

(UNOFFICIAL TRANSLATION)

Codified up to No. 4

As of 28 March 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
Tor Jor. 12/2559
Re: Application and Approval for Offer for Sale of Structured Notes**

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 40(11), Section 41(3) and (4), Section 42(10) and Section 43(3) 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 1 June 2016.

Clause 2 The following notifications shall be repealed:

(1) *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application and Approval for Offer for Sale of Newly Issued Structured Notes* dated 13 March 2009;

(2) *Notification of the Capital Market Supervisory Board No. Tor Jor. 17/2555 Re: Application and Approval for Offer for Sale of Newly Issued Structured Notes (No.2)* dated 28 March 2012;

(3) *Notification of the Capital Market Supervisory Board No. Tor Jor. 37/2555 Re: Application and Approval for Offer for Sale of Newly Issued Structured Notes (No. 3)* dated 9 August 2012;

(4) *Notification of the Capital Market Supervisory Board No. Tor Jor. 15/2556 Re: Application and Approval for Offer for Sale of Newly Issued Structured Notes (No. 4)* dated 11 March 2013;

(5) *Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2557 Re: Application and Approval for Offer for Sale of Newly Issued Structured Notes (No. 5)* dated 29 September 2014;

(6) *Notification of the Capital Market Supervisory Board No. Tor Jor. 45/2557 Re: Application and Approval for Offer for Sale of Newly Issued Structured Notes (No. 6)* dated 7 November 2014;

(7) *Notification of the Capital Market Supervisory Board No. Tor Jor. 28/2558 Re: Application and Approval for Offer for Sale of Newly Issued Structured*

Notes (No. 7) dated 10 July 2015;

(8) *Notification of the Capital Market Supervisory Board No. Tor Jor. 26/2555 Re: Offering for Sale of Newly Issued Structured Notes or Bonds Imposing Obligations on Bondholders Issued by Financial Institutions* dated 16 May 2012;

(9) *Notification of the Capital Market Supervisory Board No. Tor Jor. 20/2557 Re: Offering for Sale of Newly Issued Structured Notes or Bonds Imposing Obligations on Bondholders Issued by Financial Institutions (No. 2)* dated 16 June 2014;

(10) *Notification of the Capital Market Supervisory Board No. Tor Jor. 36/2557 Re: Offering for Sale of Newly Issued Structured Notes or Bonds Imposing Obligations on Bondholders Issued by Financial Institutions (No. 3)* dated 29 September 2014; and

(11) *Notification of the Capital Market Supervisory Board No. Tor Jor. 46/2557 Re: Offering for Sale of Newly Issued Structured Notes or Bonds Imposing Obligations on Bondholders Issued by Financial Institutions (No. 4)* dated 7 November 2014.

Clause 3 In this Notification:

The terms "*executive*", "*high net worth investor*", and "*structured note*" shall have the same definitions with those given under the *Notification of the Securities and Exchange Commission Re: Determination of Definitions in Notifications relating to Issuance and Offer for Sale of Debt Securities*.

"*short-term structured notes*" means structured notes with a maturity date of not exceeding 270 days from the issuance date of such structured notes.

"*company*" means:

- (1) a private limited company or public limited company;
- (2) a financial institution;

"*financial institution*" means:

- (1) a commercial bank, finance company or credit foncier company established under the law on financial institution business;
- (2) a securities company licensed to operate the securities business of securities brokerage, securities dealing or underwriting which is not limited to certain types of securities;
- (3) a financial institution established under a specific law as a financial institution under the law on interest on loan of the financial institutions.

"*Exchange*" means the Stock Exchange of Thailand.

"terms and conditions" means provisions governing the rights and obligations of the issuer and holder of structured notes.

"bondholders' representative" means a bond holder's representative whose name appears on the list of the persons who are qualified as bond holders' representative under the *Notification of the Capital Market Supervisory Board Re: Qualifications of Bondholders' Representatives and Authorized Actions of Bondholders' Representatives*.

