

(UNOFFICIAL TRANSLATION)

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. 62/2561
Re: Offer for Sale of Bonds Denominated in Foreign Currency
in the Kingdom of Thailand

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 November 2018.

Clause 2 The following Notifications shall be repealed:

(1) *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010;

(2) *Notification of the Capital Market Supervisory Board No. Tor Dor. 37/2554 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 2)* dated 29 December 2011;

(3) *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2555 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 3)* dated 28 March 2012;

(4) *Notification of the Capital Market Supervisory Board No. Tor Jor. 34/2555 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 4)* dated 9 August 2012;

(5) *Notification of the Capital Market Supervisory Board No. Tor Jor. 11/2556 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 5)* dated 11 March 2013;

(6) *Notification of the Capital Market Supervisory Board No. Tor Jor. 19/2557 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 6)* dated 16 June 2014;

(7) Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2557 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 7) dated 29 September 2014;

(8) Notification of the Capital Market Supervisory Board No. Tor Jor. 48/2557 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No.8) dated 7 November 2014;

(9) Notification of the Capital Market Supervisory Board No. Tor Jor. 50/2557 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 9) dated 24 November 2014;

(10) Notification of the Capital Market Supervisory Board No. Tor Jor. 37/2558 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 10) dated 10 July 2015;

(11) Notification of the Capital Market Supervisory Board No. Tor Jor. 58/2558 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 11) dated 13 July 2015;

(12) Notification of the Capital Market Supervisory Board No. Tor Jor. 67/2558 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 12) dated 27 October 2015;

(13) Notification of the Capital Market Supervisory Board No. Tor Jor. 16/2559 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 13) dated 4 May 2016;

(14) Notification of the Capital Market Supervisory Board No. Tor Jor. 57/2559 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 14) dated 22 December 2016;

(15) Notification of the Capital Market Supervisory Board No. Tor Jor. 24/2560 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (No. 15) dated 6 March 2017.

Clause 3 In this Notification:

"Thai entity" means the following businesses under Thai law:

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

(2) a foreign commercial bank whose branch the SEC Office has approved to operate commercial bank business in Thailand in accordance with the *Financial Institutions Businesses Act B.E. 2551 (2008)*;

"foreign entity" means the following businesses under foreign law:

(1) a foreign government agency or organization;

(2) an international organization;

(3) a juristic person incorporated under foreign law.

"subordinated bonds" means unsecured bonds wherein the rights of the bondholders are prescribed to be subordinate to those of the ordinary creditors;

"terms and conditions" means the provisions governing the rights and obligations of the issuer and holder of bonds;

"financial advisors" means the financial advisors that are on the list approved by the SEC Office;

"financial institutions" means the following financial institutions:

(1) commercial banks, finance companies or credit fonciers in accordance with the *Law on Financial Institution Business*;

(2) financial institutions established under a specific law to be financial institutions in accordance with the *Law on Loan Interest of Financial Institutions*.

"Exchange" means the Stock Exchange of Thailand.

"registered debt securities" means debt securities registered with the Thai Bond Market Association that is licensed and registered with the SEC Office.

"Thai Bond Market Association" means the *Thai Bond Market Association* which has been licensed by and registered with the SEC Office.

The terms **"credit ratings"**, **"registration statement"**, **"listed companies"**, **"high net worth"**, **"institutional investors"**, **"executives"**, **"controlling person"**, **"short-term bonds"** and **"structured notes"** shall have the meaning given to them under the *Notification of the Securities and Exchange Commission on Determination of Definitions in Notifications Relating to Issuance and Offer for Sale of All Types of Debt Securities*.

Part 1

General Provisions

Chapter 1

Scope of the Notification and General Requirements

Clause 4 This Notification provides criteria for the offering of newly issued bonds denominated in foreign currency by the *Thai entity* and *foreign entity* in following cases:

(1) the public offering of newly issued bonds denominated in foreign currency shall be in accordance with the criteria set out under Part 2;

(2) the private placement of newly issued bonds denominated in foreign currency shall be in accordance with the criteria set out under Part 3.

Bonds denominated in foreign currency pursuant to Paragraph 1 shall have an agreement for a bond payment and debt obligations under the bonds in foreign currency.

Clause 5 With respect to the offering of *structured notes*, the following criteria shall be complied with:

(1) for the offering of *structured notes* whereby the issuer has the callable option, or the holder has the puttable option and the return is 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, the applicant shall comply with only this Notification;

(2) the offering of *structured notes* in other manners than (1) can only be done by the applicant that is the *Thai entity*, and such *Thai entity* shall comply with this Notification and the *Notification of the Capital Market Supervisory Board concerning Application and Approval for the Issuance and Offering of Structured Notes*.

Clause 6 The application for an approval of offer for sale of bonds denominated in foreign currency under this Notification shall not have the following characteristics:

(1) securitized bonds;

(2) structured notes having the characteristics of convertible bonds;

(3) subordinated securities as a capital buffer (Tier 2) in accordance with the *Notification of the Capital Market Supervisory Board concerning the Offering of Subordinated Securities as a Capital Buffer (Tier 2) of Commercial Banks*.

