

UNOFFICIAL TRANSLATION

Codified up to No. 6

As of 29 June 2017

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. 40/2557

Re: Selling of Newly Issued Shares and Share Warrants of an equity Issuer

By virtue of Section 16/6 and Section 89/27 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 of the *Securities and Exchange Act B.E. 2535 (1992)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 16 December 2014.

Clause 2 The following Notifications shall be repealed:

(1) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 29/2551 Re: Subscription, Underwriting and Allotment of Newly Issued Securities* dated 15 December 2008;

(2) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2553 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 2)* dated 1 April 2010;

(3) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 44/2553 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 3)* dated 3 December 2010;

(4) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2554 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 4)* dated 25 July 2011;

(5) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 21/2554 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 5)* dated 1 August 2011;

(6) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2554 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 6)* dated 29 December 2011;

(7) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 23/2555 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 7)* dated 28 March 2012;

(8) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 16/2556 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 8)* dated 11 March 2013;

(9) The *Notification of the Capital Market Supervisory Board No. Tor Jor. 54/2556 Re: Subscription, Underwriting and Allotment of Newly Issued Securities (No. 9)* dated 26 December 2013;

Clause 3 In this Notification:

The terms, “*registration statement*,” “*parent company*,” “*subsidiary*,” “*listed company*,” “*executive*,” “*controlling person*,” and “*major shareholder*” shall be as defined in the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in the Notifications relating to Issuance and Offer for Sale of Securities*.

“*equity*” means a newly issued share and share warrant.

“*prospectus*” means a prospectus containing information identical to the draft prospectus that has been filed with the SEC Office.

“*related person*” means a person whose relationship with an *equity* issuer is in any of the following manners:

(1) director, *executive*, *major shareholder*, *controlling person*, *parent company* and *associated persons* thereof;

(2) private funds of the persons under (1).

“*associated person*” means any person having an association with a *director*, *executive*, *major shareholder* or *controlling person* of an *equity* issuer in any of the following manners:

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

(2) a natural person or a company that holds a majority voting of any such person’s shares, which means:

(a) any natural person or company holding a number of shares that represents more than fifty percent of the total number of voting rights of any such person;

(b) any natural person or company holding a number of shares that represents more than fifty percent of the total number of voting rights of any company under (a).

(c) any company holding shares in any level in the sequence of ownership, starting from any company under (b), provided that the number of shares held by the company in each level represents more than fifty percent of the total number of voting rights of the company whose shares are held, or any natural person who holds a number of shares that represents more than fifty percent of the total number of voting rights of the company whose shares are held in any level in the sequence of ownership;

The shareholding of the natural person under Paragraph 1 shall include the shares held by the spouse or any minor child thereof.

(3) any company that such person holds a majority voting, which means:

(a) any company that such person or any person under (1) holds more than fifty percent of the total number voting rights;

(b) any company that any company under (a) holds more than fifty percent of the total number voting rights ;

(c) any company whose shares are held in any level in the sequence of ownership, starting from any company under (b), provided that the number of shares held by the company in each level represents more than fifty percent of the total number voting rights of the company whose shares are held.

“*supporter*”⁵ means a person whose support creates a clear benefit to an *equity* issuer, for example, a client and a distributor of raw materials.

“*stock exchange*” means the Stock Exchange of Thailand.

Chapter 1 General Provisions

Clause 4 This Notification shall be applicable to an *equity* issuer which files an application for approval and obtains an approval for a public offering from the SEC Office, and has the duty to file the *registration statement* and draft prospectus with the SEC Office, excluding an issuer of securities for securities swap.

Clause 5 In selling *equities*, an issuer shall comply with the provisions under this Chapter and the following Chapters:

- (1) *equity* underwriting shall be in accordance with Chapter 2;
- (2) *equity* subscription shall be in accordance with Chapter 3;
- (3) *equity* allotment shall be in accordance with Chapter 4.

Clause 6 An *equity* issuer shall disclose information concerning the offered *equities* clearly in the prospectus.

Clause 7 An *equity* issuer shall not specify a compensation for the securities company under Chapter 9 in such a manner that persuades or supports such securities company to sell the *equities* without considering the appropriateness for investment of investors.

Clause 8 In the process of book building for an initial public offering, the share issuer shall proceed to ensure that such process will exclude demand and the offered price of *related persons* from the consideration of the initial public offering price of the issuer’s shares.

Chapter 2 Underwriting of Equity

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 42/2560 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 6)* dated 29 June 2017 (effective on 16 July 2017).

Clause 9² An *equity* issuer shall have a securities company in the category of securities underwriting proceed with the solicitation, giving of advice, or offering for sale of *equity*, except for the case where share warrants are offered for sale and the issuer of such share warrants is a securities company in the category of securities underwriting. In this regard, the share warrant issuer shall comply with the rules on securities underwriting, *mutatis mutandis*, but the rules on the prohibition of securities allotment shall not apply.

