

(UNOFFICIAL TRANSLATION)

Codified up to No.3

As of March 6, 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. 16/2558**

**Re: Issuance and Offer for Sale of  
Newly Issued Depository Receipts**

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By virtue of Section 16/6 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* and Section 35, Section 36, Section 56, Section 67, and Section 69 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 from 16 May 2015.

**Clause 2** In this Notification and the forms prescribed herein:

“*depository receipt*” means a depository receipt representing *foreign securities*;

“*foreign securities*” means securities traded on the foreign stock exchange;

“*unit of foreign ETF*” means a share of investment company or unit trust issued under collective investment scheme in the category of exchange-traded fund established under law of foreign jurisdiction;

“*foreign regulator*” means a capital market regulator in foreign jurisdiction;

“*foreign stock exchange*” means an exchange in foreign jurisdiction;

“*GMS countries*” means the countries in the Greater Mekong Sub-region (GMS), namely, the Kingdom of Cambodia, the Lao People's Democratic Republic, the Republic of the Union of Myanmar, the Socialist Republic of Vietnam, and the People's Republic of China (Yunnan Province only);

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

“*commercial bank*” means any commercial bank under the law governing financial institution business;

“*depository agreement*” means any agreement or terms governing the rights, obligations and responsibilities of the issuer and holders of *depository receipts*;

“*foreign custodian*” means any custodian who is able to operate the custodian business in foreign jurisdiction;

“**executive**” means a manager or the next four executives succeeding the manager, a person holding equivalent position to the fourth executive, including a person holding the position of manager or equivalent in accounting or finance departments;

“**controlling person**” means a shareholder or any other person who by behavior has an influence over policy making, management or operation of the company in a significant manner, whether as a result of being a shareholder or authorized under an agreement or any other matter, especially a person falling under any of the following characteristics:

(a) a person who has voting rights, whether directly or indirectly, more than twenty five percent of the total number of shares with voting rights of the company;

(b) a person who by behavior can take control over appointment or removal from office of a director of such company;

(c) a person who by behavior can take control over a person responsible for policy making, management or operation of the company to follow his order in policy making, management or operation of the company;

(d) a person who by behavior takes part in the company’s operation or has responsibility for the company’s operation as executive, including a person who holds the position with the same authority as such person of the company.

“**registration statement**” means a registration statement for an offer for sale of **depository receipts**.

<sup>2</sup>“**institutional investors**” shall have meaning in pursuant to the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in Notifications relating to Issuance and Offer for Sale of Securities*.

**Clause 3** This Notification shall be applicable to:

(1) Application for Approval and Granting of Approval for an Offer for Sale of **Depository Receipts** under Part 1;

(2) Filing of the **Registration Statement** for an Offer for Sale of **Depository Receipts** under Part 2;

(3) Ongoing Disclosure of Information on Financial Position and Operating Results of the Issuer of **Depository Receipts** under Part 3.

## Part 1

### Application for and Approval of Offer for Sale of Depository Receipts

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<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2560 Re: Issuance and Offer for Sale of Newly Issued Depository Receipts (No. 3)* dated 6 March 2017 (effective on 1 June 2017).

**Clause 4** This Notification is applicable to the issuance and offer for sale of *depository receipts* as another channel for investors to invest in *foreign securities* by holding or trading such securities. Notwithstanding the foregoing, this Notification shall not deal with the issuance and offer for sale of *depository receipts* that includes a fund raising of *foreign companies*.

## Chapter 1 Application for Approval

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**Clause 5** Any person wishing to apply for approval of an offer for sale of newly issued *depository receipts* shall submit an application and other evidentiary documentation to the SEC Office in accordance with the rules, conditions, and procedures prescribed by the SEC Office.

The application for approval under Paragraph 1 shall comprise the followings:

- (1) application for approval of the qualifications of the applicant; and
- (2) application for approval of the characteristics of the *depository receipts* presenting the information of the *foreign securities* intended to be accepted for deposit in the issuance of such securities.