Clause 7 A company limited or a public company limited incorporated under Thai law having any of the following characteristics may not submit an application to offer perpetual bond:

(1) a company, the shares of which are held by a trust as an investment in key asset of the trust at the threshold that is not less than the requirement under the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offering of Trust Units of Real Estate Investment Trust*, or the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offering of Trust Units of Infrastructure Trusts*, as the case may be.

(2) a company, the shares of which are held by an infrastructure fund as an investment in key asset of the infrastructure fund at the threshold that is not less than the requirement under the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for Establishment and Management of Infrastructure Fund*, or the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for Establishment and Management of Thailand Future Fund*, as the case may be.

Clause 8 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 9 The applicant may submit information or documents in either Thai or English to the SEC Office to apply for the offering of bonds in any of the following manners:

- (1) the public offering of bonds by the *Thai entity* at the concurrent or proximate period of time in another country;
- (2) the private placement of bonds to institutional investors or high net worth investors;
- (3) the offering of bonds by *foreign entity*.

If information or documents submitted under Paragraph 1 are translated from a foreign language, the applicant shall proceed as follows:

- (1) certify that the substance of the translated information or documents has truly occurred or is in existence, and that there is no concealment of any fact that should be disclosed;
- (2) have the translator certify that the substance of the translated information or documents is accurate and consistent with the substance of the original.

Clause 10 The documents or evidence filed with the SEC Office under this Notification shall always be prepared in the same language for the subsequent filing except where it is necessary and expedient otherwise and a waiver has been granted by the SEC Office.

Clause 11 For public offering of bonds according to Part 2, the approved entity has to comply with the *Notification of the Capital Market Supervisory Board concerning Selling of Newly Issued Debt Securities and Derivatives Warrants of Securities Issuers*.

Chapter 2

Power of the SEC Office

Clause 12 In the case where it appears to the SEC Office a fact causing any of the following suspicious grounds, the SEC Office may not grant an approval to the application for an offer for sale of bonds:

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

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

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

(4) the offer for sale of the bonds 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 13 If any one of the following characteristics is 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 bonds 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.

Clause 14 In cases where additional facts appear to the SEC Office after the approval for an offer for sale of bonds, indicating that the facts and circumstances that the SEC Office used in its consideration of the approval of the offer for sale of the bonds 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 bonds, or suspend the offer for sale of the bonds 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 bonds 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 bonds.

Clause 15 In cases where it appears that the applicant's qualifications do not comply with Clause 21(2), in notifying the result of the application, the SEC Office shall have the authority to the timeframe or conditions for its consideration of subsequent applications by taking into account the significance of the prohibited qualifications, provided that in the case of the timeframe, such period shall be no longer than fifteen years from the date on which the SEC Office notifies the applicant of the result of such consideration.

Upon the expiration of timeframe prescribed by under Paragraph 1 or applicant's compliance with the conditions specified by the SEC Office, the SEC Office shall disregard the underlying fact under Paragraph 1 in support of its consideration of subsequent applications. If the SEC Office considers that the grounds that had caused the applicant's qualifications to be non-compliant with Clause 21(2) are insignificant or a rectification or preventive measures has been adopted, the SEC Office may disregard these facts with respect to such lack of qualifications in support of its consideration.

Clause 16 In cases where any of the following grounds for suspicion appears to the SEC Office, the SEC Office shall not approve, suspend or revoke an offer for sale of a private placement of bonds, as the case may be:

(1) the issuer 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 bonds may constitute an avoidance of the rules issued under the *Law on Securities and Exchange* and the *Law on Trust for Transactions in Capital Market*;

(3) the offer for sale of the newly issued bonds may cause damage or unfairness to investors, or the investors may not have received material information to support their investment decision making.

Clause 17 If, during the term of the program under Clause 30 and Clause 52, a certain fact appears to the SEC Office showing that the approved entity has failed to maintain the qualifications in accordance with the approval rules, or has failed to meet the conditions after approval, or has failed to disclose a complete, correct and sufficient material information for investor decision making, the SEC Office may suspend or revoke the approval for offer for sale of bonds in the program.

Part 2

Public Offering of Newly Issued Bonds Denominated in Foreign Currency

Chapter 1

Approval Criteria

Clause 18 The applicant shall have the following characteristics:

(1) the financial statements and consolidated financial statements for the most recent accounting year and six-month period or the most recent quarterly financial statements prior to filing the application shall have 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 standards;

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*.

In case where an applicant that is a Thailand branch of foreign bank, the financial statements under Paragraph 1(1) shall mean the financial statements of the Thailand branch of such foreign bank applicant.

The provision under Paragraph 1 shall not apply to the offering of bonds in the name of a foreign government.