"insiders of issuer who issues underlying shares" means persons who are in the position with possible access to inside information of the issuer who issues underlying shares due to the structure of their shareholding or common management with the issuer who issues underlying shares, particularly the persons with any of the following characteristics:

(1) holding, directly or indirectly, more than 25 percent of total number of shares with the voting right of the issuer who issues underlying shares;

(2) having more than 25 percent of their total number of shares with voting right held, directly or indirectly, by the issuer who issues underlying shares;

(3) having more than 25 percent of their total number of shares with voting right held, directly or indirectly, by the same group of persons with those holding, directly or indirectly, more than 25 percent of total number of shares with voting right in the issuer who issues underlying shares;

(4) having the same group of Directors or Executives with the authorised Directors or Executives of the issuer who issues underlying shares;

(5) having such other shareholding or management structure which demonstrates that the applicant has the power to control the issuer who issues underlying shares, or is controlled by the issuer who issues underlying shares, or having the same controlling persons with that of the issuer who issues underlying shares.

For the purpose of determining the aggregate number of shares pursuant to Paragraph (1) or (2) or (3), the shareholding of related persons of such person shall be also taken into account. If the person is a juristic entity, the shareholding of Directors and Executives in the work division involved in the offer for sale of structured notes of such juristic entity shall also be considered.

Part 1
General Provision

Chapter 1
Scope of Applicability

Clause 4 The regulations on structured notes is under two separate parts due to the combined characteristics of the bonds and derivatives. The first part is under the Notification issued by the Capital Market Supervisory Board concerning the application and approval that have a characteristic of the bonds. These Notifications are, for example, the Notification of the Capital Market Supervisory Board concerning the Application and the Approval for the Offering of Newly Issued Debt Securities, the Notification of the Capital Market Supervisory Board concerning Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand and Notification of the Capital Market Supervisory Board concerning Offer for Sale of Debt Securities of Thai Governmental Agencies. The second part is this Notification which provided additional criteria to those under the first part. This part focuses on the regulations on persons who could be possibly qualified as being the issuer of structured notes, features of structured notes and the offering of such securities to each type of investors. Therefore, the application and the approval for the offering of structured notes shall be subject to the requirements under these two parts except for the structured notes under Clause 5 and in the case there are any conflicts or contradiction between the requirements under the two parts, the provisions under this Notification shall be applied.

Clause 5 Structured notes with any of the following features shall be exempted from this Notification:

(1) the callable option, or puttable option, whether the return is a fixed or variable rates according to the interest rates of a *financial institution* or any other interest rates and the return shall not be relied on any other underlying;

(2) the *rights of structured notes* are considered as *convertible bonds* which have the following characteristic:

1. to specific the return, prior to *exercising of conversion right*, at a fixed or floating rates according to the interest rates of a *financial institution*, or any other interest rates and the return shall not be relied on any other underlying;

2. to specific that the conversion right shall be applied only to the shares of the issuer;

3. to specific that the conversion price is not relied on any other underlying.

Clause 6 The provisions under this Notification shall apply only to the offer for sale of structured notes in Thailand.

Clause 6/1² Companies that have any of the following characteristics may not apply for the offer for sale of structured notes:

(1) companies whose shares are held as the core investment by trusts in the minimum ratio in accordance with the requirements of the Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust , or the Notification of the Capital Market Supervisory Board concerning the Issuance and Offering for Sale of regarding Units of Infrastructure Trusts, as the case may be;

(2) companies whose shares are held as the core investment by infrastructure funds in the minimum ratio in accordance with the requirements of the Notification of the Capital Market Supervisory Board concerning the Rules, Conditions and Procedure for Borrowing Money and Encumbering the Asset of Infrastructure Mutual Fund or the Notification of the Capital Market Supervisory Board concerning the Rules, Conditions and Procedure for Asset Management of Thailand Future Fund, as the case may be;

(3) companies that are incorporated for the purposes of procuring and providing financial support to Thailand Future Fund in accordance with the Notification of the Capital Market Supervisory Board concerning the Offer for Sale of Units of Thailand Future Fund and the Asset Management.

