

(UNOFFICIAL TRANSLATION)

Codified up to No. 5
As of 19 February 2018

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. 12/2558

Re: Offering of Units of Infrastructure Trusts

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 36, Section 67 and Section 69 of the *Securities and Exchange Act B.E. 2535 (1992)*, and, Clause 2 of the *Notification of the Securities and Exchange Commission Kor Ror. 4/2558 Re: Eligible Capital Market Transactions for the Creation of a Trust (No. 3)* dated 9 April 2015, the Capital Market Supervisory Board hereby issues the following regulation:

Clause 1 This Notification shall come into force from 16 May 2015.

Clause 2 In this Notification and in the Form attached herewith;

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

“*trust*” means an infrastructure trust;

“*high net worth investor*” means a person who meets one of the following requirements;

(1) initially acquires units of a trust not less than ten million baht; or

(2) such person in (1) who acquires additional units, which results in the total value of not less than ten million baht after the units already held are combined.

The calculation for the total value of units held in Paragraph 1 shall be based on the trading value of each transaction;

“*trust manager*” means the party serving as the trust manager under the trust instrument;

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

“*registration statement*” means the registration statement applicable to the offering of units;

“*infrastructure business*” means the infrastructure business specified in the *Notification of the Capital Market Supervisory Board concerning the Rules, Conditions and Procedures for the Establishment and Management of Infrastructure Funds*;

“**company**” means a limited company or a public limited company;

“**paid-up capital**” means the total value of units fully paid up;

“**Stock Exchange**” means the Stock Exchange of Thailand;

“**related person**” means the related person under the *Notification of the Capital Market Supervisory Board concerning the Related Party Transactions*;

“**brownfield project**” means an infrastructure business that the construction for which has been completed and is already generating cash flow;

“**greenfield project**” means an infrastructure project which does not qualified as a brownfield project;

“**association**”³ means an association related to securities business which is licensed by and registered with the SEC Office with the objective to promote and develop securities business related to investment management;

“**debt financing**” shall include the issuance of debt instruments or conclusion of any transaction that would result in or is in substance a money borrowing;

“**connected person**” means any individual or juristic person having one of the following relationships with the director, executive, major shareholder or controlling person of a company;

(1) the spouse or minor child of such person;

(2) the individual or a company who is the major shareholder of the said person, namely:

(a) an individual or a company holding shares in such juristic person more than fifty percent of the total voting rights of the outstanding voting shares;

(b) an individual or a company holding shares in the company in (a) more than fifty percent of the total voting rights of the outstanding voting shares;

(c) the holding company of the company in (b) and its consecutive holding companies whose shareholding in each company is more than fifty percent of the total voting rights of the outstanding voting shares, or, an individual holding shares in any company in the chain more than more than fifty percent of the total voting rights of the outstanding voting shares;

An individual’s holding under Paragraph 1 shall include the shares held by his spouse or any minor child;

“**common person group**” means the persons with one or more of the following relationships:

(1) spousal relationship and parent-minor child relationship

(2) relationship between a juristic person and a shareholder or partner of such juristic person who holds directly or indirectly more than fifty percent of issued shares of, or more than fifty percent of partnership interest in, such juristic person

(3) private funds of (1) or (2) above, but not including any provident fund;

³ Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2558 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

“*information relating to the offering*” means the information provided at the point of sell as follows:

- (1) amount and offering price;
- (2) period of the offering;
- (3) detail on the subscription, underwriting and allotment of the units;
- (4) any information relating to the offering or an information of the same nature or related to the information in (1), (2) and (3);

³The terms “**executive**”, “**major shareholder**”, “**controlling person**”, “**parent company**”, “**subsidiary**” and “**institutional investor**” shall have the same definition as determined by the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in Notifications concerning Securities Offering*.

Clause 3 This Notification shall apply to the offering of newly issued units of an infrastructure trust which is a trust with an objective is to invest mainly in and benefit from infrastructure assets.

Clause 4 This Notification sets out the following;

- (1) in relation to the application and the approval on the offering of the newly issued units; the applicant shall submit an application accordingly to Chapter 2 of Part 1 and comply with Part 2;
- (2) in relation to the submission of the registration statement, the applicant shall submit the said document in accordance with Part 3.

Part 1

General provisions

Chapter 1

Infrastructure Assets and Type of Trust

Clause 5 The infrastructure assets under this Notification are as follows:

- (1) the ownership of, the possessory right or the leasehold in the land, buildings, constructions, machines, equipment including all other related assets used in the operation of the infrastructure business;
- (2) the concession right to operate an infrastructure business;
- (3) the right to receive the future income or the right under the income sharing agreement that will be generated by an infrastructure business or that will result from the

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2558 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

operation of an infrastructure business or the operation of any other assets acquired through the operation of an infrastructure business;

(4) the right of claim under a sales and purchase or installation agreement for machines and equipment or under a construction agreement or under a sales and purchase agreement for the products produced or services provided by an infrastructure business;

(5) the shares issued by a company that:

(a) invests in (1) (2) (3) or (4) collectively not less than seventy-five percent of the company's total asset value or has an income deriving from the operation of the assets under (1) (2) (3) or (4) not less than seventy-five percent of the company's total income in each fiscal year and;

(b) meets one of the following criteria;

1. has or will have its shares held by the trust in the amount which enables the trust to pass extraordinary resolutions;

2. where the trust is unable to acquire the shares in the said company in the amount under 1. due to a legal restriction or a capital venture condition imposed by the government, the trust shall acquire the maximum amount of share so permit by the law which shall in no case be less than forty percent of the company's total voting rights. In any case, the trust shall be involved in the management of the said company proportionally to its shareholding.