2. the applicant shall not be in any following processes unless the exemption is granted by the SEC Office:

(a) has failed to file the financial statements or related reports required under Section 56;

(b) has failed to file the reports required by the SEC Office under Section 57 or related reports to the *Exchange*

(c) be in the process of rectifying its financial statements or reports required to be prepared under Section 56 or Section 57 or as ordered by the SEC Office or the *Exchange*;

(d) have an ongoing obligation to comply with the order of the SEC Office or the *Exchange* under Section 58 or Section 199 in conjunction with Section 58, as the case may be.

(3) the applicant shall not have any characteristics described under Clause 19, except the case that applicant is a listed company, it shall not have any characteristics described under Clause 19(1)(a);

(4) the applicant has never offered any type of bonds, bills or Sukuk for sale in violation of the criteria for offer for sale in a private placement to institutional investors or high net worth investors in the two years prior to the filing of the application, 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) there are no grounds to suspect that the material information disclosed to the general public is incomplete or inadequate to support the investment decision making, or misleading;

(6) the applicant does not default on a principal or interest payment of debt securities or default on a loan payment of a commercial bank, finance company, credit foncier company or financial institution established under specific law;

(7) the applicant is not in breach of any condition in complying with the *terms and conditions*;

(8) in cases where the applicant is a *Thai entity*, it shall comply with the additional requirements prescribed under Clause 21. In cases where the applicant is a *foreign entity*, it shall comply with the additional requirements prescribed under Clause 22.

Clause 19 The applicant shall not have the following characteristics unless otherwise in compliant with the requirements under Clause 20:

(1) within five years prior to the filing date of the application for an offer for sale of bonds, the applicant shall not have any of the following characteristics:

(a) having a record of material violation of the rules or conditions related to securities offering;

(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 been rejected the approval for an offer for sale of newly issued securities by the SEC Office on a material ground related to the disclosure of information to the public was incomplete, insufficient for investment decision making or contained misleading information for investors, which constituted the covering-up, concealment or creation of fictitious information that may not have existed in a transaction or material undertaking;

(d) having withdrawn an application for approval of an offer for sale of newly issued securities without giving any clarification to the SEC Office regarding any matter under (b) or (c), or giving clarification without demonstrating reasonable facts or grounds for disproving the suspicions set out in (b) or (c).

(2) within ten years prior to the filing date of the application for approval for offer for sale of the debt securities, the applicant had been subject to a final court judgment on the basis of an offense related to assets particularly due to deceitful, fraudulent or dishonest acts that results in widespread damage, either in accordance with Thai or foreign laws;

(3) being currently subject to a criminal complaint or legal prosecution by a relevant agency in respect of the commission of an offense related to asset particularly due to the performance of work of a deceitful, fraudulent, or dishonest nature that results in widespread damage, either in accordance with Thai or foreign laws;

(4) there is a reasonable ground to believe that the *foreign entity* had taken action so that the persons possessing the prohibited characteristics under (1), (2) or (3) would evade the application of the rules under (1), (2) or (3) by the SEC Office against those persons.

Clause 20 The provisions under Clause 19(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 19(1) or (2).

Clause 21 In addition to the requirements under Clause 18, the applicant that is a *Thai entity* shall comply with the following requirements:

(1) 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 branch of foreign bank, only the qualifications of the directors or *executives* of its Thailand branch shall be taken into consideration under Paragraph 1.

(2) 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*.

(3) there are no grounds to suspect that the directors, *executives*, and major shareholders have the following characteristics:

(a) having other interest which may be in conflict with the best interest of the business, unless the applicant can demonstrate that it has adopted a mechanism which will ensure that the management of the company shall be for the best interest of the business and its shareholders as a whole;

(b) having benefits transferred from the business.

Clause 22 In addition to the requirements under Clause 18, the applicant that is a *Foreign entity* shall comply with the following requirements:

(1) showing that the offer for sale of bonds is legally made under the foreign law that such entity registered and operated;

(2) the applicant shall appoint a contact person in Thailand for the purpose of coordinating and contacting with any person including receiving notice, order, warrant or any document related to the applicant, and can demonstrate that such person will be able to perform the assigned matter until the maturity date;

(3) there is no reasonable ground to suspect that the regulator of the capital market of the country where such entity established is unable to provide an assistance in inspection and providing information relating to any violation of, or non-compliance with, any provision of *Law on Securities and Exchange* or any rules issued by virtue of such law;

(4) in cases where a *foreign entity* is a juristic person incorporated under the foreign law, it shall also be in compliance with the requirements under Clause 21(3).

Clause 23 The applicant shall arrange the bondholders' representative with the following characteristics:

(1) be listed as a qualified person to serve as bondholders' representative in accordance with the *Notification of the Capital Market Supervisory Board concerning Qualifications of Bondholders' Representative and Performance and Fulfillment of Bondholders' Representative's Power and Duty*;

(2) be a person who has been assigned to perform the same duty as bondholders' representative under the law of the country wherein the foreign entity was registered, and such entity shall be registered in the ASEAN member countries whose

capital market regulators have signed the Memorandum of Understanding on Streamlined Review Framework for ASEAN Common Prospectus with the SEC Office.