Clause 7 The offer for sale of structured notes shall be subject to the following additional requirements:

(1) approval criteria for public offering of structured notes shall be as provided as general criteria in Chapter 3 of this Part and Part 2;

(2) criteria for private placement of structured notes shall be as provided as general criteria in Chapter 3 of this Part and Part 3;

² Added by the *Notification of the Capital Market Supervisory Board Tor Jor. 25/2560*
Re: the Application and Approval on the offer for sale of Structured Notes (No. 3) dated 6 March 2017 (effective on 1 June 2017).

Clause 7/1³ Applicants for the offering of structured notes pursuant to this Notification that is *financial institution* shall be exempted from the requirement to have a *bondholders' representative*.

Clause 7/2³ The *Company* that has obtained the approval in accordance with this Notification shall be exempted from the requirements to submit an application to register debt securities with the Thai Bond Market Association.

Clause 8 In selling structured notes to public in accordance with Part 2, the *Company* that has obtained the approval shall have the duty to also comply with the Notification of the Capital Market Supervisory Board concerning the Selling of Newly Issued Debt Securities and Derivative Warrants of Securities Issuer.

Chapter 2 Power of the SEC Office

Clause 9 In the cases it appears to the SEC Office a fact causing any of the following suspicious grounds, the SEC Office may not grant an application for an offer for sale of structure notes:

(1) the applicant or the offer for sale of the structure notes has the characteristics or structure in compliance with the rules or conditions for approval under this Notification but certain facts lead to the consideration that the true intention or the substance of the offer for sale of the structure notes constitutes an avoidance of the provisions of the *Securities and Exchange Act* or this Notification;

(2) the offer for sale of the structure notes may contradict a public or governmental policy;

(3) the offer for sale of the structure notes may have a negative impact on credibility of the Thai capital market;

(4) the offer for sale of the structure notes may cause damage or unfairness to investors in general, or the investors may not have received correct or sufficient information to support their investment decision making

Clause 10 In cases where additional facts appear to the SEC Office after the

³ Added by the *Notification of the Capital Market Supervisory Board Tor Jor. 33/2561*
Re: the Application and Approval on Offer for Sale of Structured Notes (No. 4) dated 28 March 2018
(effective on 1 April 2018).

approval for an offer for sale of structured notes, indicating that the facts and circumstances that the SEC Office used in its consideration of the approval of the offer for sale of the structured notes have changed, and if such facts and circumstances had been known to the SEC Office prior to the approval of the offer for sale, the SEC Office might not have granted an approval for such offer for sale, the SEC Office shall have the authority to:

(1) order the approved entity or its directors or executives to clarify or disclose additional information within a specified period and suspend the approval of the issuance of the structured notes, or suspend the offer for sale of the structured notes until clarification has been given or correction has been made, and if the approved entity or its directors or executives fails to give clarification or make correction within the specified period, the SEC Office may revoke the approval under (2); and

(2) revoke the approval of the offer for sale of the portion of structured notes that has not yet been offered for sale or not yet been subscribed for;

In giving an order under Paragraph 1, the SEC Office shall take the following factors into its consideration:

- (1) the seriousness of the facts or circumstances that have changed; and
- (2) the effect upon the investors who have subscribed for those structured

notes.

Clause 10/1¹ In cases where any of the following grounds for suspicion appears to the SEC Office, the SEC Office shall not approve, suspend or revoke the approval given in accordance with Clause 23 for the offering of structured notes:

(1) the **Company** offering structured notes for sale lacks the qualifications, or its compliance with the conditions after approval is inappropriate, or it will be unable to comply with this Notification;

(2) the offer for sale of the newly issued structured notes may cause damage or unfairness to investors, or the investors may not have received material information to support their investment decision making;

(3) The **Company** that is issuing or offering structured notes is a **financial institution** pursuant to Clause 23(2) with any of the following characteristics:

(a) being subject to restrictions or suspension of business operations ordered by the government or regulatory authority supervising the business operation of such **financial institution**;

(b) being in a precarious financial position or in a financial difficulty as demonstrated by other circumstances.

