

(UNOFFICIAL TRANSLATION)

Codified up to No. 2

As of 13 June 2016

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 32/2552
Re: Offering for Sale of Certificates Representing
Interest from Underlying Securities**

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 56, Section 67, Section 69 (11), Section 70 (9) and Section 71 (5) of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions relating to restriction of rights and liberties of persons which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board by virtue of Section 60 of the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 September 2009.

Clause 2 In this Notification:

(1) “**issuer of a certificate representing interest**” means a company which issues a **certificate representing interest from underlying securities** of which the **underlying asset** is securities issued by a **listed company**;

(2) “**certificate representing interest**” (**CRI**) means a certificate representing interest from Thai underlying securities;

(3) “**underlying securities**” means securities of any type issued by a **listed company** and used to underlie a **certificate representing interest**;

(4) “**listed company**” means a company whose shares are listed on the Stock Exchange of Thailand;

(5) “**executive**” means a manager or any person holding the first four highest executive positions next to the manager and every person holding a position equivalent to the fourth highest ranking executive, and shall include executives in accounting or finance at levels above or equivalent to departmental managers;

(6) “**controlling person**” means a shareholder or a person whose circumstances significantly influence the setting of policies, management or operation of the company, whether such influence is due to being a shareholder or being authorized under contract or any other circumstances, especially any person who fits any of the following descriptions:

(a) any person who has voting right, whether directly or indirectly, exceeding 25 percent of the total voting shares of the company;

(b) any person who, by circumstances, can control the appointment or removal of the directors of the company;

(c) any person who, by circumstances, can control the persons responsible for the policy, management or operation of the company to follow own commands in such aforementioned matters;

(d) any person who, by circumstances, operates or is responsible for the company's operation as a director or *executive* including any person holding a position of similar authority and responsibility as the aforementioned person in the company.

(7) “*terms and conditions*” means the terms and conditions governing the rights and obligations between the *CRI issuer* and the *listed company* towards the holders of the *CRI*;

(8) “*registration statement*” means the *registration statement* of an offer for sale of securities.

Clause 3 A *CRI issuer* shall submit an application for an offer for sale of *CRI* in accordance with this Notification only with support from the *listed company* which is the issuer of the *underlying securities*.

The support of the *listed company* under Paragraph 1 shall include participating in and taking responsibility for submission of an application for issuance and offer for sale of *CRI*, *registration statement* and draft prospectus, and any other action to comply with the obligations specified in the *terms and conditions* until the redemption of the outstanding *CRI* is complete.

Clause 4 In determining whether or not an application complies with the rules, conditions and procedures prescribed in this Notification, the SEC Office shall have the power in the following matters:

(1) in cases where the applicant or the offer for sale of newly issued *CRI* has characteristics or forms as prescribed by the rules or conditions for approval under this Notification, but there is ground to consider that the purpose or substance of such offer for sale of newly issued *CRI* is to avoid provisions prescribed under the *Securities and Exchange Act B.E. 2535 (1992)* or this Notification, the SEC Office may reject the application for such offer, in which case the SEC Office shall clearly notify the applicant of the reasons for such rejection;

(2) in cases where any of the following characteristics applies, the SEC Office may not enforce the regulations under this Notification on the consideration of the application or may not apply the conditions under this Notification to an offer for sale of newly issued *CRI* which has been approved by primarily taking into account the appropriateness and adequacy of the information supporting the investment decision as well as the measures for investor protection. In this regard, the SEC Office may also prescribe conditions for the applicant to take or omit from taking certain actions:

(a) costs outweigh benefits derived from compliance with the regulations or conditions to be waived, and there are clear facts to consider that such regulations or conditions are immaterial to the consideration of such approval;

(b) the applicant is subject to limitations under other laws which prevent compliance with the regulations or conditions to be waived;

(c) the applicant has other sufficient measures which can replace compliance with the regulations or conditions to be waived.