Chapter 2

Filing and Shelf Submission and Consideration

Clause 24 A applicant applying for an offer for sale of **bonds** shall file the application together with the **registration statement** to the SEC Office under the procedure specified in Clause 8. In this regard, the application shall be filed in any of the following manners:

- (1) application on an issue basis;
- (2) application on a program basis.

In applying for the approval for an offer for sale of **subordinated bonds**, **perpetual bonds**, **convertible bonds**, and **structured notes**, which shall comply with the *Notification of the Capital Market Supervisory Board concerning Application and Approval for Offer for Sale of Structured Notes*, the application shall be filed on an issue basis only.

Clause 25 In filing the application for an offer for sale of bonds under Clause 24, the applicant shall file an application of the person who will act as the **bondholders' representative**, together with the application. In this regard, it shall be deemed approved by the SEC Office on the approval date of the offer for sale of the bonds.

Clause 26 The applicant shall pay the application fee to the SEC Office when the application form and the complete set of supporting evidentiary documentation are accurate and complete in accordance with the *Licensing Manual for the Public* at the rates prescribed in 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 Program*.

Clause 27 A **financial advisor** is required in order to jointly prepare the application, except where the following criteria are fully met:

- (1) the applicant is a listed company without any issue of good corporate governance as specified in Clause 29;
- (2) the **credit rating** has been provided as specified in Clause 40 with investment grade rating.

Clause 28 After the SEC Office receives the application for approval of the offer for sale of bonds and a complete set of supporting evidentiary documentation in accordance with the *Licensing Manual for the Public*, the SEC Office shall consider the application in accordance with the following criteria and period of time:

(1) fast track case, the applicant shall be qualified in accordance with the rules in Clause 27 and the SEC Office shall proceed in accordance with the following steps and periods of time:

(a) conduct due diligence of the facts in accordance with the steps and procedures specified in the *Licensing Manual for the Public*, and shall notify 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. In this regard, the SEC Office shall conduct the due diligence and notify the applicant of any observation within the following periods from the date on which the SEC Office receives the complete set of documents in accordance with the *Licensing Manual for the Public*:

1. within ten days, in the case where the draft *terms and conditions* of the *company* filed together with the application is consistent with an example specified on the website of the SEC Office;

2. within thirty days, in any case that does not fall under 1;

(b) notify the result of its consideration within fourteen days from the date the SEC Office receives the clarification upon observation from the due diligence from the applicant;

(2) in general cases, 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 ninety days from the date the SEC Office receives a complete set of documents in accordance with the *Licensing Manual for the Public*, and the SEC Office shall notify the result of its consideration within thirty days from the date the SEC Office receives 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 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 for approval.

Clause 29 The applicant with issues on good corporate governance shall be in any one of the following cases:

(1) in the process of complying with the order of the SEC Office or the **Exchange** in a matter concerning failure to protect shareholders' rights, unfair treatment toward shareholders or disclosure of information to shareholders and general investors;

(2) having any of the following characteristics within one year prior to the filing date of the application:

(a) having a record of being ordered to rectify financial statements by the SEC Office;

(b) causing the SEC Office or the **Exchange** to issue a warning to the investors or shareholders of such company regarding the consideration of the information to support their decision making or the exercising the voting rights of the shareholders regarding any action of the **company**; or

(c) being ordered by the SEC Office or the **Exchange** or receiving a warning against failure to protect shareholders' right, unfair treatment toward shareholders, or the disclosure of information to the shareholders and general investors.

(3) being subject to the Notice Pending sign (NP) of the **Exchange**, or being temporary banned from trading its listed securities under the Trading Suspension sign (SP);

(4) having the directors, **executives** or **controlling persons** having the following characteristics:

(a) a director or executive is subject to an order or a warning of the SEC Office or the **Exchange** regarding failure to perform duties of directors or **executives** with responsibility, due care and honesty or failure to comply with the law, objectives, the **company's** articles of association, the resolution of the board of directors or the resolution of the shareholders' meeting during a period of one year prior to the filing date of the application;

(b) a director, **executive** or **controlling person** is being ordered by the SEC Office to clarify the suspicious ground that such person may be involved in the commission of an offense, prohibited action or any action causing prohibited characteristics, only in the following cases currently under the consideration of the SEC Office:

1. dishonest act or gross negligence;

2. disclosure or dissemination of information or a false statement that may be misleading or concealment of facts that should have been notified explicitly in material matter that may affect the decision making of the shareholders, investors or connected persons;

3. unfair treatment or exploitation of investors in trading of securities or derivatives or participating or having participated or supported such acts.

(c) a director, **executive** or **controlling person** is currently subject to a criminal complaint by the lead regulator of the **company** or legal prosecution as a result of such complaint for a cause arising from a deceitful, fraudulent or dishonest act concerning property that results in widespread damage, either under Thai or foreign laws.