**Clause 6<sup>1</sup>** The applicant shall pay the application fee to the SEC Office 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 Application for Securitization Project* on the date when a set of complete and accurate application together with the evidentiary documentation have been submitted in accordance with the Licensing Manual for the Public.

## Chapter 2 Approval Criteria

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**Clause 7** An application for an offer for sale of *depository receipts* shall be approved by the SEC Office upon full compliance with the following criteria:

- (1) the applicant is the issuer of *depository receipts* in accordance with the criteria specified in Division 1 of this Chapter;
- (2) the characteristics of the *depository receipts* are in accordance with the

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 50/2558 Re: Issuance and Offer for Sale of Newly Issued Depository Receipts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

criteria specified in Division 2 of this Chapter;

(3) the *depository agreement* contains the particulars as specified in Division 3 of this Chapter.

**Clause 8<sup>1</sup>** After the SEC Office has already received the complete and accurate application together with 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 writing the skeptical issues resulted from the ascertaining process for the applicant to clarify within the specified period in the notifying letter. In this regard, the whole aforementioned process shall be completed within the following timeframes:

(1) in case where the applicant submits the application for approval of the qualifications of the applicant under (1) of Paragraph 2 of Clause 5 and the application for approval of the characteristics of *depository receipts* under (2) of Paragraph 2 of Clause 5 at the same time, the process shall be completed within forty-five days from the date when the SEC Office has received a complete set of evidentiary documentation in accordance with the Licensing Manual for the Public;

(2) for cases other than that in (1), the applicant shall comply within fifteen days from the date when the SEC Office has received a complete set of evidentiary documentation for the application for approval of the qualifications of the applicant under (1) of Paragraph 2 of Clause 5, or the application for approval of the characteristics of *depository receipts* under (2) of Paragraph 2 of Clause 5 in accordance with the Licensing Manual for the Public.

The SEC Office shall notify the result of consideration of the qualifications of the applicant or the characteristics of *depository receipts* within ten business days from the date when the SEC Office receives the clarification of the skeptical issues from ascertaining the facts of the applicant.

In case where the applicant wishes to apply for a waiver to the criteria under this Notification, the applicant shall submit an application for a waiver together with supporting evidentiary documentation before the SEC Office commences the consideration under Paragraph 2 in accordance with the procedures and methods as specified in the Licensing Manual for the Public. The SEC Office shall complete the consideration of the application for a waiver within the same period as the consideration of the application for approval under Paragraph 2.

**Clause 9** Upon being notified of the approval under Clause 8, the

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 50/2558 Re: Issuance and Offer for Sale of Newly Issued Depository Receipts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

approved person may offer the *depository receipts* for sale within the permitted value without any restriction on the number of issues subject to the criteria and conditions prescribed herein.

Division 1  
Qualifications of Applicant

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**Clause 10** The qualifications of the applicant shall meet the following criteria:

(1) the applicant shall be:

- (a) a *commercial bank*;
- (b) a securities company licensed to undertake the securities brokerage business that is not restricted to securities that are debt securities or investment units;
- (c) a limited company incorporated under Thai law of which not less than 99 percent of its total issued shares are held by the *Thai Stock Exchange* with an objective to issue *depository receipts*.

(2) the applicant shall put in place systems of work that are equipped to accommodate the procedures for issuing *depository receipts* and the undertaking under the commitments in the *depository agreement* comprising the systems in the following areas at a minimum:

(a) system for administering and checking *foreign securities* to ensure that they are sufficient for the *depository receipts* that have been offered but not yet redeemed;

(b) system for administration, following up, and passing benefits arising from *foreign securities* to the holders of *depository receipts* under the criteria in this Notification and under the commitments in the *depository agreement*;

