

(UNOFFICIAL TRANSLATION)

Codified up to No. 5

As of 28 September 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. 14/2558

**Re: Provisions relating to Offer for Sale of Securities Issued by
Foreign Company Whose Shares Have Been Traded or
Are Purposed to be Traded on Foreign Exchange**

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, Section 69 and Section 80 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 May 2015.

Clause 2 The following Notifications shall be repealed:

(1) The *Notification of the Capital Market Supervisory Board No. Tor Jor 99/2552 Re: Provisions Relating to Offer for Sale of Securities Issued by Foreign Company for Listing on the Stock Exchange of Thailand* dated 4 November 2009;

(2) The *Notification of the Capital Market Supervisory Board No. Tor Jor 18/2556 Re: Provisions Relating to Offer for Sale of Securities Issued by Foreign Company for Listing on the Stock Exchange of Thailand (No. 2)* dated 22 March 2013;

(3) The *Notification of the Capital Market Supervisory Board No. Tor Jor 49/2556 Re: Provisions Relating to Offer for Sale of Securities Issued by Foreign Company for Listing on the Stock Exchange of Thailand (No. 3)* dated 15 October 2013.

Clause 3 In this Notification and the Application Form for an offer for sale of newly issued securities as stipulated by this Notification:

“*securities*” means the following securities regardless of the purpose of issuance:

(a) share;

(b) share warrant;

(c) any other securities as prescribed by the SEC Office.

“*foreign company*” means a company established under foreign law;

“*ASEAN company*” means a *foreign company* established under the law of any of the *ASEAN countries*;

“*ASEAN countries*” means ASEAN member countries of which capital market regulators have been bounded by the memorandum of understanding with the SEC Office relating to a streamlined review framework for a dual offering made in two or more *ASEAN countries* simultaneously or relatively in the same period of time;

“*CLMV company*” means a *foreign company* established under the law of the Kingdom of Cambodia, the Lao People’s Democratic Republic, the Republic of the Union of Myanmar or the Socialist Republic of Vietnam;

“*registration statement*” means the *registration statement* for offer for sale of *securities* issued by a *foreign company*;

“*electronic information*” means the information created, transmitted, received, kept or processed by electronic means.

The terms “*listed company*,” “*subsidiary company*,” “*related person*,” “*executive*,” “*major shareholder*,” “*controlling person*,” and “*consolidated financial statements*” shall have the same meaning 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*.

Part 1

General Provisions

Chapter 1

Scope of Effectiveness

Clause 4 This Notification shall apply to an offer for sale of *securities* issued by a *foreign company* which complies with the following criteria:

(1) an offer for sale of newly issued shares by a *foreign company* in accordance with either one of the following conditions:

(a) the shares of the *foreign company* have already been traded on any foreign exchange on the filing date of the application for an offer for sale of newly issued shares in Thailand;

(b) the *foreign company* shall purpose to have its shares traded on a foreign exchange in support of the initial public offering in many countries. In this regard, the filing of the application for an offer for sale of newly issued shares under this Notification contains a part of the total shares of such initial public offering.

The offering under Paragraph 1 shall be made in order to register such newly issued shares as listed *securities* on the Stock Exchange of Thailand unless the offering is made by an *ASEAN company* whose shares have been traded or are purposed to be traded on any securities exchange of an *ASEAN country*. In this regard, if such offering is an initial public offering, there shall be an offer for sale in an *ASEAN country* simultaneously or relatively in the same period of time.

(2) an offer for sale of newly issued *securities* of any type except share by a *foreign company* which has been granted an approval for a public offering of newly issued shares in accordance with any notification;

(3) an offer for sale of shares by a shareholder of a *foreign company* for the purpose of listing the shares of the *foreign company* on the Stock Exchange of Thailand;

(4) an offer for sale of *securities* under (2) by a securities holder.

Clause 5 The offer for sale of *securities* under Clause 4 shall be in compliance with the following criteria:

(1) an offer for sale of newly issued shares by a *foreign company* whose home exchange is a foreign exchange shall comply with the provisions related to the approval under Chapter 2 of Part 2 and the provisions related to the filing of the *registration statement* under Part 4;

(2) an offer for sale of newly issued shares by a *foreign company* whose home exchange is the Stock Exchange of Thailand shall comply with the provisions related to the approval under Chapter 3 of Part 2 and the provisions related to the filing of the *registration statement* under Part 4;

(3) an offer for sale of newly issued *securities* of any type except the *securities* under (1) and (2) by a *foreign company* which has been granted an approval for a public offering of newly issued shares by the SEC Office shall comply with the provisions related to the approval under Part 3 and the provisions related to the filing of the *registration statement* under Part 4;

(4) an offer for sale of *securities* by a securities holder of a *foreign company* shall comply with the provisions related to the filing of the *registration statement* under Part 4.

Clause 6 The following foreign exchanges located in the countries recognized by the SEC Office shall be deemed the home exchange of a *foreign company* applying for an approval under this Notification except for the case of an offer for sale of newly issued shares in Thailand which will have the characteristics under Clause 7:

(1) a foreign exchange where the shares of the *foreign company* have been traded as of the filing date of the application for approval of the *foreign company*;

(2) a foreign exchange where the *foreign company* has expressed the intention to primarily comply with its rules or the rules of the securities regulator of such recognized country (home regulators).

Clause 7 In case of any of the following circumstances, the Stock Exchange of Thailand shall be deemed the home exchange for trading of shares of a *foreign company*:

(1) an offer for sale by a *foreign company* whose shares have been traded on a foreign exchange with an offer size in Thailand to be greater than sixty percent of the paid-up capital of such company. In this regard, the number of shares held by strategic investors may be excluded from the calculation of such offer size;

(2) an offer for sale in Thailand by a *foreign company* in a significant size compared to an offer for sale in another country.