¹ Added by the *Notification of the Capital Market Supervisory Board Tor Jor. 44/2559*
Re: the Application and Approval on Offer for Sale of Structured Notes (No. 2) dated 12 October 2016 (effective on 16 November 2016).

Clause 11 If any one of the following characteristics exists met, the SEC Office may exempt the regulations under this Notification from the consideration of application, or may not enforce the conditions under this Notification to an offer for sale of structured notes that has already been approved:

(1) there is a clear fact leading to the consideration that the rules or conditions to be exempted are insignificant to the case and the costs outweigh the benefits derived from compliance with such rules or conditions;

(2) the applicant is subject to restrictions under other laws resulting in its inability to comply with the rules or conditions to be exempted;

(3) the applicant adopts other measures that are sufficient and a substitute for its non-compliance with the rules or conditions to be exempted.

In granting an exemption under Paragraph 1, consideration shall be given to the appropriateness and adequacy of the information to support investment decision making and the measures for investor protection. In this regard, the SEC Office may prescribe conditions with which the applicant shall comply.

Chapter 3 General Criteria

Clause 12 The applicant for an offer for sale of the structured notes shall have any of the following statuses:

(1) a limited company or a public limited company incorporated under Thai law;

(2) a *financial institution*. In the case of a foreign commercial bank whose branch office is approved to operate commercial bank business in Thailand under the *Financial Institutions Businesses Act*, B.E. 2551., such foreign commercial bank shall be liable to the creditors for debt repayment in full.

Clause 13 The arrangement of payment of the structured notes or debt repayment in respect of the structured notes in either Thai or foreign currency.

Clause 14 Documents or evidence filed with the SEC Office as specified under this Notification, whether before or after approval, shall comply with the rules, conditions and procedures prescribed and notified by the SEC Office.

Clause 15 The underlying of the structured notes shall be any or the combination of the following variable, commodity or index:

- (1) Thai securities;
- (2) Foreign securities;
- (3) Interest rates;
- (4) Foreign exchange rates;
- (5) Inflation rates;
- (6) Other credits linked such as credit ratings or credit event related to ability to repay debt obligation;
- (7) Commodity such as agricultural products, gold, crude oil, etc.;
- (8) Other index that fully meets the following qualifications:
 - (a) The components of the index are the underlying that described in (1) – (7);
 - (b) The index calculation methodology is clearly specified with reference to sources of data or factors used in the calculation methodology. The index calculation shall be updated taking into consideration the appropriateness of the index components. The underlying or factors shall move independently in accordance with the market condition;
 - (c) The index shall have been developed by a reliable institution which can act independently from the *Company*. If it appears that such an institution is the associated company of the *Company*, the *Company* shall provide an effective procedure to prevent conflicts of interest;
 - (d) The index shall be constantly published every business day using a media that is capable of providing timely access to information.

Clause 16 In offering structured notes that the repayment is fully or partially made in form of a physical delivery of shares, the underlying shares shall meet the following conditions:

- (1) stocks in the SET 50 of the Exchange;
- (2) stocks in the SET 100 of the Exchange whereby the share ranked from the 51st until the 100th shall have the average quarterly market value of at least THB 10,000 million for the most recent four consecutive quarters. However, such criteria of average market value do not apply to the offer for sale of structured notes in private placement under Clause 21(1), (4) and (5);
- (3) shares issued by foreign companies and listed on the foreign stock exchange having an average quarterly market value of at least THB 10,000 million for the most recent four consecutive quarters, and such foreign stock exchange shall be a member of World Federation of Exchanges (WFE). However, such criteria shall not apply to the offer for

sale of structured notes in private placement under Clause 21(1), (4) and (5);

(4) shares of a private limited company or public limited company incorporated under the law of Thailand, but not listed on the Exchange, such criteria shall apply only in the case of offer for sale of structured notes in private placement under Clause 21 (1), (4) and (5).