Clause 30 The approved entity to offer for sale of bonds on a program basis may offer bonds for sale in all manners with unlimited value and number of offers from the date of approval is granted by the SEC Office under Clause 28 until the end of the program, and it shall be deemed approved to offer bonds for sale in a private placement to high net worth investors on a program basis. In this regard, the term for the approval for the offer for sale of bonds on a program basis shall be two years from the date of approval from the SEC Office.

Clause 31 If, within the period specified in Clause 30, it appears that the approved entity for the offer of bonds for sale on a program basis is unable to maintain its qualifications in accordance with Division 1, the approved entity may not offer bonds for sale under Clause 30 until it has rectified the qualifications prior to the end of the period in Clause 30. If the approved entity offers bonds for sale 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 comply with Clause 43.

Chapter 3

Post-Approval Conditions

Clause 32 The approved entity shall arrange that the bonds offered for sale in a public offering to have the following characteristics:

- (1) a specific title shall be assigned to the bonds for the purpose of reference to the bonds offered for sale in each issue. The title of the bonds shall clearly indicate the maturity year and special features of the bonds (if any);
- (2) the interest rate is fixed or floating rates according to the interest rates of the *financial institution* or any other interest rate;
- (3) the total redemption value is equivalent to the par value of the bonds, either with single or multiple redemptions;
- (4) a *bondholders' representative* shall be appointed and the *bondholders' representative* appointment agreement shall comply with the rules in Clause 39.

Clause 33 In the case where the bonds offered for sale are *subordinated bonds*, the claims of the bondholders shall be subordinate to those of general unsecured creditors only in relation to the acceptance of debt repayment under the bonds upon any occurrence of the following events:

- (1) the issuer is subject to the court's receiving order or declared by the court as insolvent entity; or
- (2) the issuer is under a liquidation process for dissolution; or
- (3) any other case approved by the SEC Office.

Clause 34 In the case of perpetual bonds where the maturity date is upon the dissolution of the company, the rights of the bondholders shall be clearly specified in any of the following manners:

(1) the bondholders have no right to redeem such bonds prior to the dissolution of the *company*;

(2) the bondholders have the right to redeem such bonds prior to the dissolution of the company under the specific conditions and period of time.

Clause 35 In the case of secured bonds, whether the collateral of such bonds is provided at the time of making an offer for sale of such bonds or thereafter, the collateral of such bonds shall have the following characteristics:

(1) being assets or pledge taken into legal force and considered the condition of each category of collateral. The collateral shall have an ability to surpass the maturity date and being monitored by the *bondholders' representative*. In case where the collateral is not a financial instrument, such assets shall be located in Thailand and enforceable under relevant Thai law;

(2) in the case where the collateral is immovable property or a long-term lease agreement, a valuation of such collateral by a valuation company listed in the SEC Office's approved list is required. The valuation or calculation of the collateral value shall take into account any rights and liabilities incurred, whether by legal provisions or by agreement over such collateral and shall be made no longer than one year from the issuing date of those bonds. Except where the price or value of the collateral has changed significantly during such period, the issuer shall make a re-valuation of the collateral.

Clause 36 In the case of secured bonds where the collateral is an immoveable property or a movable property in the type required by law to be registered, the approved entity shall assure that the *bondholders' representative* is a legally assignee of the collateral.

Clause 37 The approved entity shall provide that the *terms and conditions* which are clear and free from any provisions unfairly taking advantage of the counterparty and signed by the authorized person of the issuer and affixed with the issuer's seal (if any). In this regard, the *terms and conditions* shall contain at least the particulars and important information as specified under Section 42.

Clause 38 Any amendment to the rights, duties, liabilities, or collateral of the bonds after the issuance shall only be made if such amendment is not inconsistent with nor contrary to the provision of this Notification and such amendment is made rightfully according to the *terms and conditions*. The approved entity shall notify such amendment and

submit a copy of the related documents to the SEC Office and the **Thai Bond Market Association** within fifteen days from the effective date of such amendment

In the case where the amendment under Paragraph 1 is an amendment to the **terms and conditions** that requires a resolution of the bondholder's meeting, the notice calling the bondholder's meeting shall clearly indicate the reason of such amendment and the effect which occurs or may occur to the bondholders for their decision making

Clause 39 The approved entity shall prepare an agreement appointing the **bondholders' representative** in accordance with the terms and conditions containing at least the following particulars and material information:

- (1) names and addresses of the counterparty;
- (2) effective date of the agreement;
- (3) power, duties, and liabilities of the counterparty with a provision indicating that the approved entity and the **bondholders' representative** have fully power, duties, and liabilities as stipulated in the terms and conditions;
- (4) pre-determined rate and method for payment of compensation or remuneration for duty performance of the bondholders' representative, including rate and method for repayment of money paid in advance by the bondholders' representative during the course of its duty;
- (5) termination clause.