Clause 8 An offer for sale of newly issued *securities* in Thailand under this Notification may be made only when the value of the approved *securities* does not exceed the allotted quota determined by the Bank of Thailand for controlling the execution of transactions related to foreign currencies in the capital market.

Chapter 2
Language for Submitting Information or
Documentation and Financial Statements

Clause 9 A submission of information or documentation to the SEC Office under this Notification shall be in accordance with the following criteria except when granted a waiver from the SEC Office as deemed necessary and appropriate:

(1) the person having duty under this Notification may submit information or documentation prepared in any of the following languages:

- (a) Thai;
- (b) English;
- (c) Thai and English.

(2) in the case that the information or documentation submitted to the SEC Office has been translated from any language other than Thai or English, the person having duty under this Notification shall also proceed accordingly;

- (a) have the translator certify that it is a true and accurate translation of the original information or documentation;
- (b) certify that the description of the translated information or documentation is actual or of true existence, and that the material facts which should be disclosed have not been concealed.

The language used for the initial submission of information or documentation to the SEC Office under this Notification shall continue to be the language used for all subsequent submissions no matter if other languages are used additionally except when the SEC Office grants a waiver for reason of necessity or appropriateness.

Chapter 3
Powers of the SEC Office

Clause 10 In the case where a certain fact appears to the SEC Office leading to any of the following reasonable suspicions, the SEC Office may reject the application for approval of a public offering of newly issued *securities* under Part 2 or Chapter 2 of Part 3:

(1) the applicant or the offering of *securities* has the characteristics or complies with the rules or conditions for obtaining an approval according to this Notification, but there is a certain fact indicating that the purpose or the substance of such offering is to avoid any provision of the Law on Securities and Exchange or this Notification;

(2) the offering of *securities* may be in contrast with the public policy or the national policy;

(3) the offering of *securities* may cause an adverse effect to the credibility of the Thai capital market as a whole;

(4) the offering of *securities* may cause any damage or an unfair treatment to the investors as a whole, or the investors may not receive correct or sufficient information for supporting the making of investment decisions.

Clause 11 In the case where a certain fact that appears to the SEC Office after the applicant has obtained an approval to offer for sale of newly issued *securities* under Part 2 or Chapter 2 of Part 3 may have changed the deliberation of the SEC Office if such fact had appeared to the SEC Office prior to the approval to offer for sale of such securities, the SEC Office is empowered to:

(1) order the approved person, a director or an *executive* to clarify or disclose additional information within a specified period, and order the *foreign company* to suspend the approved offer for sale of *securities* until clarification or correction has been made;

(2) order the approved person to cease the offer for sale of *securities* in the portion which has not been offered or subscribed yet, and discharge the approval without any effect on the offer of *securities* that have been sold or subscribed.

Clause 12 In case of any of the following circumstances, the SEC Office may grant a waiver on certain rules under this Notification in deliberating an application or may not apply certain conditions under this Notification to an offer for sale of *securities* under Part 2 or Chapter 2 of Part 3:

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

(2) the applicant is subject to the restrictions under any other laws, whether Thai or foreign, which constrain the applicant from complying with the rules or conditions to be waived;

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

In granting a waiver under Paragraph 1, the SEC Office shall mainly consider the appropriateness and the sufficiency of the information for supporting the making of investment decisions, and the measures for protecting the investors. In this regard, the SEC Office may specify an additional requirement for the applicant to comply with.

Clause 13 In the case where the approved person has not complied with the conditions after obtaining an approval under Part 2 or Part 3 in the part related to advertisement, the approved person shall comply with one or more of the following orders to be issued by the SEC Office:

- (1) cease the advertisement or the sale promotion in whole or in part;
- (2) amend the information or the statement in the advertisement or the sale promotion;
- (3) make a clarification in order that investors will receive information that is complete, accurate and true, or not misleading;
- (4) act or not to act in a certain way within a specified period for investors to make a decision or review the decision made based on the information that is complete, accurate, true and not misleading.

Clause 14 The SEC Office is empowered to grant a waiver for disclosure of details of the information additionally stipulated under this Notification if the offeror is able to demonstrate that such information shall not materially affect the making of investment decisions of investors and there is a reasonable ground not to disclose details of such information in the *registration statement*, or any other measure has already been implemented sufficiently in lieu of such disclosure.

Clause 15 In deliberating the information in a *registration statement* and a draft prospectus under Part 4, the SEC Office is empowered to order the offeror to take the following actions within a specified period as deemed necessary and appropriate so that investors will have sufficient information for making investment decisions:

- (1) disclose additional information that may affect the decision making of investors;
- (2) clarify, amend or add information

(3) have an independent expert prepare an opinion relating to the accuracy, completeness or reliability of the information appearing in the **registration statement** and the draft prospectus.

In proceeding according to Paragraph 1, the SEC Office shall suspend temporarily the calculation of the time period for the effectiveness of the **registration statement** and the draft prospectus as specified in Section 75. In the case where the offeror fails to proceed as specified by the SEC Office under Paragraph 1 for a considerably longer time than the specified period, it shall be deemed that the offeror no longer wishes to file the **registration statement** and the draft prospectus with the SEC Office, in which case the SEC Office shall return the **registration statement** and the draft prospectus to the offeror subsequently.