Clause 17 In offering structured notes that the repayment is fully or partially made in form of a physical delivery of shares, the *Company* shall submit an application to the SEC Office to file application to verify the quota of underlying shares along with documents and evidence required in the Notification of the SEC Office in accordance with Clause 14. Upon receipt of the application including complete and accurate documents and evidence in accordance with the Licensing Manual for the Public, the *Company* shall make payment of application fees to verify the quota of underlying shares at the rate prescribed in the Notification of the Securities and Exchange Commission concerning the Determination of Fees for Application for Offer for Sale of Newly Issued Securities and Application for Securitization Project.

The SEC Office shall have the power to issue a notification to determine characteristics of underlying shares which are exempted from the requirements to submit an application pursuant to Paragraph 1.

Clause 18 To prevent the issuance of structured notes which may result in unfairness to other investors caused by the issuer's access to the inside information prior to general public, in offering structured notes that the repayment is fully or partially made in form of a physical delivery of shares, the *Company* shall not be the insiders of issuer of underlying shares unless the following conditions are met:

(1) The structured notes are offered in private placement under Clause 21(1), (4) and (5);

(2) The structured notes are offered to other types of investors than (1) and the *Company* has fully complied with the following conditions:

(a) the *Company* can demonstrated that there are sufficient amount of the underlying shares for delivery such obligations of the structured notes, and there is a mechanism to prevent the use of such underlying shares for other purposes;

(b) a clear disclosure stated the *Company* is insider of the issuer of underlying shares.

Part 2

Approval Criteria for the Public Offering of Structured Notes

Clause 19 The *Company* shall be granted an approval for offering for sale of structured notes to the public when it has qualifications in accordance with the following criteria:

(1) The *Company* has any of the following qualifications or characteristics:

(a) being licensed or registered as a derivative dealer under the Derivatives Act, B.E. 2546;

(b) if the *Company* is not qualified under (a), the *Company* shall demonstrate that it has one of the following characteristics:

1. having exposures relating to the underlying such as a core business relates to the commodity or index used as an underlying;

2. will have a derivative position with the person licensed or registered as a derivative dealer under the Derivatives Act, B.E. 2546 to hedge all risks that could possibly occur from the offer for sale of structured notes.

(2) In offering structured notes which the underlying shares are needed to be verified for the quota, the *Company* shall have already been notified of the confirmation that the underlying shares can be used;

(3) There are no requirements that the structured note holders who hold until maturity date shall have at least 80 percent of the principle protection unless an exemption is granted by the SEC office.

Clause 19/1 After the SEC Office receives the application for approval of the offer for sale of the structured notes and a complete set of supporting evidentiary documentation in accordance with the Licensing Manual for the Public, the SEC Office shall conduct due diligence of the facts in accordance with the steps and procedures specified in the Licensing Manual for the Public, and shall inform the applicant of any observation from the due diligence in order for the applicant to clarify such observation within the period specified in the notice of observation within ninety days from the date the SEC Office receives a complete set of documents in accordance with the Licensing Manual for the Public.

The SEC office shall notify the result of its consideration within thirty days from the date the SEC Office received the clarification upon observation from the due diligence from the applicant.

If the applicant intends to apply for a waiver of the rules under this

Notification, the applicant shall apply for a waiver and file any supporting evidentiary documentation with the SEC Office before the SEC Office commences the consideration of the application according to Paragraph 2 and in accordance with the steps and procedures 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.

Clause 19/2 The offer for sale of short-term structured note, the approved company shall offer for sale of short-term structured note in unlimited value and number of offers within 2 years from the day on which the SEC Office has notified its consideration result. The approved company shall report the characteristics of such short-term structured note to the SEC Office in accordance with Clause 14.