(c) system for following up any information and news of *foreign securities* that is disclosed in foreign countries, and disseminating such information and news to the holders of *depository receipts* in order that the holders of such securities are informed of up-to-date information and news, and ensure that the criteria in the relevant notification on disclosure of information in such manner is complied with, as well as compliance with the commitments specified in the *depository agreement*;

(d) additional work system relating to appointment of foreign persons as custody agents for *foreign securities* as follows:

1. system for consideration and selection of agents that are *foreign custodians* equipped with work systems for the custody of *foreign securities*;
2. system for auditing and verifying *foreign securities* deposited with *foreign custodians* against the entries in the account prepared by the applicant;
3. system for administering, dealing, and coordinating with the

*foreign custodians* in order for the *foreign custodians* to perform their delegated duties properly and completely.

(3) the applicant's personnel shall be prepared to be in charge of any undertaking relating to the procedures for issuing *depository receipts* and undertaking under the terms specified in the *depository agreement*, and the personnel shall have adequate knowledge, capability, and experience appropriate to the functions of which they are in charge;

(4) it does not appear that the directors, executives, and controlling persons of the applicant have any untrustworthy characteristics in accordance with the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives*, mutatis mutandis.

In case where the applicant is a branch of a foreign *commercial bank*, the consideration under Paragraph 1 shall apply only to the persons holding positions at the branch in Thailand;

(5) the applicant is subject to any instruction by the official agency or the competent authority under law, in the country or in a foreign country, to improve the work system relating to accepting deposits of the assets of the customers or any other work system or undertaking that may have a material impact on the issuance of *depository receipts* and the good practice of the business.

**Clause 11** If, after the SEC Office has considered that the applicant is qualified in accordance with Clause 10, it appears later that the applicant is unable to maintain the qualifications in accordance with the criteria specified in this Division, the applicant shall promptly inform the SEC Office and indicate the reason for failure to maintain such qualifications.

If an event as specified in Paragraph 1 occurs and the approval for the offer for sale of the *depository receipts* has been granted, it shall be deemed that the approval for the offer for sale be suspended on a temporary basis until correction has been made by the applicant in accordance with the criteria specified in this Division, provided that the applicant shall promptly inform the SEC Office of such correction.

## Division 2

### Characteristics of Depository Receipts

**Clause 12** The characteristics of the *depository receipts* shall meet the following criteria:

(1) *foreign securities* shall fall under any of the following categories:

(a) ordinary shares that are traded on the *foreign stock exchange* and in compliance with the criteria in Clause 13;

(b) *foreign ETF units* which are in compliance with the criteria in Clause 14.

(2) such securities accommodate the deposit of *foreign securities* at the ratio of one unit of *depository receipts* to one unit of foreign securities;

(3) the issuer of *foreign securities* discloses information on a continuous basis to the *foreign regulator* or the *foreign stock exchange* and the investors can access such information in English, regardless of whether that information in English has been prepared by the issuer of *foreign securities* itself or any other reliable agency or institution. If such information in English has been prepared jointly by the applicant, the applicant shall certify that the substance of the information which has been prepared is accurate and identical to the information the issuer of *foreign securities* has disclosed to the *foreign regulator* or the *foreign stock exchange*.

**Clause 13** The ordinary shares that are traded on the *foreign stock exchange* under Clause 12(1) (a) shall be traded on the main board of the *foreign stock exchange* that has any of the following characteristics:

- (1) being the *exchange* on the list of countries approved by the SEC Office;
- (2) being the *exchange* located in the *GMS Countries*, provided that an average market capitalization for the last fifteen business days shall not be less than two billion baht.

**Clause 14** The characteristics of the *foreign ETF units* under Clause 12(1) (b) shall comply with the *Notification of the Securities and Exchange Commission concerning Units of Foreign ETF Deemed as Securities not Subject to Provisions on Public Offering of Securities*, with the exception of the criteria for arranging an agent in Thailand.