Part 2

Public Offering of Newly Issued Shares

Chapter 1

Submission of an Application

Clause 16 *A foreign company* wishing to make a public offering of newly issued shares shall submit an application together with the evidentiary documentation in compliance with the forms and procedures as stipulated by the SEC Office.

The submission of the application under Paragraph 1 shall be jointly prepared by a financial advisor whose name appears on the approved list of the SEC Office.

Clause 17¹ The applicant shall pay the application fees to the SEC Office on the date when the SEC Office has received a complete and accurate application together with evidentiary documentation as specified in the Licensing Manual for the Public at the amount as prescribed in the *Notification of the Securities and Exchange Commission concerning Determination of Fees for Application for Offer for Sale of Newly Issued Securities and*

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 49/2558 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

Application for Securitization Project.

Clause 18 In the case where it is necessary for the SEC Office to visit the place of business or any other establishment of the applicant or its *subsidiary company*, the applicant shall be responsible for all of the accommodations and travelling expenses reasonably incurred from such visit. In this regard, the SEC Office may clearly set a criterion for such expenses.

The provision under Paragraph 1 is not applicable to the visit to the place of business or any other establishment of the applicant or its *subsidiary company* located inside Bangkok or its periphery.

Clause 19¹ After the SEC Office has already received the complete and accurate application and the evidentiary documentation as prescribed in the Licensing Manual for the Public, the SEC Office shall ascertain the facts in accordance with the procedure and method as prescribed in the Licensing Manual for the Public, and notify in a written form with regard to the sceptical issues resulted from the ascertaining process for the applicant to clarify the issues within the period specified in the notifying letter. In this regard, the whole aforementioned process shall be within one hundred and twenty days as from the date when the SEC Office has received the complete and accurate application and the evidentiary documentation according to the Licensing Manual for the public.

The SEC Office shall notify the result of deliberating the application within 45 days as from the date of receiving the clarifying statement on the sceptical issues derived from the review of facts from the applicant.

In the case where the applicant wishes to apply for a waiver of a regulation under this Notification, the applicant shall submit an application for such waiver together with evidentiary documentation to the SEC Office in accordance with the procedure and method as prescribed in the Licensing Manual for the Public before the SEC Office begins to consider the application under Paragraph 2. In this regard, the SEC Office shall consider the application for the waiver within the same period as the consideration of the application under Paragraph 2.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 49/2558 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

Clause 20¹ *Repealed.*

Chapter 2
Offer for Sale of Newly Issued Shares by a Foreign Company
Whose Home Exchange is a Foreign Exchange

Division 1
Rules for an Approval

Clause 21 An applicant would obtain an approval for a public offering of newly issued shares after demonstrating to the SEC Office that it has the qualifications and complies with the following conditions:

- (1) legally eligible for undertaking business and making a public offering of *securities* according to the application for approval under Clause 22;
- (2) complying with the rules related to management under Clause 23;
- (3)⁴ complying with the rules related to disclosure of information under Clause 23/1 Clause 24 and Clause 25;
- (4) having a local representative in Thailand under **Clause 26**;
- (5) complying with the additional rules under Clause 27 in the case where the applicant is a *listed company*.

Clause 22 The Applicant shall demonstrate the legitimacy of its business and the public offering of newly issued shares by proving to the SEC Office that:

- (1) the applicant's business is not involved in any illegal activities either under Thai or foreign law;
- (2) the offering specified in the application may be legally made under the laws and regulations of the country which the applicant is subject to;

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 49/2558 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2561 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

(3)² the applicant does not have the characteristics under Clause 22/1 unless the applicant is a *listed company*, in which case the applicant shall not have the particular characteristics as specified under Clause 22/1(1) (a).

Clause 22/1² The applicant shall not have the following characteristics unless complying with the conditions as prescribed under Clause 22/2:

(1) within a period of five years prior to the date of submitting the application:

(a) having acted in violation of any rule or condition related to *securities* offering in a material matter, either under Thai or foreign law;

(b) having been rejected by the SEC Office regarding an application for approval of an offer for sale of newly issued shares on a material ground for suspicion of management mechanism in the following manners:

1. there is a possibility of unfair treatment of shareholders by improperly giving more benefits or an advantage to any group of shareholders over other shareholders;

2. there is a possibility of failure to protect shareholders' rights by causing any person to gain a financial benefit other than what should normally be gained or by causing the company to lose a rightful benefit.

(c) having been rejected by the SEC Office regarding an application for approval of an offer for sale of newly issued *securities* on a suspicious ground of having publicly disclosed information that was incomplete, insufficient for making investment decisions or misleading to investors in a manner of concealing or dissimulating or creating information that may not have existed in the particulars or a material activity;

(d) having withdrawn an application for an offer for sale of newly issued *securities* without clarifying a suspicious ground under (b) or (c) to the SEC Office or giving a clarification without demonstrating any fact or a well-grounded reason that would have invalidated

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2558 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 3)* dated 13 July 2015 (effective on 16 August 2015).

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2558 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 3)* dated 13 July 2015 (effective on 16 August 2015).

such suspicious ground under (b) or (c).

(2) within a period of ten years prior to the date of submitting the application, having been sentenced by the final judgement of a court for an offense related to property on the ground of acting in a manner of deceiving, cheating or defrauding, which caused damage on a large scale, under either Thai or foreign law;

(3) being subject to a complaint or a legal action for an offence related to property by a relevant agency only on the ground of acting in a manner of deceiving, cheating or defrauding, which caused damage on a large scale, no matter under Thai or foreign law;

(4) being a person subject to a suspicious ground of being formulated for a person possessing the characteristics under (1) (2) or (3) to avoid being considered by the SEC Office in accordance with the rules under (1) (2) or (3), which apply to the person of such characteristics.