Chapter 1
Application and Approval or Issuance and Offer for Sale of Certificates
Representing Interest from Underlying Securities

Division 1
Rules of Approval

Clause 5 An application for approval and an approval for issuance and offer for sale of a newly issued **CRI** shall meet the following conditions:

(1) in case of an offer for sale of a **CRI** with the following limited characteristics, if it is in accordance with the regulations specified under Clause 8 and Clause 9 or Clause 10, it may be proceeded and shall be deemed to have already obtained an approval from the SEC Office;

(a)¹ the **underlying securities** of the **CRI** are shares unless the offer price of shares as the **underlying securities** is liable to be an offer for sale of newly issued shares at discount in accordance with the *Notification of the Capital Market Supervisory Board concerning Granting of Approval for Private Placement of Newly Issued Shares by Listed Company*;

(b) the **underlying securities** of the **CRI** are bonds.

(2) in cases other than Subclause (1), the company wishing to be a **CRI issuer** and the **listed company** issuing the **underlying securities** shall jointly file an application together with evidentiary documentation with the SEC Office in accordance with the rules and procedures prescribed by the SEC Office, and shall pay an application fee at the amount determined in the *Notification of the Securities and Exchange Commission Re: Determination of Fees for Application for Approval of an Offer for Sale of Newly Issued Securities and Application for Approval of a Securitization Project*.

The SEC Office shall have the power to notify the applicant in writing to clarify or submit additional evidentiary documentation as deemed appropriate within the period specified by the SEC Office. In cases where the applicant fails to comply within such period, it shall be deemed that such applicant no longer wishes to file the application.

Clause 6 The SEC Office shall notify the result of the consideration to the applicant under Clause 5 (2) within the following periods:

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor 24/2559 Re: Offer for Sale of Certificates Representing Interest from Underlying Securities (No. 2)* dated 13 June 2016 (effective on 16 July 2016).

(1) in case of an offer for sale of a **CRI** with limitations, within seven business days from the date when the SEC Office has received the application together with correct and complete evidentiary documentation;

(2) in case of an offer for sale of a **CRI** without the characteristics under Subclause (1), within forty-five days from the date when the SEC Office has received the application together with correct and complete evidentiary documentation.

Clause 7 An offer for sale of **CRI** with any of the following characteristics shall be deemed an offer for sale of **CRI** with limitations:

(1)² an offer for sale of **CRI** whose **underlying securities** are shares in the same manner as a private placement of newly issued shares under the *Notification of the Capital Market Supervisory Board concerning Granting of Approval for Private Placement of Newly Issued Shares by Listed Company*.

(2) an offer for sale of **CRI** whose **underlying securities** are debentures in the same manner as a private placement of newly issued debentures under the *Notification of the Capital Market Supervisory Board Re: Application for Approval and Approval for an Offer for Sale of Newly Issued Debt Securities*;

(3) an offer for sale of **CRI** whose **underlying securities** are share warrants in the same manner as a private placement of newly issued share warrants under the *Notification of the Capital Market Supervisory Board Re: Application for Approval and Approval for an Offer for Sale of Newly Issued Share Warrants and Underlying Shares*;

(4) an offer for sale of **CRI** whose **underlying securities** are bonds in the same manner as an offer for sale of newly issued bonds exempted from the duty to file the **registration statement** and draft prospectus with the SEC Office.

Clause 8 The **CRI issuer** and the **listed company** which issues the **underlying securities** shall receive an approval of an offer for sale of newly issued **CRI** from the SEC Office only in compliance with the following regulations:

(1) the **CRI issuer** shall have the following characteristics:

(a) being a limited company established under the Thai law;

(b) having objectives limited to issuance of **CRI** as approved to be offered for sale under this Notification;

(c) having directors, **executives** and **controlling persons** who shall have qualifications and shall not have any prohibited characteristics as specified in the *Notification of the Capital Market Supervisory Board Re: Provisions on Directors and Executives of Securities Issuers, mutatis mutandis*;

(d) having a mechanism for supervising and maintaining the amount of the **underlying securities** to be not less than the total **CRIs** sold and unredeemed and such mechanism shall prevent the use of the **underlying securities** for other purposes.