Clause 40 The approved entity shall provide for **credit rating** by a **credit rating** agency approved by the SEC Office prior to the offer for sale of the bonds and for continuous **credit rating** throughout the maturity date in accordance with the following criteria:

- (1) for all types of bonds, a provided **credit ratings** shall be as follows, except for (2)
 - (a) **issue rating** for each of the bonds being offered for sale;
 - (b) **guarantor rating** only in the case where the bond is fully guaranteed and the guarantor is obliged to liabilities jointly with the debtor without revocability before the maturity date;
- (2) for **short-term bonds** which are not **subordinated bonds**, a provided **credit rating** shall be as follows:
 - (a) **issue rating** for each of the bonds offered for sale;
 - (b) **guarantor rating** only in the case where the bond is fully guaranteed and the guarantor is obliged to liabilities jointly with the debtor without revocability before the maturity date;

(c) **issuer rating.** If the issuer is a branch a foreign commercial bank in Thailand , the **credit rating** of the foreign commercial bank shall also be provided. Except on the application date, the branch of foreign commercial bank is able to maintain the capital ratio based on the following calculation:

$$\frac{\text{Total capital of the branch of a foreign commercial bank}}{\text{Risky assets} + X} \geq 1.5 \text{ times the capital ratio provided by the Bank of Thailand}$$

(X = Total value of the **debt securities** being offered for sale based on the risk weighted rate at 100%)

The provisions in Paragraph 1 shall not apply to the following cases:

(1) In cases where the **credit rating** agency approved by the SEC Office has notified the SEC Office in writing of its inability to provide credit rating arrangement of those bonds due to reasonable ground which is not caused by the issuer of the bonds, the SEC Office may grant an exemption for such credit rating arrangement to be provided by other credit rating agency prescribed by the SEC Office;

(2) In cases where an exemption has been granted by the SEC Office based on necessary and reasonable ground or in cases where it can be considered that credit rating arrangement is not needed.

Clause 41 In cases where the approved entity is a foreign commercial bank that has been exempted from credit rating arrangement according to (2) (c) of Paragraph 1 of Clause 40, such approved entity shall disclose information on the total capital ratio which its branch in Thailand has maintained on the last business day of a month within the 25th day of the following month on the website of the foreign bank branch throughout the maturity date.

Clause 42 The approved entity shall file an application with the **Thai Bond Market Association** for registration of bonds offered for sale within thirty days after the issuing date except for the **short-term bonds**.

Clause 43 If the approved entity for the offer of bonds for sale on a program basis is unable to maintain its qualifications in accordance with Clause 18(1) or Clause 19(2) and (3), it shall 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 44 The approved entity shall submit the following documents to the SEC Office in accordance with the procedure specified in Clause 8:

- (1) report of replacement of the *bondholders' representative* after the issuance of bonds. When the approved entity has submitted a complete set of documents to the SEC Office, the approved entity shall be deemed granted approval from the SEC Office to replace the *bondholders' representative*;
- (2) report of early redemption of bonds;
- (3) report of the key financial ratios of the approved entity on a yearly basis.

Part 3

Private Placement of Bonds Denominated in Foreign Currency

Clause 45 The approval for the private placement of bonds denominated in foreign currency shall be in accordance with the following requirements:

- (1) the offering of bonds to *high net worth investors* shall be done upon approval from the SEC Office in accordance with the criteria for the approval and submission of application under Part 1 and Part 2 of Chapter 2. The approved entity shall also comply with the conditions prescribed under Division 3 of Chapter 2;
- (2) the offer for sale of bonds to the investors other than *high net worth investors* pursuant to (1) shall be deemed approved when complies with the provisions prescribed under Division 1 of Chapter 3. The approved entity shall also comply with the conditions prescribed under Division 2 of Chapter 3.

Chapter 1

Manners of Private Placement of Bonds Denominated in Foreign Currency

Clause 46 An offer for sale of bonds with any of the following features shall be considered an offer for sale in a private placement:

- (1) an offer for sale to *institutional investors*;
- (2) an offer for sale to *high net worth investors*, regardless if such offer for sale is also made to *institutional investors*;
- (3) 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 not have widespread impact on the investors;

(c) has adopted adequate measures for investor protection.

Chapter 2
Private Placement of Bonds Denominated in
Foreign Currency to High Net Worth Investors

Clause 47 The provisions under this Chapter shall apply to an offer for sale of bonds in a private placement to *high net worth investors* pursuant to Clause 46 (2).

Division 1
Criteria for Approval

Clause 48 The applicant shall be granted approval for sale of bonds in a private placement to *high net worth investors* when the following criteria are met:

(1) the applicant is fully qualified under Clause 18(1)(2)(3) and (4) Clause 19 Clause 20 Clause 21(1) and (2) and Clause 22(1)(2) and (3);

(2) information is fully disclosed in the *registration statement*. In cases where the application for an approval is on a program basis, the *registration statement* shall refer to the *registration statement* which has been filed together with the application for approval only;

(3) obtain an explicit resolution from the company's board of directors approving the issuance of bonds. Except where the applicant is a public limited company, the resolution for the issuance of bonds shall be obtained in compliance with *the Law on Public Limited Company*, as the case may be;

The provisions in Paragraph 1(3) shall not apply where the applicant is required to issue bonds under the business rehabilitation plan under the *Bankruptcy Law* which has been approved by the court.