Clause 22/2² The provisions under Clause 22/1(1) and (2), as the case may be, shall not apply to the applicant who has amended or changed the cause, the work system, the management system and the operating compliance, which has already caused the applicant to have the characteristics under Clause 22/1(1) or (2).

Clause 23 The directors, *executives* and *controlling persons* of the applicant shall not have any of the following prohibited characteristics:

(1) having deficiency in legal competence, for instance, being an insolvent person, incompetent or quasi-incompetent person;

(2) having or plausibly having any of the following behaviors. In this regard, the SEC Office shall deliberate retrospective behaviors for no more than 10 years:

(a) breaching the duty of director or *executive* in performing with responsibility, due care and loyalty including breaching or failing to comply with the laws, objectives or articles of association, and the resolutions of the board of directors or the resolutions of the shareholders' meetings with respect to material matters;

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2558 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 3)* dated 13 July 2015 (effective on 16 August 2015).

(b) breaching the law on supervision of the capital market whether under Thai or foreign law in the following matters:

1. engaging in any unfair activity or exploitation of investors in trading *securities* or derivatives;
2. undertaking a dishonest act or causing damage to properties, creditors or the public;
3. failing to perform duties with due care or loyalty;
4. intentionally making a materially false statement or concealing a material fact which should have been clearly stated;
5. operating business relating to *securities* or derivatives without license in a manner of defrauding a large number of investors;

(c) breaching the law on money laundering and having been subject to the judgment or the order of a court relating to confiscation of an illicit asset or any other similar judgment or order.

Clause 23/1⁴ The following financial statements of the applicant shall be accurate, reliable and in accordance with the regulations under Clause 24:

(1) In case where the financial statements or consolidated financial statements for the year ended 31 December 2023 is the most recently completed fiscal year at the time the application is filed; the financial statements or the consolidated financial statements for the three most recent years, and the latest quarterly financial statements.

(2) In all other cases which do not fall under (1); the financial statements or the consolidated financial statements for the most recent years, and the latest quarterly financial statements.

Clause 24⁴ the financial statements specified in Clause 23/1 shall be in accordance with the following rules:

⁴ Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2561 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2561 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

(1) being prepared in compliance with the following financial reporting standards or any other financial reporting standard rendered a waiver by the SEC Office;

(a) Thai Financial Reporting Standards and the rules issued by virtue of Section 56 [of *the Securities and Exchange Commission B.E. 2535 (1992)*], which also apply to foreign companies issuing shares for public offering under this Notification.

(b) International Financial Reporting Standards (IFRS);

(c) financial reporting standards recognized or specified by foreign regulators. In this regard, the reconciliation to IFRS shall be prepared and disclosed as well;

(2) the auditor's report shall be affixed with the signature of the auditor to demonstrate that it has been audited (in case of financial statements for an accounting year) or reviewed (in case of quarterly financial statements). In this regard, such auditor shall have any of the following characteristics;

(a) being an auditor whose name appears on the SEC Office's approved list under the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Auditors in the Capital Market*.

(b) being a foreign auditor approved by the SEC Office under the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Foreign Auditors*.

(3) the auditor's report under (2) shall not have the following meanings:

(a) the preparation and disclosure of information in the financial statements are not in compliance with the financial reporting standard which shall be used in the preparation for such financial statements;

(b) the scope of auditing or reviewing, as the case may be, of the auditor is limited by any act or failure to act of the issuing company or a director or an *executive* of the issuing company.

In the case where the applicant has a *subsidiary company*, the applicant shall demonstrate that such *subsidiary company* is able to prepare financial information and other information for disclosure in order that such applicant will be able to prepare the *consolidated financial statements* in accordance with the financial reporting standards under Paragraph 1(1).

Clause 25 In the case where the applicant has already had its shares traded on any foreign exchange prior to submitting the application, the applicant shall not be in violation of or fail to comply with the applicable foreign laws or regulations as well as the

orders issued thereunder relating to preparation and submission of financial statements or reports relating to financial and non-financial information.

Clause 26 The applicant shall appoint a local representative in Thailand for the purpose of coordinating and contacting any person including receiving notices, orders, summons or any other document relevant to the applicant, and shall be able to demonstrate that such representative has the ability to perform the assigned duties.

Clause 27 In the case where the applicant is a *listed company*, the applicant shall not have any demeanour indicating a lack of appropriateness to be a *listed company* in a material aspect, for instance, [i] operating business in the manner of opaqueness or not providing any channel for shareholders to inspect the company or [ii] neglecting or intentionally rendering no cooperation to perform in accordance with any important policy or publicly published guideline.

Division 2

Conditions to Comply after Obtaining an Approval

Clause 28 An approved person under this Chapter shall comply with the conditions specified in **Clause 29** to **Clause 36** except in the case where it appears the fact that the home exchange of the approved person is not located in any of the countries recognized by the SEC Office, in which case the applicant shall comply with the conditions specified in **Clause 37** only.

Clause 29 As from the effective date of the *registration statement* and draft prospectus, if the approved person wishes to make an advertisement for an offer for sale of its shares by any method other than distribution of the prospectus, the advertisement shall be in accordance with the following criteria:

- (1) not containing information that is false, overstated, distorted, concealed or materially misleading;
- (2) containing material information that is not beyond the information presented in the *registration statement* and draft prospectus submitted to the SEC Office in accordance with Part 4 of this Notification.