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor 24/2559 Re: Offer for Sale of Certificates Representing Interest from Underlying Securities (No. 2)* dated 13 June 2016 (effective on 16 July 2016).

(2) the *listed company* which issues the *underlying securities* shall have the following characteristics:

(a) having all qualifications for obtaining an approval for an offer for sale of such *underlying securities* under the *Notification of the Capital Market Supervisory Board Re: Application for Approval and Approval for an Offer for Sale of Securities*, whether the *underlying securities* of the *CRI* are newly issued or sold securities of the *listed company*, which shall also comply with the following regulations:

1. in case of an offer for sale of *CRI* with limitations, it shall be in accordance with the rules specified for an offer for sale of securities for private placement, with limitations or exemption;

2. in case of an offer for sale of *CRI* with characteristics other than those in Subclause 1, it shall be in accordance with the rules specified for securities offering to the public or in a general manner;

(b) in cases where the *underlying securities* are newly issued securities, the shareholders' meeting of the *listed company* shall be notified of the use of such securities as the *underlying securities* of the *CRI*.

The directors, *executives* and auditor of the *listed company* agree to bind to the reporting of change in the holding of the approved *CRI* by complying with the rules prescribed by the SEC Office under Section 59, *mutatis mutandis*.

The provision under (b) of Paragraph 1 shall not apply to an offer for sale of *CRI* with limitations.

(3) a *CRI* to be offered for sale shall have the following characteristics:

(a) the *underlying securities* shall be securities issued by only one *listed company* and the underlying rate of one unit of *CRI* shall equal one underlying security. In this regard, the *underlying securities* shall be any of the following types:

1. share;
2. bond or debenture, excluding structured debenture;
3. share warrant.

(b) in case of term underlying, a definite term shall be specified, in which case the maturity term of the *CRI* shall end before that of the *underlying securities*. In this regard, the determination of maturity term shall take into account time sufficiency for the *CRI* holders who receive such term *underlying securities* to exercise the right or obtain benefits from such securities;

(c) the *CRI* holder shall receive benefits in the same manner as the *underlying securities* holder does from the *listed company*, provided that the management expenses of the *CRI issuer* have been deducted (only in cases where the *terms and conditions* allow);

(d) there shall be a limitation of transfer of the *CRI* which shall be registered with the SEC Office in case of an offer for sale of *CRI* with limitations to ensure that the subsequent transfers shall have the characteristics under Clause 7;

(e) there shall be *terms and conditions* attached to the *CRI* in accordance with Clause 9 or Clause 10, as the case may be.

Clause 9 The *terms and conditions* of the *CRI* shall not contain provisions which allow unfair exploitation of contract parties and the authorized persons shall affix

binding signature to the *CRI issuer* and the *listed company* which issues the *underlying securities*, and the company's seal thereof shall be affixed (if any). In this regard, the *terms and conditions* shall have at least the following particulars and substances:

(1) the rights of the *CRI* holders:

(a) the right to return of investment which shall be the same as what the *underlying securities* holders receive from the *listed company*. In this regard, the characteristics of such return and the procedure for payment shall be clearly specified;

(b) the voting right in cases where the *underlying securities* are shares and the *CRI issuer* agrees to let the *CRI* holders exercise the right to vote in the *listed company* through the *CRI issuer*, in which case the *terms and conditions* shall clearly specify the following matters:

1. the matters on which the *CRI* holder shall have the right to vote;
2. the procedures for exercising the voting rights;
3. the reasons for restriction of the voting rights or the right of the

CRI issuer to use discretion in exercising voting rights (if any).

In this regard, in cases where there is an exercising of voting rights, the *CRI issuer* shall not exercise voting rights in the *listed company* in a manner which avoids or violates the *Securities and Exchange Act, B.E. 2535 (1992)* or the law governing foreign business.

(c) the right to receive the same information as the *underlying securities* holders such as the notice to call shareholder's meeting, financial statements and annual report of the *listed company* or the tender offer statement etc., in this regard, within reasonable time;

(d) any other right (if any) of the *CRI* holders except those specified in Subclauses (a), (b) or (c). In this regard, if such other right is a juristic relationship which shall bind any person other than the *CRI issuer* or the *listed company*, the status and relationship of such person shall be clearly specified.

