure that the assets and obligations of the *mutual fund* be vested in the *REIT* in exchange for the newly issued *units* of that *REIT*;

(2) The *REIT manager* shall deliver all newly issued *units* of the *REIT* to the *mutual fund* in exchange for the assets and obligations of the *mutual fund*.

In delivering the assets and obligations of the *mutual fund* to the *REIT* under the first paragraph, the *management company* shall undertake the action it deems



necessary to ensure that the trustee of the **REIT** has the complete rights and duties, and deliver the relevant evidentiary documentation in order that the **REIT manager** and the trustee shall be able to continuously perform their duties, provided that, in delivering such evidentiary documentation, the **management company** shall prepare and deliver a letter to certify that the evidentiary documentation delivered is correct and complete.

**Clause 19** The switching of the investment units of the **mutual fund** and the **units** of the **REIT**, and the dissolution and the liquidation of the **mutual fund** under the **conversion** plan shall be carried out as follows:

(1) The **management company** shall dissolve the **mutual fund** on the business day following the date on which the assets and obligations of the **mutual fund** are transferred to the **REIT** under Clause 18.

Before the dissolution of the **mutual fund** under the first paragraph, the **management company** shall inform its investors, custodian of the mutual fund, the Stock Exchange of Thailand, and the SEC Office of the proposed dissolution of the **mutual fund** at least five business days in advance in accordance with the following procedures:

(a) the **management company** shall inform its investors the proposed dissolution through the channels accessible by the general investors;

(b) the **management company** shall inform its custodian of the mutual fund, the Stock Exchange of Thailand, and the SEC Office of the proposed dissolution in writing.

(2) If the **management company** itself does not perform the liquidation of the **mutual fund**, it shall deliver the evidentiary documentation containing the necessary information of the liquidation to the liquidator without delay in order for the liquidator to be able to perform its duties.

(3) The liquidator shall proceed and complete the liquidation in accordance with the following criteria within sixty days from the dissolution of the **mutual fund**, unless a waiver is granted from the SEC Office if it is deemed necessary and expedient:

(a) make payment of debts and undertake to make payment of debts that become due, together with all fees and charges of the **mutual fund**, as well as other expenses payable in the liquidation, provided that the provision under Clause 20 shall also be complied with;

(b) allocate and complete the **units** of the **REIT** to the unitholders whose names appear in the unitholder register on the day that specifies the right to switch the investment units with the **units** of the **REIT** without delay and ensure that such unitholders become the holders of the **units** of the **REIT** in accordance with the switching ratio approved by the meeting of the unitholders;

(c) file the application for the registration for the dissolution of the **mutual fund** to the SEC Office and submit a report of the liquidation result within 15 days from the allocation of the **units** under (b) and the transfer of the pending assets to the SEC Office (if any);

(d) In addition to the action undertaken under (a) to (c), the liquidator shall be empowered to undertake other action to the extent that it is deemed necessary to complete the liquidation.

**Clause 20** If the *mutual fund* has debts that become due and the creditors do not accept the debt repayment or cannot receive debt repayment, or there are dividends or distribution from the decrease of the registered capital of a *mutual fund* that the unitholders have not collected or deposited checks at banks for that payment, the liquidator shall reserve the assets being the object of the debts or such fund from the assets of the *mutual fund* and place the assets in accordance with the criteria prescribed in the *Notification of the Capital Market Supervisory Board concerning the Rules, Conditions and Procedures for Liquidation of Mutual Funds, mutatis mutandis* or undertake any other action in order to be able to make debt repayment upon demand by the creditors.

## Chapter 5 Waiver of Criteria

---

**Clause 21** In the interest of the *conversion*, a waiver is granted to the criteria prescribed in the relevant Notifications of the Capital Market Supervisory Board, the Notifications of the Office of the Securities and Exchange Commission, orders, and circulars that are issued or establish guidelines in the following matters:

- (1) The requirement relating to the minimum period of which *mutual funds* shall hold their real estates or the leasehold right to their real estates;
- (2) The requirement relating to the criteria of the disposal of real estates of *mutual funds* and the arrangement for valuation reports to be prepared before the date on which the real estates of *mutual funds* are disposed of;
- (3) The requirement relating to the criteria for investment by *mutual funds* only in the case that the compliance with Chapter 4 renders that a *mutual fund* is unable to comply with the criteria prescribed for that particular matter.

**Clause 22** If one of the following characteristics is met, the SEC Office may grant a waiver to the criteria under this Notification:

- (1) There is a clear fact in respect of which it can be considered that the criteria or conditions to be waived are immaterial and the costs outweigh the benefits derived from compliance with such criteria or conditions.
- (2) The persons subject to this Notification are restricted under laws resulting in their being unable to comply with the criteria or condition to be waived;

(3) The persons subject to this Notification adopt other measures that are sufficient to compensate for their non-compliance with the criteria or conditions to be waived.

In granting a waiver under the first paragraph, consideration shall be given to the adequacy and sufficiency of information to support investment decision-making and the measures for investor protection. In this regard, the SEC Office may prescribe conditions to be met by the persons subject to this Notification.

Notified this 16<sup>th</sup> day of December 2013.

(Vorapol Socratianurak)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board