Clause 30 In advertising for solicitation to buy shares in a print publication, in addition to compliance with Section 80 [of the *Securities and Exchange Act B.E. 2535 (1992)*], the approved person shall briefly provide information relating to limitation and risk issues as prescribed in **Clause 57(1)** in such printed document or advertising.

Clause 31 The approved person shall complete its offer for sale of shares within six months as from the date on which the SEC Office has notified the granting of approval. In the case where the approved person is unable to complete the offer for sale within such period and wishes to continue the offer, the approved person shall request an extension of the offering period from the SEC Office in writing at least thirty days prior to the expiration of such period. In this regard, the rationale for such request together with the information relating to any material change to the characteristics of the approved person under Chapter 2 (if any) shall be provided as well. The SEC Office is empowered to extend the offering period as deemed appropriate, provided that such extension shall not exceed twelve months as from the date on which the SEC Office has notified the granting of approval for the first time.

Clause 32 In case of the primary listing on the Stock Exchange of Thailand, if the approved person is unable to sell its shares to meet the required minimum amount, or comply with any other listing requirement as prescribed by the Stock Exchange of Thailand, the approved person shall cancel the offer for sale of shares in the whole amount and return the money to the subscribers.

The provision under Paragraph 1 shall not be applicable to an *ASEAN company* which is unable to sell its shares to meet the required minimum amount, or comply with any other listing requirement as prescribed by the Stock Exchange of Thailand if such *ASEAN company* has or will have its shares traded on any ASEAN exchange.

Clause 33 The approved person shall comply with the following criteria to ensure that its directors, *executives* and *controlling persons* have the specified characteristics:

(1) monitor to acknowledge possession of any unqualified characteristic of the directors, *executives*, and *controlling persons* as prescribed in Clause 23. In case there is a certain fact demonstrating that any of such persons has an unqualified characteristic, the approved person shall take action as authorized by law to cease the duty performance of such person;

(2) monitor and ensure that the characteristics of the directors and *executives* are in accordance with the rules under Clause 23 at all times. In case of necessary change of a director or *executive* for any reason, the approved person shall take any action as authorized by law to have a new director or *executive* in compliance with such rules as well.

Clause 34 The approved person shall maintain the presence of the local representative in Thailand who shall perform duties in accordance with the rules prescribed under Clause 26.

Clause 35⁴ During the period where the approved person is obliged to comply with the rules as specified in the Notification of the Capital Market Supervisory Board issued by virtue of Section 56 [of the *Securities and Exchange Act B.E.2535 (1992)*], the approved person shall comply with the commitments given in the application or *the registration statement* and draft prospectus, and shall proceed to have its *major shareholders, directors, executives, and controlling persons* comply with such commitments as well, unless it has any of the following characteristics:

(1) the company obtains shareholder approval with counting votes not less than three-fourths of the entire votes of the attending shareholders qualified to vote and no more than ten percent of the total votes of the shareholders who attend the meeting vote against the proposal. In this regard, the counting of number of votes shall not include the vote of a person having special interest in such resolution regardless of his personal own interest or the interest of his *connected person*;

(2) there is no material change of the use of proceeds which shall be in accordance with the regulations specified by the SEC Office.

Clause 36 In the case where the financial advisor who jointly prepares the application wishes to receive or verify any information for the purpose of performing its duties in the part related to the approved person in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Financial Advisor and Scope of Work* and this Notification, the approved person shall cooperate in providing

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2561 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

such information to the financial advisor throughout the period where the financial advisor has the duties as specified in such Notifications.

Clause 37 In the case where a fact appears to the SEC Office after an approval has been granted that the home exchange of the approved person is not located in any of the countries recognized by the SEC Office, the approved person shall comply with the conditions after obtaining an approval as specified under Chapter 3 of Part 2 of the *Notification of the Capital Market Supervisory Board concerning Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are not Traded on Foreign Exchange, mutatis mutandis*. In this regard, the SEC Office has the power to issue an order in connection with the said compliance under the aforementioned Notification.

For the purpose of complying with the rules specified under Paragraph 1, the SEC Office may issue a guideline suitable for the nature of the offer for sale and the approved person.

Chapter 3

Offer for Sale of Newly Issued Shares by Foreign Company Whose Home Exchange Is the Stock Exchange of Thailand

Clause 38 A public offering of newly issued shares by a *foreign company* shall be approved upon compliance with the following rules:

(1) the applicant shall demonstrate that it has the characteristics and complies with the rules relating to offering for sale of newly issued shares as prescribed in the *Notification of the Capital Market Supervisory Board concerning Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares are not Traded on Foreign Exchange, mutatis mutandis*, except the case where the applicant obtains a waiver of the rules under Clause 39;

(2) in the case where the applicant has already had its shares traded on any foreign exchange prior to submitting the application, the applicant shall not be in violation of or fail to comply with the applicable foreign laws or regulations as well as the orders issued thereunder relating to preparation and submission of financial statements or reports relating to financial and non-financial information.

Clause 39 The following rules under the *Notification of the Capital Market Supervisory Board relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares are not Traded on Foreign Exchange* shall not apply to the applicant who is a ***CLMV company***:

(1) the rules related to assistance of capital market regulator regarding examination or giving information to the SEC Office as specified under Clause 17 of such Notification only in the case where the ***CLMV company*** has any of the following characteristics:

(a) having Thai persons collectively holding more than fifty percent of the total voting rights of the applicant. In this regard, at least a shareholder of the applicant shall have the characteristics as prescribed under Clause 40(2);

(b) having Thai persons collectively holding at least forty percent of the total voting rights of the applicant only in the case where there are legal restrictions or capital venture conditions imposed by the state, which prevents the shareholding from being in accordance with (a). In this regard, at least one shareholder of the applicant shall have the characteristics as prescribed in Clause 40(2).