(2) the obligation of expenses on the *CRI* holders (if any) which may be determined as necessary and at a reasonable rate, provided that the amount or the procedure for calculating and collecting such expenses shall be clearly specified.

(3) the amendment to the *terms and conditions* which shall at least specify the following characteristics:

(a) amendment to the right of the *CRI* holders to obtain returns shall be approved by the *CRI* holders of not less than three-fourths of all *CRIs* not yet redeemed;

(b) amendment to the voting rights in the *listed company* shall be approved by the *CRI* holders of not less than three-fourths of all *CRIs* not yet redeemed and by the SEC Office.

(4) the procedure for the custody of the *underlying securities*;

(5) the preparation of the register of the *CRI* holders and the provision that the issuance of the *CRI* shall be only for name-specific *CRI* holder;

(6) the provisions relating to the registration of *CRI* transfers which shall specify that the transfer of *CRI* shall be valid only when the person whose name is on the *CRI* or the last transferee has submitted such *CRI* to the transferee endorsed on the back with signature showing the transfer under Section 53 and the regulations specified in the *Notification of the Office of the Securities and Exchange Commission Re: Rules and*

Procedure for the Preparation of the Register of Securities Holders and the Registration of Securities Transfers, mutatis mutandis;

(7) the **terms and conditions** for the redemption of **CRI** which shall specify that such redemption shall be done by settling the **underlying securities** to the **CRI** holders only;

(8) the confirmation of the **CRI issuer** that the **underlying securities** shall not be transferred to any person except the securities custodian for the interest of **CRI** holders, and that there shall not be any form of obligation in any manner attached to such **underlying securities**;

(9) the confirmation of the **listed company** that it shall not register a transfer or a pledge of the **underlying securities** held by the **CRI issuer** except a transfer of the **underlying securities** for the redemption of **CRI** no matter if the **listed company** is the registrar of such **underlying securities** or appoints another person to be the registrar;

(10) the right to claim compensation of the **CRI** holders in the event that the **CRI issuer** or the **listed company** acts or omits to act in violation of the **terms and conditions**;

(11) an example of the **CRI**.

Clause 10 In case of an offer for sale of a **CRI** with limitations, the **terms and conditions** of the **CRI** shall contain at least the following particulars and substances as specified in Clause 9 (1), (5), (6), (7), (8), (9), and (11).

Division 2

Approval and Conditions for Approval

Clause 11 Except for an offer for sale of a **CRI** with limitations, the approved applicant shall appoint a securities company to be the underwriter and shall comply with the *Notification of the Capital Market Supervisory Board Re: Subscription, Underwriting and Allocation of Newly Issued Securities*, in the same manner as an offer for sale of newly issued **underlying securities**, *mutatis mutandis*.

Clause 12 The approved applicant shall complete the offer for sale of the **CRI** within the period specified in the project or within six months from the date when the SEC Office notifies of the approval, or within the period extended by the SEC Office which shall not exceed 12 months as from the date when the SEC Office notifies such approval. In this regard, in considering an extension, the SEC Office may require that the approved applicant submit additional information or documents.

Clause 13 The **CRI issuer** shall not issue the **CRI** at an amount exceeding the existing **underlying securities** of such **CRI**, and after the issuance of **CRI**, the **CRI issuer** shall maintain the **underlying securities** at an amount not less than the total **CRIs** sold and not yet redeemed.

Clause 14 The *CRI* shall contain at least the following particulars:

- (1) name and address of the *CRI issuer*;
- (2) specific name and significant characteristics of the *CRI*;
- (3) name of the *underlying securities*;
- (4) name of the *listed company* which issues the *underlying securities*;
- (5) amount of units of the *CRI*;
- (6) name of the *CRI* holder;
- (7) reference number of the *CRI* holder according to the register of *CRI* holders;
- (8) dates of issuance and maturity of the *CRI*;
- (9) provisions and procedures for redemption of the *CRI*;
- (10) statement specifying that the rights, duties and responsibilities of the *CRI* holder, the *CRI issuer* and the *listed company* shall be in accordance with the *terms and conditions*;
- (11) binding signature of the authorized person of the *CRI issuer* or the registrar of *CRI*;
- (12) limitations of transfer showing that the *CRI issuer* shall not accept registration of any transfer of the *CRI* at any time if such transfer contradicts such limitations of transfer registered with the SEC Office.