**Clause 15** If, after approval for an offer for sale of *depository receipts*, the characteristics of the *depository receipts* fail to meet the criteria specified in Clause 12, Clause 13 or Clause 14, the approval for the offer for sale of *depository receipts* shall be suspended on a temporary basis. Notwithstanding the foregoing, such suspension of the approval shall not have any effect on the *depository receipts* that have already been offered for sale or issued.

If the *foreign securities* under Paragraph 1 are ordinary shares traded on any stock exchange in the *GMS Countries*, the market capitalization under Clause 13(2) shall be calculated by averaging the share value for fifteen consecutive business days prior to the first day of each offer.

Division 3  
Particulars in Draft Depositary Agreement

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**Clause 16** The draft depositary agreement shall contain the following information at a minimum:

- (1) rights, obligations and responsibilities of the issuer of *depositary receipts*;
- (2) rights, obligations and responsibilities of the holders of *depositary receipts*, particularly the right to receive benefits from the *foreign securities* and the process to exercise the rights if the issuer of *foreign securities* grants any benefits to the holders of its securities or any other action that may have an impact on the holders of its securities, as well as restrictions on the exercise of such rights;
- (3) seeking resolutions and meetings of the holders of *depositary receipts*;
- (4) terms and conditions on the issuance and redemption of *depositary receipts*;
- (5) terms and conditions on the cancellation of *depositary receipts*;
- (6) action to be taken by the issuer of *depositary receipts* if the *foreign securities* or the issuer of *foreign securities* have undergone any significant change such as a change to the par value of *foreign securities*, a change to the core business or acquisition and merger, etc.;
- (7) action to be taken by the issuer of *depositary receipts* in the case of any event rendering that it is unable to arrange for *foreign securities* that are sufficient to the *depositary receipts* that have been offered but not yet redeemed, as well as arrangements relating to compensation for damages or other remedial measures to which the holders of *depositary receipts* will be entitled;
- (8) fees and expenses collected from the holders of *depositary receipts*;
- (9) amendments to the *depositary agreement*;
- (10) governing law.

**Clause 16/1<sup>2</sup>** For an offer for sale of *depositary receipts*, the approved person shall comply with rules relating to the disposal of shares under the *Notification of the Capital Market Supervisory Board Re: Distribution of Newly Issued Shares and Share Warrants by Issuer, mutatis mutandis*, unless otherwise specified. For the purpose of complying to the specified rules in Paragraph 1, the Office may prescribe details of applying *mutatis mutandis* of an offer for sale of *depositary receipts*.

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<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2560 Re: Issuance and Offer for Sale of Newly Issued Depositary Receipts (No. 3)* dated 6 March 2017 (effective on 1 June 2017).



**Clause 16/2<sup>2</sup>** the approved person shall arrange the soliciting or the giving of *depositary receipts* trading or investment advice to be made through securities company which is approved to provide such services concerning *depositary receipts* except in the following cases:

(1) the approved person has been granted a securities company status, provided that the approved person shall comply with the specified rules for providing such services according to its category, mutatis mutandis, excluding the prohibited securities allocation rules;

(2) an offer for sale of such *depositary receipts* is for institutional investors.

### Chapter 3 Post-approval Conditions

**Clause 17** In offering for sale of the *depositary receipts*, if the fixed offer price of such *depositary receipts* has not been determined in the prospectus (for example, the offer price is stated as a price range or calculation formula), the approved person shall disseminate or deliver, by any means, documents showing the fixed offer price in order for the investors to be aware of such information before subscribing for the instruments.

**Clause 18** The approved person shall make an initial offering of any *depositary receipts* within six months from the date it is informed of approval from the SEC Office under Paragraph 2 of Clause 8 and the result of the initial offering of such instruments shall meet the following criteria:

(1) there shall be no less than fifty subscribers;

(2) the total subscription amount shall at least meet the following minimum requirements:

(a) for *depositary receipts* that are shares traded on the *exchange* in the **GMS Countries**, the minimum requirement is twenty million baht; or

(b) for cases other than (a), the minimum requirement is fifty million baht.