In considering the number of shares held by Thai persons under (a) and (b) of Paragraph 1, only the shareholding of the shareholders who have the characteristics as prescribed in Clause 40 shall apply.

(2) the rules related to financial advisor under Clause 36 of the aforementioned Notification only in the case where the applicant has all of the following characteristics:

(a) being a ***CLMV company*** which has the characteristics as prescribed in (1);

(b) being a ***listed company***.

Clause 40 In considering the number of shares held by Thai persons under Clause 39(1)(a) or (b), only the shareholding of the following shareholders shall apply:

(1) shareholder holding more than 10 percent of the total voting rights of the ***foreign company***;

(2) shareholder having substantially participatory *de facto* management of the ***foreign company***.

Clause 41 The approved person under Clause 38 shall comply with the rules relating to conditions after obtaining an approval as prescribed in the *Notification of the Capital Market Supervisory Board relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares are not Traded on Foreign Exchange, mutatis mutandis*. In this regard, the SEC Office has the power to issue an order in connection with the said compliance under the aforementioned Notification.

For the purpose of complying with the rules specified under Paragraph 1, the SEC Office may issue a guideline suitable for the nature of the offer for sale and the approved person.

Part 3

Offer for Sale of Newly Issued Securities by a Foreign Company Which Once Obtained an Approval for Public Offering from the SEC Office

Clause 42 The Provisions in this Part shall be applicable to the offering of any of the following securities:

- (1) a right offering made for shareholders in Thailand to acquire shares from capital increase in proportion to their holding, or sell or transfer such right;
- (2) underlying shares of the *securities* under (1);
- (3) underlying shares of share warrants or other share convertible *securities* as prescribed by the SEC Office, offered to the shareholders in proportion to their shareholding;
- (4) underlying shares of transferable subscription right;
- (5) share warrants;
- (6) underlying shares of share warrants under (5);
- (7) any other *securities* as specified by the SEC Office.

Clause 43 A *foreign company* may make an offer for sale of *securities* upon meeting any of the following criteria:

- (1) being an offer approved by the SEC Office in accordance with the rules in Chapter 1;
- (2) being an offer of *securities* other than (1), approved by the SEC Office through filing of application, in compliance with the rules and conditions after obtaining an approval in as prescribed in Chapter 2.

Chapter 1

Rules for a Deemed Approval

Clause 44 An offer for sale of *securities* under Clause 42(1) (2) (3) or (4) shall be deemed to obtain an approval upon meeting the conditions as prescribed in Clause 45.

Clause 45 A *foreign company* offering newly issued *securities* under Clause 44 shall comply with the following rules:

- (1) having any of the following characteristics:
 - (a) being a *listed company* on the Stock Exchange of Thailand; or
 - (b) being a *CLMV company* which has obtained an approval for a public offering of shares from the SEC Office;
- (2) being able to make an offer for sale of newly issued shares or transferable subscription right in accordance with the laws and regulations governing such foreign company.

Chapter 2

Rules for an Approval and Conditions after Obtaining an Approval

Clause 46 The filing of an application for an offer for sale of newly issued *securities* under Clause 42(5) (6) or (7) shall be in accordance with the rules relating to submission of application under Chapter 1 of Part 2, *mutatis mutandis*.

Clause 47 A *foreign company* may file an application under Clause 46 only upon having the following characteristics:

- (1) being a *listed company* on the Stock of Thailand or a *CLMV company* which has obtained an approval for a public offering of shares from the SEC Office;
- (2) having foreign exchange as home exchange.

Clause 48 An applicant would obtain an approval for an offer for sale of newly issued *securities* under Clause 42(5)(6) or (7) only upon demonstrating to the SEC

Office its possession of characteristics and its compliance with the following conditions:

- (1) the *foreign company* maintains the characteristics and complies with the rules on approval prescribed under Chapter 2 of Part 2;
- (2) the offer for sale of *securities* subject to approval may be made in accordance with the laws and regulations of the jurisdiction applicable to the applicant.

Clause 49 The provisions in Division 2: Conditions after Obtaining an Approval under Chapter 2 of Part 2 shall be applicable to an approval under this Chapter, *mutatis mutandis*.

Part 4

Filing of Registration Statement and Draft Prospectus

Clause 50 An offeror who has not been exempted from filing the *registration statement* and draft prospectus in accordance with the *Notification of the Securities and Exchange Commission concerning Exemption from Filing the Registration Statement for Offer for Sale of Securities Issued by Foreign Company* shall comply with the following rules related to filing of the *registration statement* and draft prospectus:

- (1) the rules prescribed in Chapter 1, Chapter 2, Chapter 3, Chapter 4 and Chapter 5 shall apply in case of an offering with the following characteristics;
 - (a) an offering of shares or other types of *securities* by a *foreign company* which has or would have foreign exchange as its home exchange;
 - (b) an offering of shares, which meets the following conditions, by the shareholders of the *foreign company* for the purpose of listing such shares on the Stock Exchange of Thailand;
 1. issued by the *foreign company* and having the characteristics eligible for an approval under Chapter 2 of Part 2;
 2. having a written warranty of the *foreign company* under 1 to acknowledge the offering of such shareholders and certify that the *foreign company* shall comply with the disclosure rules as well as other relevant provisions.
 - (c) an offering by *securities* holders of the *foreign company* only in the case granted an approval under this Notification.