Clause 49 The approved entity shall appoint a *bondholders' representative* with any of the following characteristics:

- (1) be a *bondholder's representative* under the provisions in Clause 23;
- (2) entitled to serve as a trustee in accordance with foreign law or be a foreign financial institution complying with Clause 22(3);
- (3) be any other person approved by the SEC Office on a case-by-case basis.

Division 2

Submission of Application

Clause 50 A *company* intends to offer bonds for sale in a private placement to *high net worth investors* shall submit an application and register the transfer restrictions (if any) with the SEC Office.

In this regard, the provisions in Clause 24, Clause 25, and Clause 26 shall apply to the submission of application under Paragraph 1, *mutatis mutandis*.

Clause 51 The SEC Office shall notify its consideration result within fifteen days after the date the SEC Office receives the application and a complete set of supporting evidentiary documentation in accordance with *the Licensing Manual for the Public*.

In cases where the applicant intends to apply for an exemption of the rules under this Notification, the applicant shall submit an exemption form and any supporting evidentiary documentation to the SEC Office together with 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 an exemption within the same period as the application for approval under Paragraph 1.

Clause 52 The approved entity to offer for sale of bonds to *high net worth investors* on a program basis shall offer bonds for sale to *high net worth investors* in all manners in unlimited value and number of offers from the date the approval is granted by the SEC Office under Clause 51 until the end of the program. In this regard, the term for the approval for offer for sale of bonds on a program basis shall be two years from the date of approval for the offer for sale of bonds by the SEC Office.

Clause 53 If, within the period specified in Clause 52, it appears that the approved entity for the offer for sale of bonds to *high net worth investors* on a program basis has failed to maintain its qualifications in accordance with Clause 48 (1), the approved entity may not offer bonds for sale under Clause 52 until it has rectified the qualification prior to the end of the period in Clause 52. If the approved entity offers bonds for sale prior to rectification of qualifications, it shall be deemed that the bonds are offered for sale without approval under this Notification. In this regard, the approved entity has the duty to comply with Clause 57(8).

Division 3
Post-Approval Conditions

Clause 54 The approved entity to offer for sale bonds to *high net worth investors* shall comply with the conditions under this Division.

Clause 55 The approved entity shall be assured that the bonds to be offered for sale in a private placement to *high net worth investors* shall have the following characteristics:

- (1) having the characteristics in accordance with Clause 32 (1) (2) and (3)
- (2) being registered bonds and having a statement in the certificate of bonds offered for sale each time that the issuer shall not accept transfer registration of bonds in any level if such transfer is inconsistent with the transfer restriction as indicated and registered with the SEC Office;
- (3) complying with the rules prescribed in Clause 33 and Clause 34 in the case of an offer for sale of subordinated bonds or perpetual bonds, as the case may be;
- (4) offering documents shall contain a statement indicating the transfer restriction and in the case of an offer for sale of *subordinated bonds*, such subordination shall be clearly defined.

Clause 56 If the approved entity intends to provide a *financial advisor* in order to analyze its information and give advice on specific appropriate features, terms, conditions, and tenor of bonds being offered, the approved entity shall delegate the *financial advisor* with the analysis of the following information:

- (1) nature of business operation and future business plan;
- (2) important financial information as specified on the website of the SEC Office or *credit rating* information;
- (3) objective to use the proceeds;
- (4) reserved financial sources for debt repayment;
- (5) assets which may be used as collateral against debt repayment.

The approved entity under Paragraph 1 shall also have the following obligations:

- (1) submitting necessary, accurate and complete information to the *financial advisor* in the interest of information analysis under Paragraph 1;
- (2) providing an agreement that the *financial advisor* shall maintain the documents and evidence prepared under Paragraph 1 for at least three years.

Clause 57 The approved entity for the offer of bonds for sale in a private placement to the *high net worth investors* shall comply with the following criteria:

(1) a solicitation or any giving advice on trading or investment in bonds shall be made through securities companies that are capable of providing such services with respect to bonds. Except where the approved entity is a securities company and is capable of doing so, provided that the approved entity shall comply with the rules specified for providing services or giving advice on trading or investing in bonds;

(2) the approved entity shall arrange for distribution of factsheet to investors prior to the offer for sale;

(3) the approved entity shall undertake any act with respect to the terms and conditions under Clause 37, Clause 38, and Clause 39;

(4) the approved entity shall arrange for **credit rating** under Clause 40(1) in the case of an offer for sale of **subordinated bonds** or bonds with maturity upon the dissolution of the company;

(5) the approved entity shall file an application to the **Thai Bond Market Association** for registration of the issued and offered bonds within thirty days after the issuing date except an offer for sale of **short-term bonds**;

(6) in the case where a person expresses his or her intention to the approved entity to register a transfer of bonds, the approved entity shall verify the proposed transfer of bonds. If the approved entity finds that the proposed transfer is contrary to the transfer restriction registered with the SEC Office, the approved entity shall not register the transfer of the bonds except a transfer by inheritance.