<sup>2</sup>If the approved person is unable to offer for sale the *depositary receipts*

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<sup>2</sup> Amended by the *Notifitcation of the Capital Market Supervisory Board No. Tor Jor. 31/2560 Re: Issuance and Offer for Sale of Newly Issued Depositary Receipts (No. 3)* dated 6 March 2017 (effective on 1 June 2017).

<sup>2</sup> Amended by the *Notifitcation of the Capital Market Supervisory Board No. Tor Jor. 31/2560 Re: Issuance and Offer for Sale of Newly Issued Depositary Receipts (No. 3)* dated 6 March 2017 (effective on 1 June 2017).

within the period specified in Paragraph 1, it shall be deemed that the approval for the offer for sale of such *depository receipts* is rescinded and the approved person shall cancel the offer in its entirety.

**Clause 19<sup>2</sup>** The approved person shall clearly state the information relating to the grounds for cancellation of the offer for sale of the *depository receipts* and the action taken after the cancellation of the offer for sale of such *depository receipts* in the offering documents.

**Clause 20** The approved person shall arrange to put in place a *depository agreement* containing particulars and information identical to the draft *depository agreement* which has been approved by the SEC Office, with the exception of the information relating to the *depository receipts* and information specific to each offer for sale of such *depository receipts*.

Any amendment to the *depository agreement* that is to be made shall not be in conflict with the requirements under this Notification and such amendment shall comply with the requirements specified in the *depository agreement*.

If any amendment to the *depository agreement* requires a resolution at a meeting of the holders of *depository receipts*, the reason for the amendment to the *depository agreement* and any impact on the holders of *depository receipts* that has occurred or will occur shall be clearly indicated in the notice for invitation of the meeting of the holders of *depository receipts*.

**Clause 21** The approved person shall only be able to issue the *depository receipts* to the subscribers of such instruments upon compliance with the following criteria:

(1) the approved person is confident that the *foreign securities* are sufficient to accommodate the number of *depository receipts* to be allocated to the investors, provided that the system for making payment and delivering securities of the relevant *foreign stock exchange* is taken into consideration;

(2) the value of such issued *depository receipts* falls within the limit prescribed by the Bank of Thailand for the control of capital market transactions related to foreign currencies.

**Clause 22** The approved person shall prepare and submit a monthly report of information of the number of *depository receipts* issued and redeemed and the

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<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2560 Re: Issuance and Offer for Sale of Newly Issued Depository Receipts (No. 3)* dated 6 March 2017 (effective on 1 June 2017).

balance on the last business day of the month. The report shall be submitted to the SEC Office within fifteen days from the last day of each month. If the report has been submitted to the *Thai Stock Exchange*, it shall be deemed that the report has been submitted to the SEC Office.

**Clause 23** In the interest of the examination of the qualifications of the approved person and the characteristics of the *depository receipts* prior to each issuance and offer for sale, the approved person shall prepare documents and record information relating to the qualifications of the approved person and the characteristics of such *depository receipts* that demonstrate compliance with the requirements prescribed herein, and the approved person shall submit such information and documents upon request of the SEC Office.

The approved person shall store the complete information and documents under Paragraph 1 in paper format or electronic media for a period of five years at a minimum from the date when the *depository receipts* are issued and offered for sale in each issue.

#### Chapter 4 SEC Office's Authority in Approval

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**Clause 24<sup>1</sup>** *Repealed.*

**Clause 25** In case where any of the following grounds for suspicion becomes apparent to the SEC Office, the SEC Office may not approve the offer for sale of the *depository receipts* for which the application is made:

(1) The applicant or the offer for sale of *depository receipts* has the characteristic or is of the format that is in compliance with the approval criteria or conditions under this Notification but certain facts lead to the consideration that the intention or the substance of such offer for sale of *depository receipts* constitutes an avoidance of the provisions of the law governing securities and exchange or this Notification;

(2) The offer for sale of the *depository receipts* may contradict public or governmental policy;

(3) The offer for sale of the *depository receipts* may have an impact on the overall creditability of the Thai capital market;

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<sup>1</sup> Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 50/2558 Re: Issuance and Offer for Sale of Newly Issued Depository Receipts (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

(4) The offer for sale of the *depositary receipts* may cause damage to the investors in general or may lead to an unfair treatment of the investors in general, or the investors may not obtain correct or sufficient information to support their investment decision-making.