(6)³ the debt instruments issued by the company in (5) or an agreement in the nature of debt financing with the company in (5) only in the case where the trust is already a shareholder.

Clause 6 An infrastructure trust may be one of the following types:

(1) a retail trust which is a trust without the restriction under (2);

(2) a major investor trust that the unitholders of which are restricted to major investors.

Chapter 2

Application and consideration period

Clause 7 An applicant for the offering of newly issued units shall be the following;

(1) for the initial offering where the trust has not been created, the settlor, who shall take up the roll of trust manager once the trust is created;

(2) for an existing trust, the trust manager, who is designated by the trust instrument to file an application for the offering.

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2558 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

The trust manager under Paragraph 1 shall be those approved by the Office, including those undergoing the process.

Clause 8 An application shall be filed to the SEC Office accordingly to the procedure prescribed by the SEC Office and using such applicable form.

¹The applicant in Paragraph 1 shall pay the application fee to the SEC Office when the SEC Office has received the application together with accurate and complete evidentiary documentation according to the *Licensing Manual for the Public*. In this regard, the application fee shall be in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Filing of Registration Statement, Registration and other Applications*.

Clause 9 The application for the offering of newly issued units shall be jointly prepared with a financial advisor who shall also certify the accuracy and completeness of the information therein.

The financial advisor under Paragraph 1 shall not be, be related to or have an interest in the party who will be selling, transferring, leasing out or granting the rights in the infrastructure asset to the trust in the manner that may obstruct the financial advisor from independently conducting the due diligence on the infrastructure asset in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Granting of Approval for Auditors and Scope of Duties*.

Clause 10¹ After receiving the application together with the accurate and complete evidentiary documentation according to the *Licensing Manual for the Public*, the SEC Office shall examine the facts according to the procedures and methods specified in the *Licensing Manual for the Public* and notify the issues derived from the examination of such facts for the applicant to clarify within the period specified by the SEC Office in the notifying letter. The SEC Office shall complete the said acts within one hundred and twenty days from the date of receiving the application together with the accurate and complete evidentiary documentation according to the *Licensing Manual for the Public*.

The SEC Office shall notify its decision on the application within forty-five days from the date of receiving the clarification of the issues derived from the examination of the facts from the applicant.

In the case where the applicant wishes to request a waiver of the rules under this Notification, the applicant shall submit a request for the waiver together with evidentiary documentation to the SEC Office before the SEC Office commences the consideration under Paragraph 2 according to the procedures and methods specified in the *Licensing Manual for*

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 48/2558 Re: Offering of Units of Infrastructure Trusts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 48/2558 Re: Offering of Units of Infrastructure Trusts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

the Public. In this regard, the SEC Office shall complete the consideration of the request for the waiver within the same period for considering the application under Paragraph 2.

Part 2

Approval Requirements and post-approval obligation

Clause 11 The application for the offering of newly issued units shall be approved by the SEC Office upon satisfying the following requirement:

(1) for a retail trust, the requirements prescribed in the Requirements for All Types of Trust set out in Chapter 1 and the Additional Requirements for a Retail Trust set out in Chapter 2;

(2) for a major investor trust, the Requirements for All Types of Trust set out in Chapter 1. The applicant is also required to present a restriction on the unit transfer that would prohibit any transfer, save for inheritance, which may misplace the units with a non-major investor;

Upon being approved of the offering, the approved applicant shall comply with the post-approval obligation set out in Chapter 3.

Chapter 1

Requirements for All Types of Trust

Division 1

Trust manager and trustee

Clause 12 The trust manager shall meet the following requirement:

(1) have no records of breaching or not complying with any significant approval requirements for the offering of trust unit within the period of 5 years before applying for the offering;

(2) pose no reasonable doubt to its ability to continuously and credibly manage the trust in accordance with the trust instrument.

Clause 13 The trustee poses no reasonable doubt to its ability to continuously and credibly perform the duties of a trustee in accordance with the trust instrument.

Division 2

Trust requirements

Clause 14 A trust shall:

- (1) pose no reasonable doubt to have been created as a private asset management for the benefit of a single person or a single group of persons (private trust);
- (2) the infrastructure business underlying the infrastructure asset shall be for the benefit of the public. Such public benefit shall be construed in accordance with the same set out in the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for Management of Infrastructure Funds, mutatis mutandis*

Clause 15 The name of the trust shall indicate its main features and does not misrepresent its investment policy.

Clause 16 The trust shall characterize its beneficiaries and units under the following condition:

- (1) a beneficiary of the trust is a unitholder thereof;
- (2) the payment for the units shall be made in cash or cash equivalent;
- (3) a classification of the units may be made in compliance with the following condition:
 - (a) the units of the same class shall render equal rights and benefits;
 - (b) a different class of units may render different rights and benefits in:
 1. the distribution payment and capital refund to the unitholders;
 2. the fees or expenses to be charged to the unitholders;
 3. other differentiation that is practical and regardful of the benefit of all unitholders including the potential impact to each class of unitholder;
- (4) if a class of unit may be redeemable, the trust instrument shall contain a clear condition on the terms and period of the redemption, and, the applicant shall prove that such redemption will not impact the trust's viability.

Clause 17 The trust shall have a minimum capital of 10 billion baht, calculated from the expected paid up capital after the offering.