If, within the period specified in Paragraph 1, it appears that the approved entity for the offer of short-term structured note is unable to maintain its qualifications in accordance with the Notification issued by the Capital Market Supervisory Board concerning the application and approval that have a characteristic of the bonds, the approved entity may not offer for sale of short-term structured note under Paragraph 1 until it has rectified the qualification prior to the end of the period under Paragraph 1. If the approved entity offers for sale of short-term structured note prior to rectification of its qualifications, the offer for sale is made without approval under this Notification. In this regard, the approved entity shall also have the duty to inform its failure to maintain the qualifications to the SEC Office within seven days from the date on which the approved entity becomes aware or should have been aware of such situation.

Clause 20 The approved *Company* with characteristics under Clause 19 (1) (b) 2. shall have the obligation to submit a copy of the evidence of having derivative position in accordance with Clause 19 (1) (b) 2. to the SEC Office within 15 days from the date of having the derivative position.

Part 3

Offer for Sale of Structured Notes in Private Placement

Chapter 1

Offer for Sale in Private Placement and General Rules

Clause 21 The offer for sale of structured notes in any of the following manners shall be considered an offer for sale of structured notes in private placement:

- (1) an offer for sale to no more than ten specific investors within any four-month period;
- (2) an offer for sale to *institutional investors*;
- (3) an offer for sale to *high net worth investors*,
- (4) an offer for sale to a person being a company's creditor prior to the offer for sale of structured notes for the purpose of debt restructuring;
- (5) an offer for sale to any waiver which is granted by the SEC Office whereby the waiver can prove that such offering:
 - (a) is necessary and reasonable;
 - (b) shall have no broadly impact to the investors;
 - (c) has proper investors protection procedures.

Clause 22 The offer for sale of structured notes in a Private Placement under Clause 21 shall have following characteristic:

- (1) An offer for sale to the investors under Clause 21(1), in cases where the Thailand Securities Depository, custodian, securities broker, securities dealer or any person holds structured notes on behalf of other persons, the number of investors shall be counted based on the actual owners of those structured notes
- (2) An offer for sale to *institutional investors* under Clause 21(2) or *high net worth investors* under Clause 21(3) that has been included an offer for sale of investors registered for a transfer restriction within no more than ten specific investors within any four-month period shall not be considered as an offer for sale under Clause 21(1).
- (3) An offer for sale to *high net worth investors* under Clause 21(3) shall refer to an offer for sale to high net worth investors including the institutional investors.

Chapter 2

Deemed Approval of the Offer for Sale in a Private Placement

Clause 23 The *Company* applying for the approval to offer for sale of structured notes in a private placement shall be deemed approval by the SEC Office if it has the following characteristics and has complied with the conditions under Clause 24:

- (1) The offer for sale is made to Institutional Investors incorporated or

certified under foreign law;

(2) The offer for sale is made to Institutional Investors incorporated under Thai law only in the case where the *Company* is the Financial Institution licensed or registered as a derivative dealer under the Derivatives Act, B.E. 2546;

(3) The offer for sale is made in private placement not exceed than 10 investors under Clause 21(1);

(4) The offer for sale is made to the *Company*'s creditors under Clause 21(4);

(5) Any waiver that is granted by the SEC Office under Clause 21(5).

Clause 24 The *Company* that intends to offer for sale of structured notes to the persons under Clause 23 shall be deemed approval by the SEC Office if the following conditions are met:

(1) the *Company* has registered a transfer registrations for structured notes to be offered for sale with the SEC and has a statement in the certificate that the issuer shall not accept transfer registration of structured notes that is inconsistent with a transfer restriction as indicated under Clause 21 except for a transfer by inheritance. It shall be deemed that the SEC office has registered a transfer restriction on the date such statement is made;

(2) the *Company* has reported the features of the structured notes to be offered for sale to the SEC Office in accordance with the procedure specified in Clause 14;

(3) the *Company* shall obtain a Board of Directors' resolution that clearly approves the issuance of structured notes. If the *Company* is a public limited company, the resolution on the issuance of structured notes shall be in accordance with the law on the public limited company before the structured notes can be offered.