**Clause 26** The SEC Office may grant a waiver to the criteria under this Notification in considering the application for approval or may not apply the conditions under this Notification to the approved offer for sale of *depositary receipts* if any of the following cases applies:

(1) there is a clear fact to consider that such criteria or conditions to be waived are not material to the consideration for such approval, and the costs outweigh the benefits derived from compliance with such criteria or conditions;

(2) the applicant or the approved person, as the case may be, is subject to limitations under other laws which restrict it from complying with the criteria or conditions to be waived;

(3) the applicant or the approved person, as the case may be, has provided other measures that are sufficient and that compensate its compliance with the criteria or conditions to be waived.

In granting the waiver under Paragraph 1, consideration is primarily given to the appropriateness and sufficiency of the information supporting investment decisions and investor protection measures. The SEC Office may prescribe conditions for the applicant or the approved person to comply with.

## Part 2

### Filing of the Registration Statement for an Offer for Sale of Depositary Receipts

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#### Chapter 1

#### Filing Procedures and Fees

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**Clause 27** The offeror of *depositary receipts* shall file the *registration statement* as prescribed in Clause 29 and the draft prospectus in the form prescribed under Section 72 [of the *Securities and Exchange Act*] with the SEC Office by taking the following actions:

(1) filing one set of the *registration statement* and the draft prospectus in paper format, and one set of the photocopies thereof;

(2) transmitting information electronically via the data transmission

system as prescribed on the website of the SEC Office.

The information that the offeror of the instruments files with the SEC Office in both paper and electronic formats shall be identical.

**Clause 28** The offeror of *depository receipts* shall be obligated to pay the fee for filing the *registration statement* in accordance with the criteria and procedures prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning the Determination of Fees for Filing the Registration Statement, Registrations, and Other Applications* on the filing date of the *registration statement*.

## **Chapter 2**

### **Registration Statement**

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**Clause 29** The issuer of *depository receipts* shall file the *registration statement* for an offer for sale of such *depository receipts* in accordance with the following criteria:

- (1) for the initial offer for sale of *depository receipts* approved under Part 1, Form 69-DR, as attached hereto, shall be filed;
- (2) for an offer for sale of *depository receipts* in cases other than (1) Form 69-DR-reissue, as attached hereto, shall be filed.

**Clause 30** The *registration statement* under Clause 29 for filing with the SEC Office shall be prepared in the Thai language only, with the exception of the information of *foreign securities* that may be prepared in the English language.

**Clause 31** If, prior to the closing of the offer for sale of the *depository receipts*, the issuer of these *depository receipts* has disclosed facts, which are material and have not been presented in the *registration statement* and the prospectus, to any specific person for the purposes of analyzing the adequacy of investment in, or decision-making in the investment in the *depository receipts* offered for sale, the issuer of such *depository receipts* shall disclose such facts in the *registration statement* and the prospectus promptly.

If the *registration statement* has not yet become effective, the information under Paragraph 1 shall be disclosed before the date when the *registration statement* becomes effective. Alternatively, if the *registration statement* has become effective, such information shall be disclosed within the business day following the date when the facts are disclosed to such specific person.

Chapter 3  
SEC Office's Authority in Disclosure of Information

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**Clause 32** The SEC Office shall be empowered to grant a waiver to the disclosure of the particulars as prescribed in this Notification if the issuer of *depository receipts* is able to demonstrate that such information is not the type of information that would have a material impact upon decision-making by investors, and there is a reasonable cause that such particulars should not be presented in the *registration statement* or other action has been taken to compensate for such non-disclosure.