Clause 18 The investment in an infrastructure asset shall meet the following requirements:

- (1) the value of the investment shall be at least seventy-five percent of the trust's net asset value except when exempted by the SEC Office on a necessary and due cause;
- (2) if the trust is investing in multiple infrastructure businesses, each business' value shall not be less than 3 billion baht;

(3) the infrastructure asset to be invested shall be specified at the time of application, and, the trust shall acquire the said infrastructure asset within 6 months upon the creation of trust or from the closing date of the offering, as the case may be;

(4)² the infrastructure asset to be invested shall not be under possession of a person who has the characteristics under Clause 18/1 unless the applicant can demonstrate to the SEC Office that such person has rectified the cause, work system, management structure and operating control, which caused such person to have the characteristics under Clause 18/1(1) or (2), in which case the provisions under Clause 18/1(1) and (2), as the case may be, shall no longer apply.

Clause 18/1² A trust shall not enter into a contract to invest in an infrastructure asset with a person having the following characteristics if such person or other persons controllable by such person will be involved in the management of the trust. In the case where such person is a company whose shares are listed on the Stock Exchange, only the characteristics under (1)(a) shall apply:

(1) within a period of five years prior to the filing date of an application for approval of an offer for sale of a trust, such person shall not have any of the following characteristics:

(a) having a record of contravening a regulation or condition related to securities offering in a significant matter;

(b) having been rejected by the SEC Office regarding an application for an offer for sale of newly issued shares due to a significant suspicious ground regarding management mechanism in any of the following manners:

1. having a possibility to be unable to treat shareholders fairly by giving benefits to any group of shareholders, which will create an advantage over other shareholders or give inappropriately more benefits than other shareholders;

2. being unlikely to be able to protect shareholders' rights by allowing any person to receive financial gain beyond what should be received normally or by causing the company to lose a benefit that should have been received.

(c) having an application for an offer for sale of newly issued shares rejected by the SEC Office on a suspicious ground related to disclosure of information that was incomplete, insufficient for making an investment decision, or that misled investors in a manner of concealing or disguise or making up non-existing facts in material transactions or operation.

(d) having withdrawn an application for an offer for sale of newly issued shares without a clarification of the suspicious grounds under (b) or (c) to the SEC Office or

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 54/2558 Re: Offering of Units of Infrastructure Trusts (No. 3)* dated 13 July 2015 (effective on 16 August 2015).

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 54/2558 Re: Offering of Units of Infrastructure Trusts (No. 3)* dated 13 July 2015 (effective on 16 August 2015).

with a clarification that does not contain facts or reasonable ground for refuting the suspicious grounds under (b) or (c).

(2) within a period of ten years prior to the filing date of an application for approval of an offer for sale of a trust, such person has been sentenced by a final judgement in an offense concerning property, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(3) being currently subject to a criminal complaint or legal prosecution for an offense concerning property by a relevant agency, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(4) being a person subject to a suspicious ground of being arranged for the person with the characteristics under (1)(2) or (3) to avoid compliance with the regulations for consideration under (1)(2) or (3) imposed by the SEC Office.

Clause 19 The calculation of the investment value in the infrastructure asset shall comply with the following rules:

(1) for assets of a greenfield project, the calculation shall be based on the acquisition price and the development costs expected to be incurred by the trust to mature the project;

(2) for assets of a brownfield project, the calculation shall be based on the acquisition price;

(3) for any existing investment, the calculation shall be based on the latest appraised price adjusted by any acquisition or disposal of infrastructure assets (if any) and amortization of the infrastructure asset (if any) occurred after the latest appraisal.

If the payment for the infrastructure asset will be made in instalments, the money reserved for the consecutive payments may be included in the calculation for the investment value in (1), (2) or (3) of the first paragraph.

Clause 20 The income generating activities to be carried out on the infrastructure asset shall be restricted to leasing out, granting or allowing other persons to operate the asset. The trust shall not undertake the infrastructure business itself save for the infrastructure businesses conducted via the company in Claus 5(5).

Clause 20/1³ The debt financing of a trust, regardless of the methods, shall not have the following characteristics:

(1) having terms and conditions similar to the terms of perpetual bond;

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

(2) having the characteristics of structured note unless in the case that fully meets the following criteria;

- (a) granting callable option to the debtor or puttable option to the trust;
 - (b) specifying an interest rate or return at a fixed rate or variable rate based on the interest rate of financial institution or other interest rates;
 - (c) not specifying conditions for paying interest or returns based on other factors additionally.
- (3) being a securitization.

Division 3

Trust instrument, disclosure of information and other requirements

Clause 21 the trust instrument or the draft thereof, as the case may be, shall be in accordance with the laws on trust for transactions in capital market including the notifications, regulations or orders issued under the said law, and shall also meet the requirements in this Notification.

Clause 22 The information disclosed to the investors shall not contain any misleading statement and poses no reasonable doubt to its completeness or insufficiency.

Clause 22/1³ In the case where the applicant wishes to make concurrent initial offering of units and debt financing through offer for sale of newly issued debentures, it shall be demonstrated that the person who will sell, transfer, lease or grant the rights in the infrastructure asset of the trust are committed to buy units not less than the amount specified under Clause 41/1.

Clause 23³ For a subsequent offering to increase capital of the established trust, the applicant shall demonstrate that the units to be offered have been duly authorized in accordance with the terms set out in the trust instrument.