The provisions in Paragraph 1 shall not apply where the *Company* is required to issue structured notes under the business rehabilitation plan under the *Bankruptcy Law* which has been approved by the court.

(4) within the two years prior to the registration of transfer restriction, the *Company* has never breached any provisions of the limited offer for sale of any type of bonds, bills or sukuk to the institutional investor and high net worth investors, unless an exemption is granted by the SEC Office on the ground that the offering is necessary, reasonable and adequate measures for the offering for sale have been adopted;

(5) in case of offering structured notes that have the features of a secured structure notes or where there is an arrangement to have a *bondholders' representative*, the *Company* has submitted draft Terms and Conditions and draft *bondholders' representative* appointment agreement along with the registration of transfer restriction;

(6) in case of an offering of structured notes that requires the quota verification of underlying shares, the *Company* has been notified by the SEC Office of the confirmation of such underlying shares.

Chapter 3
An Approval Process of the Offer for Sale
in Private Placement

Clause 25 A *company* wishing to offer structured notes for sale in private placement according to following manners

(1) the offer for sale is made to *institutional investors* incorporated under Thai law except for an offer for sale under Clause 23(2).

(2) the offer for sale is made to *high net worth* Investors.

Clause 26 The applicant under Clause 25(1) shall be approved for offer for sale of structured notes when complying with Clause 19(1) and (2) and Clause 24 , *mutatis mutandis*.

Clause 27 The applicant under Clause 25(2) shall be approved for offer for sale of structured notes when complying with the follow criteria:

(1) the financial statements and the consolidated financial statements of the applicant for the most recent year and the financial statements for the most recent quarter prior to filing the application shall meet the following criteria:

(a) the financial statements shall be prepared in accordance with the financial reporting standards in compliance with other criteria related to preparing financial statements under the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for Reporting the Disclosure of Financial and Non-financial Information of Securities Issuers*;

(b) the auditor's report shall not express any of the following meanings:

1. a disclaimer of opinion on the applicant's financial statements and the consolidated financial statements or an adverse opinion;

2. a qualified opinion on any material transaction as non-compliance with the financial reporting standard;

3. an expression of opinion that the auditor's scope of audit is limited by any act or omission to act of the applicant, its directors or *executives*;

If the applicant is the Thailand branch of the foreign bank, the financial statements under Paragraph 1(1) shall mean the financial statements of the Thailand branch of such foreign bank.

(2) unless an exemption is granted by the SEC Office:

(a) the applicant has failed to file the financial statements or related reports required under Section 56 or Section 199 in conjunction with Section 56, as the case may be;

(b) the applicant has failed to file the reports required by the SEC Office or the *Stock Exchange* under Section 57 or Section 199 in conjunction with Section 57, as the case may be;

(c) the applicant shall not be in process of rectifying its financial statements or reports required to be prepared under Section 56 or Section 57 or Section 199 in conjunction with Section 56 or Section 57 as ordered by the SEC Office or the *Stock Exchange*, as the case may be;

(d) the applicant shall not have an ongoing obligation to comply with the order of the SEC Office or the *Stock Exchange* under Section 58 or Section 199 in conjunction with Section 58, as the case may be.

(3) the directors and *executives* shall be listed on the database of directors and *executives* of the securities issuing companies under the *Notification of the Capital Market Supervisory Board concerning Rules for Listing Names of Persons on the Database of Directors and Executives of Securities Issuing Companies*;

In cases where the applicant is a foreign bank under Clause 6(2), only the qualifications of the directors or *executives* of its Thailand branch shall be taken into consideration under Paragraph 1.