**Clause 33** In considering the information in the *registration statement* and the draft prospectus, if the SEC Office deems it necessary and expedient for the investors to have sufficient material information for making investment decisions, the SEC Office shall be empowered to require the issuer of *depository receipts* to undertake the following actions within the period specified by the SEC Office:

- (1) Clarifying or amending information or submitting additional evidentiary documentation;
- (2) Arranging for an independent expert to give an opinion relating to the correctness, completeness or reliability of the information in the *registration statement* and the draft prospectus.

If the issuer of *depository receipts* fails to undertake any action as prescribed by the SEC Office under Paragraph 1, it shall be deemed that the issuer of such *depository receipts* no longer intends to file the *registration statement* and the draft prospectus with the SEC Office.

In requiring the issuer of such *depository receipts* to undertake any action under Paragraph 1, the SEC Office may require the issuer to disclose any instruction, action and observation of the SEC Office or clarification of the instrument via the website of the SEC Office in accordance with the guidelines prescribed by the SEC Office.

Chapter 4  
Certification of Information

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**Clause 34** The affixing of signatures to certify the correctness of the information in the *registration statement* and the draft prospectus shall comply with the following criteria:

- (1) for an offer of *depository receipts* for sale by a branch of foreign *commercial bank*, the authorized persons of the branch of foreign *commercial bank*

shall affix their signatures in the **registration statement**;

(2) for an offer of **depository receipts** for sale by any person other than (1), the authorized directors or the persons holding the highest position and authorized by the authorized directors shall affix their signatures in the **registration statement**.

**Clause 35** If it becomes necessary and expedient for any person required to affix his or her signature for the juristic person as specified in Clause 34, to be unable to affix his or her signature, such juristic person shall comply with the following criteria unless a waiver is granted by the SEC Office:

(1) if the reason for such person to be unable to affix his or her signature is a result of such person being unconscious or being unable to control himself or herself due to a physical illness or a mental disorder, the offeror of **depository receipts** is not required to have such person affix his or her signature in the **registration statement**;

(2) if the reason for such person to be unable to affix his or her signature is a result of reasons other than those specified in (1) and after such reason is no longer applicable, the offeror of **depository receipts** shall arrange for such person to affix his or her signature immediately in order that the **registration statement** shall be effective in accordance with Clause 36.

## Chapter 5

### Effective Date of Registration Statement and Draft Prospectus

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**Clause 36** Subject to Section 68 and Section 75 [of the *Securities and Exchange Act*], the **registration statement** and draft prospectus shall become effective upon full compliance with the following criteria:

(1) the issuer of **depository receipts** shall have obtained an approval to offer such instruments for sale;

(2) the issuer of **depository receipts** has paid the filing fee for the **registration statement**;

(3) when the following periods of time and conditions are complied with:

(a) for Form 69-DR, after a period of seven business days from the date when the SEC Office receives the most updated **registration statement** (excluding any information relating to the offer for sale or other information which is immaterial and for which the SEC Office has granted a waiver to the requirement for the issuer to make any amendment);

(b) for Form 69-DR-reissue, after the date when the complete information has been fully provided in the **registration statement** by the offeror.

(4) the complete information has been fully provided in the **registration**

*statement* by the offeror.

In the interest of (3) of Paragraph 1, “information relating to the offer for sale” shall include the following information:

- (1) number and offer price of the *depository receipts* offered for sale;
- (2) offering period;
- (3) details relating to the procedures for subscription, underwriting and allocation;
- (4) any other information relating to any trading of *depository receipts* of similar characteristics or any other information relating to the information under (1), (2), and (3).