Chapter 2

Additional Requirement for Retail Trusts

Division 1

Due diligence and Appraisal

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

Clause 24 The trust manager and the financial advisor shall conduct a due diligence on the infrastructure asset to be invested by the trust by preparing the analyses on the infrastructure business and the infrastructure asset, such as financial, legal and technical analyses, and, deriving an opinion therefrom that the investment is;

(1) suitable for the investment of the general investors for having the potential to generate income in accordance with the objective of the trust;

(2) supported by documents evidencing the ownership or rights or has a contracting document that are complete, clear and legally enforceable and sufficient for the trust to operate upon.

Clause 25³ The infrastructure asset shall be appraised in accordance with the following rules;

(1) for the infrastructure asset under Clause 5(1) (2) (3) or (4);

(a) the appraiser shall be a juristic person with experience or expertise in the appraisal of infrastructure assets of that specific type;

(b) the appraisal is conducted in full where the instruments of rights have been verified and such appraisal is conducted for public purposes;

(c) the appraisal is conducted not more than 1 year prior to the acquisition of the said asset;

(d) if the acquisition of the infrastructure asset is a transaction with the trust manager or a related party to the trust manager, the appraisal shall be conducted by at least two appraisers under (a);

(2) for the infrastructure asset in the form of shares under Clause 5(5), if such shares are not listed securities, the appraisal of the infrastructure asset invested by the company shall be conducted in accordance with the rules under (1), *mutatis mutandis*. The appraisal shall consider tax burdens of the company and other factors that may affect the price of the infrastructure asset of the company of which the trust is the shareholder;

(3) for assets other than (1) and (2), the appraisal shall be conducted in accordance with the following rules:

(a) the rule related to the pricing of assets issued by an association;

(b) in the case where the rule under (a) is no applicable to the pricing of assets, the appraisal shall be conducted according to an academic principle that is recognized or complies with international standards.

Clause 26 If the trust wishes to invest in a foreign infrastructure asset, the applicant shall prove that the trust is able to acquire and own that infrastructure asset

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

accordingly to the applicable foreign law by presenting a legal opinion of a lawyer expertized in the said foreign law together with the due diligence.

Division 2

Investments in infrastructure assets

Clause 27 The trust may invest in an infrastructure asset in a greenfield project provided that the aggregate value of the said asset is not more than thirty percent of the asset value of the trust.

The investment in a greenfield project under Paragraph 1 shall include the following;

- (1) the investment in multiple infrastructure asset that one of which is a greenfield project;
- (2) the investment in an infrastructure asset that will be developed in phases whereby certain phase is not fully developed.

The calculation of the investment value in Paragraph 1 shall comply with Clause 19(1).

Clause 28 If the investment will be made in the right to receive the future income or the right under the income sharing agreement under Clause 5(3), the applicant shall prove that the contracting party to the said agreement has arranged for;

- (1) a process by which the trust manager or its agent may examine or verify the correctness of the income contractually entitled to the trust;
- (2) a covenant to deliver a report or relevant information to the trust manager for the trust manager's use of such in the examination or verification of the correctness of the income contractually entitled to the trust.

Clause 29 If the investment will be made in the shares issued by the company in Clause 5(5), the applicant shall prove that a supervision is put in place to direct the operation of the company in accordance with the requirements applicable to the trust that invests directly in that infrastructure asset. The said supervision shall include;

- (1) sending in individuals in a number corresponding to the trust's holding to serve as directors to the company. The trust instrument shall require the selection of the said individuals to be approved by the trust manager's board of directors;
- (2) specifying the responsibilities of the said individuals clearly, including:
 - (a) a clear scope of his managerial discretion that would also put his voting discretion in material subjects of the company under the approval of the trust manager's board of directors;

(b) a supervision over the company's disclosure of information that would make the disclosure on its financial status and operation, transactions between the company and the trust manager or trust manager's related persons, and, the material acquisition or disposal of assets correct and complete;

(c) a supervision over the directors and executives of the company to make sure that they comply with the legal duties and responsibilities.

(3) implementing a supervision to conform the content and authorization of the transactions between the company and the trust manager or trust manager's connected persons, acquisition or disposal of assets and, other significant transactions of the said company accordingly to the trust instrument;

(3/1)³ having a supervisory mechanism that causes the debt financing of the company to be in accordance with rules applicable to the trust except the rules related to the debt-to-equity ratio under Clause 31(1), which may apply specifically to the trust;

(4) arranging measures for the trustee to supervise the trust manager's operation in accordance with the mechanism under (1) (2) (3) and (3/1).

Division 3

Income generating, debt financing and creation of encumbrances

Clause 30 The rent, fees or other considerations including the terms and conditions of the income generating agreements shall be determined in the best interest of the trust as a reasonable person would do under the same circumstances.

Clause 31 The debt financing and creation of encumbrances shall be made under the following rule:

(1) the debt ratio shall be prescribed three times the equity whereby the debt and equity of the trust's subsidiary (if any) shall be accumulated therewith in accordance with the preparation rules for a consolidated financial statement.

The debt to equity ratio under Paragraph 1 shall be considered at the time of a transaction.

(2) the encumbrances shall be created on a necessary basis and related to the trust's asset management as follows;

(a) the encumbrances relating to an agreement permissible to the trust under this Notification such as collateralizing the trust's asset to a loan agreement made in compliance with the trust instrument and this Notification;

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

(b) Such encumbrance is a business custom or a normal practice of the transaction.