In the case where the approved entity arranges for a registrar, the approved entity shall ensure that the registrar complies with the rules specified in Paragraph 1.

(7) the approved entity shall submit reports to the SEC Office in accordance with the procedures specified in Clause 44, *mutatis mutandis*;

(8) the approved entity for the offer for sale on a program basis who fails to maintain the qualifications under Clause 18(1) and Clause 19(2) and (3) shall inform the SEC Office of its failure to maintain the qualifications within seven days from the date on which the approved entity becomes aware or should have been aware of such situation.

Chapter 3

Offer for Sale of Debt Securities in a Private Placement to Investors Who Are Not High Net Worth Investors

Clause 58 The provisions under this Chapter shall apply to the offer for sale of bonds in private placement pursuant to Clause 46 (1) and (3).

Division 1 Approval

Clause 59 The offer for sale of bonds under this Chapter shall be deemed approved by the SEC Office when the approved entity has the characteristics under Clause 18 (4) and has complied with the general rules in Clause 22(1)(2) and (3) and the following additional rules:

(1) the approved entity shall obtain an explicit resolution in accordance with Clause 48 (3);

(2) the approved entity shall report the features of the bonds to be offered for sale to the SEC Office in accordance with the procedure specified in Clause 8;

(3) the approved entity shall register the transfer restriction for the bonds to be offered for sale with the SEC Office. The transfer restriction shall contain a statement that the issuer of the bonds shall not accept the registration of any transfer of bonds at any level if such transfer of bonds will make such offer for sale of bonds unqualified as private placement under Clause 46 except a transfer by inheritance;

(4) in the case of the offer for sale of secured bonds or bonds where a *bondholders' representative* is appointed, the company has proposed the draft *terms and conditions* and the draft *bondholders' representative* appointment agreement, together with the registration of the transfer restriction under (3);

(5) in the case where a *bondholders' representative* is appointed, the *bondholders' representative* shall have the characteristics in accordance with Clause 49.

Clause 60 The SEC Office shall be deemed accepted the registration of such transfer restriction in accordance with Clause 59(3) on the date which the SEC Office receives the intention of registration of transfer restriction with such statement under Clause 59(3).

Division 2 Post-Approval Conditions

Clause 61 The approved entity who offers for sale of bonds in a private placement in other manners than to *high net worth investors* shall comply with the following criteria, *mutatis mutandis*:

(1) requirements regarding submission of reports pursuant to Clause 44 (1) and (2);

(2) requirements regarding features of the bonds pursuant to Clause 55;

(3) requirements regarding Financial Advisors (if any) pursuant to Clause 56;

(3) requirements regarding transfer registration of bonds pursuant to Clause 57 (6).

Clause 62 An offer for sale of bonds in a private placement to *institutional investors* pursuant to Clause 46 (1) shall comply with the following criteria:

(1) the offer for sale of bonds to *institutional investors* incorporated under Thai law, the followings shall be complied with:

(a) provide the *terms and conditions* which contain at least the particulars and important information as specified in Section 42 and proceed in compliance with Paragraph 1 of Clause 38;

(b) arrange for the distribution of factsheet to investors prior to the offer for sale.

(2) file an application to the *Thai Bond Market Association* for registration of the issued and offered bonds within thirty days after the issuing date, except an offer for sale of *short-term bonds*.

Clause 63 For an offer for sale of bonds in a private placement with a waiver from the SEC Office under Clause 46(3), the approved entity shall not advertise the offer for sale of such bonds. If a distribution of documents is made, the approved entity shall distribute such documents only to the persons who have been granted a waiver.

Chapter 4

Transitional Provisions

Clause 64 An application submitted to, or approved by, the SEC Office pursuant to the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 before the effective date of this Notification shall remain subject to such Notification and related Notifications.

Clause 65 The bonds which have been approved for an offer for sale under the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 prior to the date on which this Notification comes into force shall remain subject to such Notification and related Notifications.

Clause 66 A *registration statement* and draft prospectus filed to the SEC office pursuant to the *Notification of the Capital Market Supervisory Board No. Tor Dor.*

26/2553 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand dated 4 June 2010 before the effective date of this Notification shall remain subject to such Notification.

Clause 67 Any reference in any other notification to the *Notification of the Capital Market Supervisory Board No. Tor Dor. 26/2553 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 shall be deemed reference to this Notification.

Clause 68 All notifications of the SEC Office, orders and circulars issued or prescribing guidelines under the *Notification of the Capital Market Supervisory Board No. Tor Dor. 16/2553 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand* dated 4 June 2010 that 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 or contrary to the provisions of this Notification until new notifications, orders, and circulars which are issued or prescribe guidelines under this Notification come into force.

Notified this 5th day of October 2018.

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