Clause 10 An *equity* issuer shall arrange an agreement for a securities company to handle the selling of *equities* in a manner that the issuer shall remain in compliance with this Notification.

Clause 11 An *equity* issuer shall not sell or give a consent to have its *equities* sold at the same time as the securities issued by other persons unless the objective for, or the consent to, such act has been clearly specified in the prospectus.

Chapter 3 Subscription of Equity

Clause 12 An *equity* issuer shall specify the method of subscription through submission of subscription form, either in paper or electronic form, as a minimum subscription method.

Clause 13 An *equity* issuer shall prepare a sufficient amount of subscription forms in paper for delivery or distribution to investors upon request.

Clause 14 A subscription form shall have particulars containing at least the following information:

- (1) name, address and identification card number or passport number, tax identification number (if any) of the subscriber and the subscription amount;
- (2)³ a statement which demonstrate that the subscriber has received the *prospectus* or material information identical to the executive summary (if any) and the format of the received *prospectus*, or the subscriber does not wish to receive the *prospectus*;
- (3)⁴ a statement warning the subscriber that investment in *equity* has risks, the subscriber should read the *prospectus* or material information identical to the executive summary (if any) carefully prior to decision making for *equity* subscription.

Clause 15 In case of subscription for *equity* through any method other than submitting a subscription form, the issuer shall take the following actions before accepting such subscription:

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 41/2559 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 4)* dated 30 September 2516 (effective on 16 November 2016).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 15/2558 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 2)* dated 9 April 2015 (effective on 16 May 2015).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 15/2558 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 2)* dated 9 April 2015 (effective on 16 May 2015).

- (1) arrange for the subscriber to provide information containing the details under Clause 14(1);
- (2) provide a warning statement in the same manner as specified under Clause 14(3);
- (3) have a method in place to confirm that the subscriber has already received the information under Clause 16.

Clause 16 An *equity* issuer shall arrange a channel for distributing *prospectus* appropriately, either in paper or electronic form, unless investors have expressed an intention not to receive the *prospectus* voluntarily.

In case of selling newly issued shares, if an investor does not wish to receive the *prospectus*, the issuer shall distribute or deliver material information identical to the executive summary as appearing in the *registration statement* by any method before such investor subscribes for the shares.

⁵The provision under Paragraph 2 shall not be applicable to the selling of newly issued shares of a foreign company which has obtained an approval for a public offering from the SEC Office in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules related to Offer for Sale of Securities Issued by a Foreign Company Whose Shares Are Listed or Will be Listed on a Foreign Exchange*, in this regard, only in the case where the home exchange of such foreign company is a foreign exchange.

Clause 17⁶ An *equity* issuer shall not use the subscription money in the amount exceeding the total amount expected to be received from the total offer of *equities* for any business, and shall return such excessive amount to the subscribers who do not receive an allotment in the same period as specified by the standard practice for such matter of securities companies as specified by the Association of Thai Securities Companies.

Clause 18⁷ An *equity* issuer shall specify in the *prospectus* the investors' rights to cancel subscription within an appropriate period as specified upon the occurrence of a cause for the issuer to suspend or terminate the offer for sale of *equity* or fail to settle the offered *equities*. In this regard, the issuer shall return the subscription money to the investors who cancel the subscription in the same period as the standard practice for such matter of securities companies as prescribed by the Association of Thai Securities Companies.

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 15/2558 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 2)* dated 9 April 2015 (effective on 16 May 2015).

⁶ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 11/2560 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 5)* dated 14 February 2017 (effective on 1 March 2017).

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 11/2560 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 5)* dated 14 February 2017 (effective on 1 March 2017).

Clause 19 An *equity* issuer shall specify in the *prospectus* that in the case where the issuer fails to return the subscription money to the subscribers within the period specified under Clause 17 or Clause 18, as the case may be, the subscriber shall have the right to receive interest at a rate not lower than 7.5 percent per year as from the date following the expiration for the return of the subscription money.

Chapter 4 **Allotment of Equity**

Clause 20 An *equity* issuer shall separate the *equities* to be allotted to each group of persons clearly and disclose the information on the allotment in the *registration statement* and the *prospectus*. In addition, the issuer shall proceed in compliance with the provisions under this Chapter.

Clause 21 An *equity* issuer shall not allot shares to its *subsidiaries*.

Clause 22⁸ In the case where an *equity* issuer wishes to allot *equities* to *related persons* or *supporters*, the issuer shall proceed accordingly:

(1) clearly separate the *equities* to be allotted to *related persons* or *supporters* from the *equities* to be allotted to the public, and disclose the following information in the *registration statement* and the *prospectus*:

(a) types of *related persons* and the amount of allotment thereto;
(b) group of persons to receive an allotment as a supporter, the characteristics of the relationship with such group of persons that create continuing or clear benefits to the issuer, and the amount to be allotted to such group of persons.