Clause 15 In cases where the *underlying securities* are newly issued securities, upon approval of the SEC Office for an offer for sale of *CRI*, it shall be deemed that the SEC Office has granted an approval for the *listed company* to issue and offer for sale of such newly issued *underlying securities* including the underlying shares (if any).

Clause 16 In case of an offer for sale of a *CRI* with limitations, the approval applicant shall comply with the following conditions:

- (1) the approved applicant shall not advertise the offer for sale of the *CRI* to the general public, and the documents relating to the *CRI* to be offered for sale or being offered for sale (if any) shall be distributed to specific persons or only as necessary in order for such offer for sale of shares to comply with the provisions specified in Clause 7 only;
- (2) in case of distribution of supplementary documents to the offer for sale, the approved applicant shall provide a statement specifying the limitations of transfer showing that the approved applicant shall not accept registration of transfer of the *CRI* at any time if such transfer contradicts the specified limitations of transfer which shall be the same as those registered with the SEC Office;
- (3) in cases where any person wishes to register a transfer of the *CRI*, the approved applicant shall examine the accuracy of such *CRI* transfer. If such transfer contradicts the limitations of transfer registered with the SEC Office, the approved applicant shall not accept registration of transfer of the *CRI* except a transfer by inheritance.

In cases where the approved applicant appoints a registrar of the *CRI*, the approved applicant shall ensure that the registrar also complies with the rules specified in Paragraph 1.

Clause 17 After an offer for sale of the *CRI*, the approved applicant shall submit a copy of the *terms and conditions* to the SEC Office together with the sale report of the *CRI*.

Amendment to the *terms and conditions* after the issuance of the *CRO* is allowed insofar that it is not contrary to or inconsistent with the regulations specified in this Notification; in this regard, the approved applicant shall submit a copy of the amended *terms and conditions* to the SEC Office within fifteen days from the date of such amendment.

In case of an amendment to the *terms and conditions* which requires prior approval from the SEC Office, such amendment may proceed only when the SEC Office does not notify an objection within seven business days as from the date when the SEC Office has received the application for approval of such amendment.

Clause 18 In cases where the *underlying securities* are shares and after the issuance of the *CRI*, the *listed company* increases the registered capital and issues the rights offering to the shareholders, if the *CRI* holders notify the intention to subscribe such rights offering and the *CRI issuer* has acquired such rights offering, the *CRI issuer* may issue additional *CRIs* to the *CRI* holders, in which case the additional *CRIs* issued for this purpose shall be deemed to have already been approved by the SEC Office.

Chapter 2

Filing of the Registration Statement and Draft Prospectus

Clause 19 Prior to each offer for sale of *CRI* or each project, the *CRI* offeror shall submit two sets of the *registration statement* together with draft prospectus which has been approved and jointly prepared by a financial advisor whose name is on the approved list of the SEC Office.

The *registration statement* under Paragraph 1 shall contain at least the following particulars:

- (1) information about the *CRI issuer* which shall contain at least the particulars under Section 69 (1) to (10);
- (2) information about the *CRI* to be offered for sale and the *terms and conditions* of the *CRI*, including documents showing the obligations under the *CRI* whereby a person other than the *CRI issuer* or the *listed company* is a counterparty (if any);
- (3) information about the underlying company and the *underlying securities* which shall contain the same information as that to be disclosed in the *registration statement* as specified for the offer for sale of the *underlying securities*;
- (4) certification of accuracy of the information under Part 4 of Form 69-1 annexed to the *Notification of the Capital Market Supervisory Board Re: Filing of the Registration Statement for an Offer for Sale of Securities, mutatis mutandis*.