(2) the rules relating to filing of the *registration statement* and draft prospectus under Part 4 of the *Notification of the Capital Market Supervisory Board concerning Rules related to Offer for Sale of Shares by Foreign Company Whose Shares Are Not Traded on Foreign Exchange*, including the power of the SEC Office relevant to such matter shall apply, *mutatis mutandis*, in case of an offer for sale of shares having the following characteristics;

- (a) an offer for sale of shares by a *foreign company* whose home exchange is or will be the Stock Exchange of Thailand;
- (b) an offer for sale of shares by a *securities* holder in the same category and type as those under (a).

Chapter 1

General provisions

Clause 51 An offer for sale of *securities* is allowed only when the offeror has already filed the *registration statement* and draft of prospectus to the SEC Office and the cooling-off period of such documents has elapsed.

Clause 52³ In the case where the offeror wishes to offer for sale of the remaining shares after the period for the previous offering as specified in the *registration statement* has expired, the offeror shall file a new *registration statement* and a new draft prospectus in accordance with the procedure specified under Clause 53.

Chapter 2

Filing Procedures and Fees

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 5/2559 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No.4)* dated 10 February 2016 (effective on 1 March 2516).

Clause 53³ An offeror shall file the *registration statement* as prescribed in Chapter 3 and draft prospectus according to the form under Section 72 [of the *Securities and Exchange Act B.E.2535 (1992)*] together with the evidentiary documentation as specified on the website of the SEC Office in accordance with the following rules:

(1) In case of an initial public offering for listing the offered shares on the Stock Exchange of Thailand or a right offering of a *listed company*, a set of printed copy of the *registration statement* and draft of prospectus shall be filed with the SEC Office, and such printed documents shall be submitted to the *electronic information* transmission system of the Stock Exchange of Thailand provided for submission of such printed documents;

(2) In case of any share offering other than (1) or an offering of other securities, a set of printed copy of the *registration statement* and draft prospectus shall be filed with the SEC Office and submitted to the *electronic information* transmission system of the SEC Office provided for such purpose by the SEC Office.

Clause 54 An offeror has the duty to pay the filing fee of the *registration statement* in accordance with the rules and procedures as specified by the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Filing Registration Statement, Registration and Applications for Approval*.

Chapter 3

Form and Information in the Registration Statement

Clause 55 The *registration statement* filed with the SEC Office shall:

(1) not contain any information that is false or may be misleading, and not lack any material statement which should have been disclosed;

(2) contain the information as prescribed in Section 69(1) to (10) [of the *Securities and Exchange Act B.E. 2535 (1992)*];

(3) contain additional information as specified under this Chapter.

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 5/2559 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No.4)* dated 10 February 2016 (effective on 1 March 2516).

Clause 56 The *registration statement* filed with the SEC Office shall be in the following forms. In this regard, the offeror shall have a financial advisor whose name appears on the approved list of the SEC Office jointly prepare information to be submitted in such forms:

(1) in case of an offering made in *ASEAN countries* simultaneously or in a proximate period, the offeror shall file the *registration statement* via Form 69-FE attached herewith;

(2) in case of any offering other than (1), the *registration statement* may be filed in any form provided that details of the particulars shall at least be equal to those specified in this Chapter.

Clause 57 The *registration statement* filed with the SEC Office in accordance with **Clause 56** shall at least contain the following additional information:

(1) information related to restrictions and risks in the following matters:

(a) rights and protection entitled to investors investing in shares issued by a *foreign company* in accordance with the laws and regulations of the jurisdiction where the *foreign company* is established. Investors, therefore, should study and keep abreast of such laws and regulations. In this regard, such information shall be stated in bold characters on the cover page of the *registration statement* for clear visibility;

(b) legal action against the *foreign company* or the offeror not having residence in Thailand. In this regard, the jurisdiction of the court where legal proceedings against the *foreign company* are allowed shall also be specified;

(c) possible effect on *securities* holders of the *foreign company* in the case where the law of the jurisdiction where such *foreign company* is involved has a restriction on overseas remittance (if any);

(d) restriction on purchasing shares of the *foreign company* in the case where the value of such shares to be allocated to investors in Thailand exceeds the remaining quota specified by the Bank of Thailand for foreign exchange control over capital market transactions;

(e) any other restriction or risk which may materially affect the exercise of right or the making of investment decisions, for instance, a restriction on giving proxy to vote, or a restriction on delivery of share certificates because the shares of the *foreign company* are in the book-entry system (scripless);

(2) information relating to the name and contact address of the person appointed by the *foreign company* as its representative in Thailand, as well as the clearly stated power and duty of such representative;

(3) clear statement relating to the language(s) to be used in the preparation for prospectus, financial statements, annual report, annual registration statement, supplementary documents for shareholders' meetings, and any other information or report on business prepared by the *foreign company* for disclosure to the public.

Clause 58 In case of an offer for sale of shares, the *registration statement* filed with the SEC Office in accordance with Clause 56 shall include the following information in addition to the information under Clause 57:

(1) information relating to restrictions and risks in the following matters:

(a) a warning statement shall be provided for investors to acknowledge the relevant facts and understand the risk of depreciation of the share price when the shares are traded on the Stock Exchange of Thailand in case of an offer for sale of shares having the following complete characteristics:

1. being an offer for the purpose of listing the shares primarily on the Stock Exchange of Thailand;

2. the *foreign company* has offered shares of the same category for sale to any person at a price lower than the offer price stated in the *registration statement* at this time. In this regard, such offer occurred during the six months prior to the offering under the *registration statement* this time, and the aggregate number of shares offered during such period exceeded ten percent of the total number of shares offered under the *registration statement* this time;

(b) conditions relating to cancellation of the offering and returning money to the subscribers in the case where the offeror fails to sell its shares at the required minimum amount, or fails to comply with any other listing requirement as prescribed by the Stock Exchange of Thailand, provided that the procedures and methods for cancelling the offer and returning the subscription money are clearly stated.