(2) in case of an initial public offering, the issuer shall allot shares to *related persons* and *supporters* at a collective amount not exceeding the amount specified under Clause 22/1;

(3) in case of allotting shares of an initial public offering to *supporters*, the issuer shall proceed in compliance with Clause 24 as well;

(4) in case of an offer for sale of *equities* of a *listed company*, the issuer shall specify the information in the notice calling a shareholders' meeting to seek approval for the offer for sale of *equities*, which shall contain at least the following information:

(a) names of the *related persons* to receive an allotment of *equities*;
(b) amount of *equities* to be allotted to each *related person*;
(c) reason and necessity for allotment to the *related persons*.

Clause 22/1⁹ The calculation of shares to be allotted to *related persons* and *supporters* shall be in accordance with the following method:

$$RP + Sup + Em \leq 25\% \text{ of } (A - B) \text{ in which case,}$$

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 42/2560 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 6)* dated 29 June 2017 (effective on 16 July 2017).

⁹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 42/2560 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 6)* dated 29 June 2017 (effective on 16 July 2017).

- $$\text{Sup} \leq 15\% \text{ of } (A - B)$$
 RP = number of shares allotted to *related persons*.
 Sup = number of shares allotted to *supporters*.
 Em = number of shares allotted to directors or employees of the issuer during the initial public offering, excluding directors or employees who make a subscription as a general client through a securities company.
 A = number of shares offered for sale this time.
 B = number of shares set aside for proportionate allotment to shareholders of the *listed company* in the case where such listed company is a shareholder of the issuer (if any). In this regard, the total proportion of shares to be allotted to the shareholders of the *listed company* shall not exceed the proportion of shareholding of the *listed company* which holds shares of the issuer.

The number of shares allotted to the *related persons* or *supporters* under Paragraph 1 shall exclude the following shares allotted to such persons:

- (1) shares allotted to such persons as a shareholder of the *listed company* in proportion to the shareholding of such persons in the case where the *listed company* is a shareholder of the issuer. In this regard, the total proportion allotted to the shareholders of the *listed company* shall not exceed the shareholding proportion of the *listed company* which holds shares of the issuer;
- (2) shares allotted to such persons as a client of the issuer in the case where the issuer is a securities company licensed to undertake securities business in the category of securities brokerage without limitation to debt securities or investment units.

Clause 22/2 In case of an initial public offering where the shareholders of the issuer offer their shares for sale at the same time and there will be shares allotment to *supporters* as well, the share allotment in such case shall be included in the calculation under Clause 22(2) as well.

The issuer shall oversee that the shareholders under Paragraph 1 act in the manner that maintains the issuer's compliance with the regulations related to share allotment specified under this Chapter.

Clause 23 In the case where the issuer does not separate shares or disclose information on *equity* allotment to *related persons* as specified under Clause 22(1), the issuer may allot *equities* to such persons only after there are *equities* remaining from the subscription of all other subscribers.

Clause 24¹⁰ An *equities* issuer may allot shares of an initial public offering to *supporters* only in compliance with the following rules:

- (1) only the persons whose names appear on the name list as specified by the chief *executive* of the company shall be eligible to receive share allotment;
- (2) the name list under (1) shall be in accordance with the criteria approved by the company's board of directors with regard to the characteristics of relationship that

¹⁰ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 42/2560 Re: Selling of Newly Issued Shares and Share Warrants by Issuer (No. 6)* dated 29 June 2017 (effective on 16 July 2017).

create a clear benefit to the company. In this regard, the criteria approved by the board shall truly reflect the characteristics of the *supporters* and there shall not be any characteristic that encourages fraud or corruption or promote improper advantage to the company.

The issuer shall have a procedure for monitoring and overseeing the allotment of shares to *supporters* in accordance with Paragraph 1 as well.

Clause 25 In case of an initial public offering with the objective of registering the offered shares as listed securities on the *stock exchange* and partial shares have been set aside for allotment to the *supporters* of the issuer, the issuer shall list the names of the *supporters* who receive a share allotment at the value of 1 million baht or more by using the Form 35-IPO-1M provided on the website of the SEC Office, and submit a report according to such Form to the board of directors of the issuer at the first meeting after the date on which the company reports the results of the offering to the SEC Office in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Reporting of Results of Securities Offering to the Public*.

Chapter 5 Other Provisions

Clause 26 Any reference made in any other notifications to the *Notification of the Capital Market Supervisory Board No. Tor Jor. 29/2551 Re: Subscription, Underwriting and Allotment of Newly Issued Securities* dated 15 December 2008 in the part related to the selling of newly issued shares and share warrants of an issuer shall mean reference to this Notification.

Notified this 7th day of November 2014.

(Mr. Vorapol Socratyanurak)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board