The certification of accuracy of the information under Paragraph 1 shall comply with the following regulations:

- (a) the **CRI issuer** shall certify the information under Subclauses (1) and (2);
- (b) the **listed company** shall certify the information under Subclauses (2) and (3);
- (c) the **underlying securities'** owner who is a joint supporter in the issuance of the **CRI** (if any) shall certify the information under Subclause (3);
- (d) the financial advisor shall certify the information under Subclauses (1), (2) and (3).

Clause 20 Pursuant to the provisions under Section 68 and Section 75, after the **CRI** offeror has filed the **registration statement** and draft prospectus with the SEC Office and has paid the registration fee in accordance with the rules and procedure specified by the SEC Office, the **registration statement** and draft prospectus shall be effective upon the lapse of fifteen days from the date of receipt of such **registration statement** and draft prospectus by the SEC Office.

Clause 21 Apart from those specified in Clause 19 and Clause 20, the provisions of the *Notification of the Capital Market Supervisory Board Re: Filing of the Registration Statement for an Offer for Sale of Securities* or the *Notification of the Capital Market Supervisory Board Re: Filing of the Registration Statement for an Offer for Sale of Debt Securities* shall be in force *mutatis mutandis*, as the case may be.

Clause 22 The **CRI** offeror shall prepare a report on the redemption of the **CRI** to the SEC Office in accordance with the following rules:

- (1) an offer for sale of **CRI** with limitations shall be reported to the SEC Office within fifteen days from the last day of each redemption with the following details:
 - (a) redemption date of the **CRI**;
 - (b) type, characteristics and specific name of the **CRI** (if any);
 - (c) total units of the **CRI** offered for sale and the total units of the **CRI** redeemed;
 - (d) price of the **CRI** redeemed. In cases where the **underlying securities** are shares, the market price of such shares, the date of calculation, the source of the market price together with the calculation method of such market price shall be specified;
 - (e) names and addresses of the holders of the **CRI** which have been redeemed;
 - (f) name, mailing address and telephone number of the reporter of the redemption results.
- (2) any case other than that under Subclause (1) shall be reported to the SEC Office under the rules for the report of sale of the **underlying securities** specified in the *Notification of the Office of Securities and Exchange Commission Re: Reporting of the Results of a Securities Offering for Sale to the Public, mutatis mutandis*, along with additional details of the **CRI**.

Clause 23 The **CRI** issuer shall report the financial and non-financial information of the issuer under Section 56 within the period specified by the SEC Office or

when the SEC Office orders; in this regard, such report shall be in accordance with the regulations as specified under the *Notification of the Capital Market Supervisory Board Re: Rules, Conditions and Procedures for Disclosure of Information on Financial Position and Operating Results of Securities Issuers, mutatis mutandis.*

Division 3 Transitional Provisions

Clause 24 All notifications of the Office of the Securities and Exchange Commission, orders and circulars issued under or providing guidelines for compliance with the *Notification of the Securities and Exchange Commission No. Kor Jor. 30/2546 Re: Offering for Sale of Certificates Representing Interest from Underlying Securities dated 27 October 2003* which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with nor contrary to the provisions under this Notification, until any new notifications, orders and circulars issued under or providing guidelines for compliance with this Notification come into effect.

Clause 25 Any reference made under any other notifications to the *Notification of the Securities and Exchange Commission No. Kor Jor.30/2546 Re: Offering for Sale of Certificates Representing Interest from Underlying Securities* dated 27 October 2003 shall mean a reference to this Notification.

Notified this 3rd day of August 2009.

(Mr. Vijit Supinit)
Chairman
Securities and Exchange Commission

Remark: The reason for the promulgation of this Notification is that the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* stipulates that the issuance of regulations on the offering for sale of Certificates Representing Interest from Underlying Securities shall be the power of the Capital Market Supervisory Board; therefore, it is deemed expedient to issue this Notification to replace the *Notification of the Securities and Exchange Commission No. Kor Jor. 30/2546 Re: Offering for Sale of Certificates Representing Interest from Underlying Securities* dated 27 October 2003.