### Part 3

#### Ongoing Disclosure of Information on Financial Position and Operating Results of Issuers of Depository Receipts

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**Clause 37** The issuer of *depository receipts* approved under Part 1 shall be obligated to prepare and submit the report of its financial position and operating results under this Part.

The duty to prepare and submit the report under Paragraph 1 shall commence when the *registration statement* filed with the SEC Office becomes effective.

**Clause 38** The report of the financial position and operating results to be prepared under Clause 37 shall comprise the following information:

- (1) financial statements;
- (2) annual *registration statement* containing the information under Form 56-DR attached hereto.

**Clause 39** If the issuer of *depository receipts* is not a company classified under Clause 40, the issuer shall prepare and submit the report to the SEC office in accordance with the provision in Clause 38 in accordance with the following criteria:

- (1) the issuer shall prepare and submit the financial statements in compliance with the requirements of the official agency which is the regulator directly supervising the business operation of the issuer of instruments, or the requirements of the Ministry of Commerce, as the case may be.

If the issuer of such *depository receipts* is a branch of a foreign *commercial bank*, the preparation and submission of the financial statements under



Paragraph 1 shall mean the financial statements of that branch of foreign *commercial bank*.

(2) the issuer shall prepare and submit the annual *registration statement*, together with the financial statements under (1). The information in the annual *registration statement* shall be identical to the *registration statement* filed with the SEC Office under Clause 29 and such information shall be updated.

The issuer of *depository receipts* shall submit the report under Paragraph 1 to the SEC Office in accordance with the following formats:

- (1) filing one set of the documents in paper format;
- (2) transmitting one set of electronic data via the data transmission system available on the website of the SEC Office.

The information filed with the SEC Office in both paper and electronic formats shall be identical and the information shall not be materially false or conceal any material statements that should have been disclosed.

**Clause 40** If the issuer of *depository receipts* is a listed company on the *Thai Stock Exchange* and is obligated to file the financial statements and the annual *registration statement* under the *Notification of the Capital Market Supervisory Board concerning Reporting Criteria, Conditions, and Procedures for Disclosure of Information relating to Financial Position and Operating Results of Securities Issuing Companies* and has submitted the annual *registration statement* under such notification, including the following information, it shall be deemed that the issuer has submitted the report under Clause 38 to the SEC Office. The issuer shall inform such inclusion to the SEC Office at the time of filing the financial statements and the annual *registration statement*:

- (1) risk factors associated with the investment in *depository receipts*;
- (2) information on the characteristics of *foreign securities* deposited under *depository receipts* issued in the previous year.

**Clause 41** The issuer of *depository receipts* shall no longer be obligated to prepare and submit the report of its financial position and operating results to the SEC Office as required in this Part upon occurrence of any of the following events:

- (1) the issuer of *depository receipts* is subject to liquidation for winding-up;
- (2) the issuer of *depository receipts* has not offered *depository receipts* within the period the SEC Office has granted an approval for offer for sale of the *depository receipts*, or the issuer of *depository receipts* has cancelled the offer for sale of *depository receipts* as specified in the prospectus;
- (3) the *depository receipts* have been delisted from the *Thai Stock*

***Exchange;***

(4) the issuer of *depository receipts* is a financial institution whose business operation has been suspended by the order of the competent officer or the authority under law.

Notified this 9<sup>th</sup> day of April 2015.

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

**Appendix of Amendment**

<b>No.</b>	<b>Issued date</b>	<b>Notification No.</b>	<b>Title</b>	<b>Content</b>	<b>Status</b>
	9 April 2015	Tor Jor 16/2558	Issuance and Offer for Sale of Newly Issued Depository Receipts		In use (effective from 16 May 2015)
1	10 July 2015	Tor Jor 50/2558	Issuance and Offer for Sale of Newly Issued Depository Receipts (No. 2)	Amended Notification No. Tor Jor 16/2558 accordingly: 1. Amended Clause 6 2. Amended Clause 8 3. Repealed Clause 24	In use (effective from 20 July 2015)