Division 4

Other requirements

Clause 32 The applicant for the offering of newly issued units to convert a major investor trust to a retail trust shall have received the unitholders' resolution given in accordance with the trust instrument to do so.

Clause 33 The applicant shall prove that;

- (1) it shall list the units on the exchange once approved of the offering;
- (2) it has implemented a governance that is capable to protect unitholders' rights and render fair treatment and has implemented a measure to manage potential conflicts of interest in order to manage the trust equitably and not disadvantageous to the trust.

Chapter 3

Post-approval requirements

Clause 34³ The applicant approved to offer for sale of trusts to high net worth investors shall be exempted from the requirements set out in Clause 39, Paragraph 1(1) of Clause 42 and Clause 53. In case of unit offering at the whole amount to institutional investors, compliance with the rules under Clause 40 shall also be exempted.

Division 1

Advertisement and sales promotion of the units

Clause 35 The content, the proportion of content and the presentation of the advertisement shall be appropriate in order to provide investors necessary and useful information in relation to the investment in the units. The advertisement shall be made under the following rule;

- (1) the advertisement is not false, overstated, distorted, withheld or misleading in material aspects;

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

(2) the main points communicated in the advertisement shall not be more than those shown in the registration statement and the draft prospectus submitted to the SEC Office in compliance with Chapter 3;

(3) does not precipitate investors into investment;

(4) not suggestive or assertive of the return deriving from the investment except as exempted by the Office, or, when such information is a forecast made under the following condition;

(a) made with sufficient information to support the forecast;

(b) provide information concerning the possible risks on each condition of the forecast;

(c) the information in (a) and (b) is presented the form understandable for the investors and not misleading;

(5) a warning on the investment risks is sufficiently provided and a place of contact is given so that the investors may therefrom inquire about the investment;

(6) the information of other parties on which the advertisement is based or referenced shall be current and retrieved from a specifiable and credible source;

(7) the information in an advertisement of a sale promotion shall contain mainly the information on the units whereas the information on the sales promotion shall be marginal;

(8) the advertising expenses may be charged to the trust when the advertisement is made for or will be for the benefit of the trust;

(9) the approved applicant shall make sure that the parties in conjunction with whom, or, by whom the advertisement is prepared, comply with (1) to (8).

If the advertisement is made before the registration statement becomes effective, the approved applicant shall also comply with the notifications relating to the dissemination of information on the offering of infrastructure trust before the registration statement becomes effective.

Clause 36 The approved applicant shall make the text, warnings and information in the advertisement clearly audible and visible, and, suited to the form of presentation. The warnings in each subject shall be stressed as well other information in that advertisement.

Clause 37 The approved applicant may arrange a sales promotion provided that the sales promotion;

(1) does not incentivize or precipitate the investors to invest in the units regardless of the basic information essential to an investment decision;

(2) does not involve a competition for a prize or drawing a winner of a prize or any kind of benefit;

(3) contains the conditions on which the investors may receive a reward or any kind of benefit that are clear, easily understandable, not misleading, appropriate and fair;

(4) has been publicly communicated to the investors in advance for a proper period of time;

(5) the expenses of which are not charged to the trust.

Division 2

Offering and allotment

Clause 38 The approved applicant shall finish the offering within 6 months after being notified of the approval. The approval shall be terminated upon the lapse of the said period.

Clause 39 The approved applicant shall comply with the rules on the sale of shares in the *Notification on the Sale of Shares and Warrants of an Equity Issuer, mutatis mutandis*, unless otherwise required by this Part.

The SEC Office may prescribe the detail on the implementation of the said notification.

Clause 40 The approved applicant shall have the solicitation or advice relating to the trading or investment in the units conducted by a securities company eligible to provide the said services on the units except when the approved applicant is also an eligible securities company and provided, however, that it shall comply with the requirements on providing the said services, *mutatis mutandis*, save for the allotment restrictions.

The securities company or the approved applicant soliciting or advising on the investment under Paragraph 1 shall be independent from the party selling, transferring, leasing out or granting the rights in the infrastructure asset to the trust.

Clause 41 The approved applicant shall make sure that the investors are informed through all subscription channels that the subscription detail, allotment, cancellation of the subscription, termination of the offering and return of subscription money can be found in the registration statement and the prospectus.

Clause 41/1³ In an initial public offering for units, if the approved person concurrently offers units for sale and conducts debt financing through an offer for sale of newly issued debentures (concurrent offering), the following rules shall apply:

(1) the approved person shall offer units for sale to the person who will sell, transfer, lease or grant the rights in the infrastructure asset to the trust prior to offering units to other investors;

(2) the total accumulative value of the units offered to the persons under (1) shall not be less than one hundred million baht or not less than ten percent of the total outstanding units that such person wishes to buy, whichever value is lower;

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

(3) the approved person shall establish a trust instrument by transferring the total proceeds from the offer for sale of units under (2) to the trustee to establish a trust instrument in accordance with the rules under Clause 51 prior to offering for sale of the remaining units and debentures to other investors.

Clause 42 Upon the closing of the initial offering, provided that any of the following event occurs, the approved applicant shall terminate the offering and return the subscription money to the subscribers;

(1) having less than 250 subscribers or the unit distribution does not satisfy the exchange's listing rule;

(2) the value of the subscribed units and the debt financing (if any) is insufficient to make the intended investment in the infrastructure asset as disclosed in the registration statement and the prospectus;

(3) the allotment made to any person, the associated person or a foreign investor does not comply with the ratio set out in this Part and cannot be corrected so;

(4) the transfer of the offering proceeds cannot be made to the trustee to create the trust within fifteen working days from the closing date.