(4) the *controlling persons* of the applicant shall not have any of the untrustworthy characteristics under the *Notification of the Securities and Exchange Commission concerning the Determination of Untrustworthy Characteristics of Directors and Executives of Companies, mutatis mutandis*;

(5) information is fully disclosed in the *registration statement*.

(6) meets the criteria in Clause 19(1) and (2) and Clause 24, *mutatis mutandis*.

(7) not having characteristics as specified under Clause 28 except where an approved company is a listed company such company shall not have characteristic as specified in Clause 28(1) (a).

Clause 28 The *Company* that intends to offer for sale of structured notes in private placement under Clause 25(2) shall possess none of the following characteristics, except for the circumstance under Clause 29:

(1) within a period of five years prior to the filing date of the application for an

offer for sale of structured notes, the applicant shall not have any of the following characteristics:

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

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

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

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

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

(d) having withdrawn an application for an offer for sale of newly issued shares without a clarification of the suspicious grounds under (b) or (c) to the SEC Office or with a clarification that does not contain facts or reasonable ground for refuting the suspicious grounds under (b) or (c).

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

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

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

Clause 29 The provisions under Clause 28(1) and (2), as the case may be, shall not apply to the applicant who has rectified the cause, work system, management structure and operating control, which has caused the applicant to have the characteristics under Clause 28(1) or (2).

Clause 29/1 The *Company* that intends to offer for sale of structured notes in private placement under Clause 25 shall submit an application together with the **registration statement** to the SEC Office. After the SEC Office has received the application including complete and accurate documents and evidence in accordance with the Licensing Manual for the Public, the *Company* shall pay application fees to the SEC Office at the rate prescribed under the *Notification of the Securities and Exchange Commission concerning Determination of Fees for the Application for Offer for Sale of Newly Issued Securities and the Application for Approval of Securitization Projects*.

After the SEC Office has received the application including complete and accurate documents and evidence in accordance with the Licensing Manual for the Public, the SEC Office shall conduct due diligence of the facts in accordance with the steps and procedures specified in the Licensing Manual for the Public and shall inform the *Company* of any observation from the due diligence in order for the *Company* to clarify such observation within the period specified in the notice of observation. The clarification process shall be completed within 45 days from the date on which the SEC Office has received complete and accurate documents and evidence in accordance with the Licensing Manual for the Public.

The SEC Office shall notify the *Company* of the application results within 30 days from the date on which the SEC Office has received clarifications from the *Company* in response to its observations.

If the *Company* intends to apply for a waiver of the rules under this Notification, the *Company* shall apply for a waiver and file any supporting evidentiary documentation with the SEC Office before the SEC Office commences the consideration of the application in accordance with the steps and procedures 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 under Paragraph 3.

Clause 29/2 The *Company* that has obtained the approval of the SEC Office to offer structured notes in accordance with Clause 29/1 may offer the structured notes in the following manners:

(1) the offer may be made without limitations on amount and issue of the offering within one year from the approval date under these characteristics;

(a) Being offer short term structured notes

(b) Being offer structured notes to high net worth investors by the

Company is the Financial Institution licensed or registered as a derivative dealer under the Derivatives Act, B.E. 2546;

(2) each tranche of the offering of structured notes in other manners than (1) shall be completed within one year from the date on which the *Company* is notified of the approval.

Division 4

Conditions after Approval for Offer for Sale

Clause 30 The *Company* that has obtained the approval in accordance with Clause 29/1 shall comply with the following criteria:

(1) in case where the approved company can demonstrate characteristics pursuant to Clause 19(1)(b) 2. The approved company shall comply with Clause 20, *mutatis mutandis*.

(2) in case an offer for sale of structured notes is made to high net worth investors, the approved company shall comply with the *Notification of the Capital Market Supervisory Board concerning Distribution of Newly Issued Debt Securities and Derivative Warrants of Securities Issuing Companies, mutatis mutandis*.

Notified this 4th day of May 2016

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