(2) a clear statement that the *foreign company* has passed a preliminary consideration by the Stock Exchange of Thailand for accepting its shares as listed securities;

(3) comparative information between the foreign laws and regulations governing the applicant in the part of corporate governance and protection of shareholders in significant

matters and the laws and regulations applicable to Thai public limited companies in such matters.

Clause 59⁴ The financial statements disclosed in the *registration statement* shall be in compliance with the rules prescribed in Clause 23/1 and Clause 24.

Clause 60 In case of disclosing the appraised value of any asset in the *registration statement*, the appraisal shall be prepared by a person who is deemed by the applicant and the financial advisor jointly preparing the application to be properly qualified and has the capability to assess the value of the asset in such a way that sufficiently and reliably reflects the true value. In this regard, the appraiser shall have any of the following characteristics:

(1) being a financial advisor or an appraisal company in the capital market whose name appears in the approved list of the SEC Office or a specialist in the field recognized by the SEC Office;

(2) in case of a foreign appraiser, such person shall also comply with the additional criteria as follows:

(a) being an appraiser whose name appears on the approved list of the authority or the regulator of the country where the appraised asset is located;

(b) in case of an appraiser whose name does not appear on the list under (1), such appraiser shall possess any of the following characteristics:

1. being a professional appraiser whose work is widely recognized in the country where the appraised asset is located;

2. being an appraiser whose performance and operational systems comply with standards of professional appraisal practice;

3. being an appraiser who is a member of an international appraisal network (international firm).

Clause 61 In the case where the offeror submits the *registration statement* prepared in the English language only but wishes to publish information relating to the *securities* offering in the Thai language, such information shall be provided in the appendix

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 56/2561 Re: Provisions relating to Offer for Sale of Securities Issued by Foreign Company Whose Shares Have Been Traded or Are Purposed to be Traded on Foreign Exchange (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

attached to the *registration statement* as well and shall be deemed a part of the *registration statement*.

Clause 62 Prior to the closing date of the offer for sale of *securities* as approved, if the offeror has disclosed any material information not stated in the *registration statement* and prospectus to any specific person for the purpose of analyzing the properness of investment in the offered *securities* or making a decision to invest in such offered securities, the offeror shall proceed to disclose such information in the *registration statement* and prospectus promptly, in this regard, not later than the effective date of the *registration statement*, or within the next business day after the date when such disclosure is made to such specific person in the case where the *registration statement* has already become effective.

Chapter 4

Certification of information

Clause 63 The *registration statement* filed with the SEC Office shall be signed to certify the correctness and completeness of the contained information in accordance with the following criteria:

(1) an offer for sale of *securities* by a foreign issuing company shall be in compliance with the following criteria:

(a) in case of an offering made simultaneously or in a proximate period in a country where home exchange is located, the method of certification by affixed signature on the documents disclosing information on *securities* offering shall be in accordance with the laws and regulations of the country of home exchange, except where there is no specific law or regulation in this regard, the rules under (b) shall apply:

(b) in any case other than as specified in (a), the authorized director of the foreign issuing company shall affix signature together with the company's seal thereunto (if any).

(2) in case of an offering by a *securities* holder, the *registration statement* shall be signed by:

(a) such *securities* holder and in the case where the *securities* holder is a juristic person, the authorized signatory of such juristic person shall sign and affix the company's seal thereunto (if any);

(b) the authorized director of the *foreign company* with the company's seal affixed thereunto (if any);

(3) in case of an offering of *securities* that involves a financial advisor, the authorized signatory of the financial advisor shall sign and affix the company's seal thereto (if any).

Clause 64 Where there is a necessary and appropriate cause for the authorized signatory of the juristic person under Clause 63 to be unable to affix signature, such juristic person shall comply with the following rules unless a waiver is granted by the SEC Office:

(1) in case the cause of inability to affix signature is a result of unconsciousness or failure to control oneself owing to physical or mental disorder, the offeror would be exempted from arranging such person to sign in the *registration statement*;

(2) in case the cause of inability of any authorized signatory to affix signature is a result of any cause other than (1), the offeror shall have such person affix signature immediately upon extinguishment of such cause so that the *registration statement* shall become effective in accordance with Clause 65.

Chapter 5

Effective Date of Registration Statement and Draft Prospectus

Clause 65 Pursuant to Section 68 and Section 75, after the *securities* offeror has filed the *registration statement* and draft prospectus with the SEC Office and paid the filing fee in full, the *registration statement* and draft prospectus shall become effective upon the lapse of the following periods whichever comes later, providing that such period shall not exceed forty-five days from the date on which the SEC Office has received the complete *registration statement* and draft prospectus:

(1) fourteen days from the date when the SEC Office has received the complete *registration statement* and draft prospectus;

(2) the date when the *securities* offeror completely states in the *registration statement* and draft prospectus the information concerning the offer for sale of securities, which includes the amount and price of the *securities* to be offered, the offering period, details on subscription, distribution, allotment and any other similar information including

documents relevant to such information, providing that the period from the date of filing the *registration statement* with complete information of the other parts to the date of filing the information concerning the offer for sale of *securities* shall not be less than fourteen days;

(3) the date when the *registration statement* and draft prospectus become effective in a foreign jurisdiction wherein an offer for sale of similar type of *securities* is also made simultaneously or in a proximate period.

Notified this 9th day of April 2015.

(Mr. Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board