The approval on the offering shall be terminated upon termination of the offering pursuant to Paragraph 1.

Clause 43 The approved applicant of a secondary offering shall terminate the offering and return the subscription money to the subscribers upon the occurrence of any of the following event;

(1) the value of the subscribed units, the money segregated for investment and the debt financing (if any) is insufficient to make the intended investment in the infrastructure asset as disclosed in the registration statement and the prospectus. In this regard, the total offering shall be terminated.

(2) the allotment made to a person, the associated person or foreign investors in aggregate with the units being held by the same (if any) does not comply with this Part. In this regard, the excess allotment shall be terminated.

The approval on the offering shall be terminated upon termination of the offering pursuant to (1) in Paragraph 1.

Clause 44 Upon the occurrence of the offering termination event, the approved person shall inform the SEC Office within five working days from the date of occurrence.

Clause 45 The allotment made to a person or an associated person shall not exceed the following rate and shall also be in accordance with Clause 46;

- (1) fifty percent of the outstanding units;
- (2) fifty percent of the outstanding units of a class, if there is a classification of units.

If there is more than one person to sell, transfer, lease out or grant the rights in the infrastructure asset to the trust, the rate specified in Paragraph 1 shall be the accumulation of all.

Clause 46 The portion to be allotted to the trust manager or the director, executive, controlling person, parent company, subsidiary of the trust manager including the related party of any of the aforesaid person shall be segregated from the portion to be allotted to the public. In this regard, the category of the allotment target and the portion shall be disclosed in the registration statement and the prospectus.

Clause 47 The allotment to be made to a foreign investor in a trust that invests in a domestic infrastructure asset shall comply with the foreign holding rules set out by the law, regulations or requirements relating to that infrastructure asset.

If the investment is made in multiple infrastructure assets which have different applicable requirement on the foreign holding, the allotment shall be made in compliance with the lowest ratio set out by all relevant laws.

Clause 48 If the approved applicant discovers that a holding of a person or an associated person does not comply with the ratio or requirements set out by this Notification, the approved applicant shall;

- (1) forthwith notify the said person of the restriction on the right to vote and the right to distribution under the trust instrument prepared in accordance with the *Notification concerning Entries and Content of the Trust Instrument of an Infrastructure Trust*;

- (2) inform the SEC Office within five business days from the date it discovers or should have discovered the said event.

Clause 49 The approved applicant shall take all necessary steps to ensure that all holdings are in compliance with the ratio and requirements set out in this Notification. Such necessary measure shall include the establishment of a monitoring system for the holdings or the appointment of a registrar with the said system.

Division 3

Creation of trust and other requirements

Clause 50 The approved applicant shall conclude the trust instrument before or on the date the transfer of assets is made to the trustee. In this regard, the content of which shall not be different from the draft approved by the Office.

The approved applicant shall deliver the signed copy of the trust instrument to the SEC Office within five working days upon signing.

Clause 51³ The approved applicant shall transfer the offering proceeds to the trustee in accordance with the following rules:

(1) in case of initial public offering of units in cases other than (2), the proceeds shall be transferred to the trustee to complete the creation of the trust instrument within fifteen business days from the closing date of the offer;

(2) in case of initial public offering of units and debt financing through an offer for sale of newly issued debentures at the same time (concurrent offering):

(a) transfer the proceeds from the unit offering to the person who will sell, transfer, lease or grant the rights in the infrastructure asset to the trust instrument not less than the amount specified in Clause 41/1(2) to the trustee to complete the creation of the trust instrument prior to an offer for sale of the remaining units and newly issued debentures to investors;

(b) transfer the proceeds from the offer for sale of the remaining units to the trustee within fifteen business days from the closing date of such offer.

(3) in cases other than (1) and (2), transfer the proceeds to the trustee to be an asset of the trust instrument within fifteen business days from the closing date of the unit offering.

The approved person shall submit a proof of transfer made pursuant to Paragraph 1 to the SEC Office together with the offering report under Paragraph 1 to the SEC Office together with the report of the offering results under Paragraph 1(1) or (2)(a) or (b) or (3), as the case may be.

Clause 52 Following the initial offering, the approved applicant shall take up the role of the trust manager in order to assume the obligations under this Notification and the trust instrument.

The approved applicant shall ensure that the trust instrument stipulates that upon a change of trust manager, the new trust manager shall abide by the requirements set out for the approved applicant in this Notification.

Clause 53 The approved applicant shall effect the listing of the units within forty-five days from the closing date.

Clause 54 If an amendment is made to the trust instrument, the approved applicant shall ensure that the amendment complies with the trust instrument and this Notification.

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

The approved applicant shall deliver a copy of the amended trust instrument to the SEC Office within five working days

Clause 55 The approved applicant shall comply with the commitment given in the application, the registration statement or the prospectus, including the stipulations of the trust instrument.

Clause 56 Within 1 year of the registration statement becoming effective, if the financial advisor wishes to obtain or examine any information in order to perform its responsibilities under the [ข้อประกาศ FA], the approved applicant shall make cooperation to any such requests.

Division 4

Conversion of major investor trust to retail trust

Clause 57 A major investor trust wishing to convert to a retail trust may proceed as follows;

(1) if an offering will be made together with the conversion, an application shall be filed pursuant to the requirements for the offering of retail trust units;

(2) if no offering will be made together with the conversion, the conversion may be made when approved by the Office. The conversion may be approved when the following condition are satisfied;

(a) the resolution of the unitholders authorizing the conversion given pursuant to the trust instrument is obtained;

(b) the applicant is able to show that the units of the trust may be approved to be offered to retail investors pursuant to the requirements for the offering of a retail trust units.

¹The approved applicant of a conversion from a trust for high net worth investors to a retail trust which has been approved by the SEC Office in any case shall comply with the post-approval requirements applicable to a retail trust as well.

Clause 58¹ An applicant for the conversion Paragraph 1(2) of Clause 57 shall submit an application and evidentiary documentation to the SEC Office as prescribed on the SEC Office's website.

The SEC Office shall notify its decision on the applicant under Paragraph 1 within one hundred twenty days from the date of receiving the accurate and complete application and evidentiary documentation according to the *Licensing Manual for the Public*.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 48/2558 Re: Offering of Units of Infrastructure Trusts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 48/2558 Re: Offering of Units of Infrastructure Trusts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

Clause 59 Once the conversion is approved, the restriction on the unit transfer set up under (2) of Paragraph 1 in Clause 11 shall be revoked.

Part 3

Submission of registration statement

Division 1

General requirements

Clause 60 The offering of units may commence when the registration and the draft prospectus are submitted to the SEC Office and the registration statement becomes effective.

Clause 61 Following the offering of the units stated in the registration statement, if the offeror wishes to offer the remaining units from the previous offering, the offeror shall submit another registration statement to the Office.

Division 2

Submission and fee

Clause 62 The offeror shall submit a registration statement prescribed by this Division, and the draft prospectus prepared in accordance with the form issued under Section 72 to the SEC Office together with the supporting documents. In this regard, the offeror shall;

- (1) submit 1 hard copy of the registration statement and the draft prospectus, and 2 copies thereof;
- (2) submit the documents electronically via the channel provided on the Office's website.

The information contained in the documents submitted to the SEC Office both in the printed material and the electronic form shall be identical.

Following the offering of the units stated in the registration statement, if the offeror wishes to offer the remaining units from the previous offering, the offeror shall submit another registration statement to the Office.

Clause 63 The offeror shall pay the submission fee as set out by the rules issued under Section 19.

Clause 64 The registration statement submitted to the SEC Office shall satisfy the following requirement;

- (1) does not contain any false or possibly misleading information and not missing any material information;

(2) contain equal information as those disclosed in other countries if the offering is or will shortly be made in other countries;

(3) contain the information prescribed by Section 69 (1) to (10) and additional information required by this Division;

The registration statement under Paragraph 1 and the draft prospectus submitted to the SEC Office shall be jointly prepared with and verified by a financial advisor listed on the Office's list of approved financial advisor.

Clause 65 The offeror shall submit the following registration statement that is complete and up to date to the Office;

(1) 69-IFT attached herewith for an offering of retail trust units;

(2)³ in case of offering for sale of trust units for high net worth investors, the offeror shall specify information as specified under Section 69(1) to (10) and additional information under Clause 65/1.

Clause 65/1⁴ The registration statement of a trust for high net worth investors submitted to the SEC Office under Clause 65(2) shall contain at least additional information, as follows:

(1) in the case where a trust will conduct a debt refinancing, at least the following relevant information shall be disclosed:

(a) in case of reserve for debt repayment, the trust shall specify the amount of such reserve each year until the debt repayment is completed, in accordance with the rules specified in the trust instrument;

(b) in case of debt refinancing through offering for sale of newly issued debentures at the same time as the unit offering (concurrent offering), specify the value and the proportion of the debentures to be allocated to the person who will sell, transfer, lease or grant the rights in the infrastructure asset to the trust and common person group of the such person at an amount not exceeding fifty percent of the total value of all debentures offered for sale this time. In case the trust fund manager is a subsidiary of the person who will sell, transfer, lease or grant the rights in the infrastructure asset to the trust instrument, additional information related to such relationship shall be clearly disclosed, including the amount and proportion of units to be allocated to the trust fund manager and the value and the proportion of the debentures to be allocated to the trust fund manager as well.

(2) in case of unit offering to increase capital, the following information shall be disclosed:

(a) name list of the unitholders holding the top ten largest amount of units this time. In this regard, the counting of such units shall include the holding of the common person group and controllable persons thereof;

(b) number of units and unitholding proportion of the group of unitholders under (2)(a);

(c) in case the name list of the unitholders under (2)(a) does not identify the true unitholders such as a nominee account, disclose the name of the person or the primary group

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 30/2560 Re: Offering of Units of Infrastructure Trusts (No. 4)* dated 6 March 2017 (effective on 1 June 2017).

of persons who is the true unitholders unless there is a reasonable ground not allowing disclosure of the true unitholders;

(3) any other information that may affect investment decision making of investors.

Clause 66 The financial statement and the consolidated financial statement disclosed in the registration statement and the draft prospectus (if any) shall be audited or reviewed by an auditor listed on the Office's list of approved auditors and prepared accordingly to the Thai financial report standards.

Clause 67 If, before the closing of an offering, the offeror has disclosed any material information not stated in the registration statement and the prospectus to any specific person for the purpose of analyzing the investment suitability in the offered unit or making investment decision, the offeror shall forthwith disclose such information in the registration statement and the prospectus. The said disclosure shall be made no later than the date the registration statement becomes effective, or, if the registration has already become effective, the working day after the disclosure is made to the said person.

Clause 68 The information disclosed in the registration statement and the draft prospectus of a domestic offering made following an offering in another jurisdiction shall be as detailed as the information disclosed in such other jurisdiction under any such foreign law.

Division 3

Effective date of registration statement and draft prospectus

Clause 69 Subject to Section 75, the registration statement and the draft prospectus shall become effective when the following requirement are satisfied;

(1) for an offering of newly issued units where an approval is required under Section 33, the offeror shall have been approved of the said offering;

(2) the offeror has paid the submission fee for the registration statement set out by the rules issued under Section 19;

(3) the offeror has corrected the information in the registration statement and disclosed the information required under Paragraph 3 of Clause 77 (if any);

(4) following the lapse of the following period from the date the SEC Office receives the latest registration statement (which may not include the offering information or non-material information that the SEC Office may authorize additional amendment on);

(a) for a 69-IFT form

1. fourteen days; or

2. three working days for a registration statement and the draft prospectus submitted within 3 months following the date that the previous registration statement of the trust becomes effective;

(b) three working days for a registration statement under Clause 65(2)

(5) the offeror has filled in all information required by the registration statement.

Part 4
Authority of the SEC Office

Clause 70¹ *Repealed.*

Clause 71¹ *Repealed.*

Clause 72 In relation to the enforcement of the rules set out in Division 1 of Chapter 3 in Part 2, the SEC Office may;

(1) require that the advertisement or certain sales promotion be authorized by the SEC Office in advance in order to verify that such advertisement or sales promotion complies with the rules of this Notification;

(2) If the applicant fails to comply with the rules set out in Division 1 of Chapter 3 in Part 2, the SEC Office may order the applicant to take one or more of the following actions;

(a) stop the advertisement or the sales promotion either in whole or in part;

(b) correct the information or the statement in the advertisement or the sales promotion;

(c) clarify the information to the investor so they may receive correct, complete, realistic and not misleading information;

(d) act or omit to act within a specified period of time in order that the investors may reconsider the investment on the correct, complete, realistic and not misleading information.

Clause 73 After the approval on the offering is given under Part 2, if the facts and circumstances upon which the SEC Office had given the approval is incorrect, incomplete or changed, and, if known so to the SEC Office before the approval is given, the SEC Office may not approve the offering, the SEC Office may;

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 48/2558 Re: Offering of Units of Infrastructure Trusts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

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(1) order the approved applicant, its directors or executives to clarify or disclose additional information within a specified period of time and put the approval on halt or order the applicant to halt the offering until a rectification is done;

(2) revoke the approval given upon the offering in the part of which units have not been offered or in part that the money for which has not been transferred to the trust or used to create the trust.

The SEC Office shall consider the measure to be taken on the following factor;

- (1) the degree of change of the fact or the circumstance;
- (2) the impact upon the subscribers.

Clause 74 If any of the following reasonable doubt is known to the Office, the SEC Office may not approve the offering of the newly issued units under Part 2;

(1) the features of the applicant or the offering may be in accordance with this Notification but the substance of whom or which can be considered an evasion of the Securities and Exchange Commission Act B.E. 2535, the Trust for Transactions in Capital Market Act B.E. 2550, the rules issued under the said laws or this Notification;

(2) the offering may violate the public policy or the state policy;

(3) the offering may impact the credibility of the Thai capital market as a whole;

(4) the offering may adversely affect the investors as a whole or may deprive investors of fair treatment, or, the investors may not receive correct and sufficient information to make an investment decision.

Clause 75 The SEC Office may exempt the applicant from certain requirements on the application or on the offering made under Part 2 if one of the following conditions applies;

(1) it is obvious that the requirement to be exempted is minor to the case and the benefit of compliance does not suffice the cost thereof;

(2) the applicant is restricted by other law, either Thai or foreign, from complying with the requirement to be exempted

(3) the applicant has sufficient alternative measure to replace its compliance with the requirement.

The SEC Office shall take into account the sufficiency and fitness of information provided to the investors and investor protection in granting the exemption under Paragraph 1. In this regard, the SEC Office may impose conditions on the exemption granted.

Clause 76 The SEC Office may exempt the detail of the disclosure required by this Notification if the offeror can prove that such information is minor to the investor's decision making and the absence of which from the registration statement is due or other

alternative measure is sufficiently taken.

Clause 77 During the examination of the information in the registration statement submitted under Part 3, if the SEC Office considers it necessary and due in order that the investors are provided with sufficient material information for decision making, the SEC Office may require the submitting party to comply with the following within a specified period of time;

- (1) clarify or amend the information;
- (2) procure an independent expert to give an opinion on the correctness, completeness or credibility of the information in the registration statement and the draft prospectus.

The SEC Office shall not include the period during which the submitting party takes to fulfil the requirement into the period prior to the effectiveness of the registration statement and draft prospectus

The SEC Office may order the offeror to disclose any such order, proceeding, comments of the SEC Office or statements of the offeror on the Office's website.

Clause 78 The SEC Office may prescribe guidelines to set out guidance on proper and compatible compliance of this Notification. If the applicant acts accordingly to any such guideline, it shall be deemed that the applicant has complied with the requirement under which such guideline is issued.

Notified this 9th day of April 2015.

-signature-

(Mr. Vorapol Socratyanurak)

Secretary-General

Office of Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

Note: The contents added in brackets [...] have been provided in the English version for clearer understanding only.