

(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. 63/2561
Re: Approval Rules on Offer for Sale of Newly Issued Bond of
Foreign Entity Denominated in Thai Baht

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Clause 2 The following Notifications shall be repealed: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 Jor. 58/2559 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities in Thai Baht* dated 22 December 2016;

(2) *Notification of the Capital Market Supervisory Board No. Tor Jor. 29/2560 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities in Thai Baht (No. 2)* dated 6 March 2017;

(3) *Notification of the Capital Market Supervisory Board No. Tor Jor. 3/2561 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities in Thai Baht (No. 3)* dated 16 January 2018.

Clause 3 In this Notification:

“**foreign entity**” means any of the following entities established under foreign law:

(1) a foreign government agency or organization;

(2) an international organization;

(3) a foreign juristic person.

“*debt securities*” means newly issued debt securities as follows:

(1) bond;

(2) corporate bond.

“*subordinated bond*” means unsecured bond wherein the rights of the bondholders are prescribed to be subordinate to those of ordinary creditors;

“*terms and conditions*” means the provisions governing the rights and obligations of the issuer and the corporate bondholders, and shall include the provisions governing the rights and obligations of the issuer and the bondholders;

“*financial advisor*” means a financial advisor on the approved list of the SEC Office;

“*financial institution*” means a commercial bank, finance company or credit foncier under the *Law on Financial Institution Business*;

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

“*registered debt securities*” means the debt securities registered with the *Thai Bond Market Association*;

“*Thai Bond Market Association*” means the Thai Bond Market Association licensed by and registered with the SEC Office;

The terms, “*credit rating*”, “*registration statement*”, “*listed company*”, “*parent company*”, “*subsidiary*”, “*associate company*”, “*executive*”, “*institutional investor*”, “*high net worth investor*”, “*short-term bond*”, and “*structured note*” shall have the same definitions as given to such terms in the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in Notifications related to 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 the debt securities denominated in Thai Baht by *foreign entity* in the following cases:

(1) the public offering of the debt securities shall be in accordance with the criteria set out under Part 2;

(2) the private placement of the debt securities shall be in accordance with the criteria set out under Part 3;

The debt securities denominated in Thai Baht under Paragraph 1 shall have an agreement for debt securities payment and debt obligations under the debt securities in Thai Baht.

Clause 5 A *foreign entity* intending to offer for sale of the debt securities may submit information or documents to the SEC Office in either Thai or English.

If the information or documents under Paragraph 1 are translated from a foreign language, the *foreign entity* shall also 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 translation is accurate and consistent with the substance of the original.

Clause 6 The information or documents filed with the SEC Office under this Notification shall always be prepared in the same language for the subsequent filings except where it is necessary and expedient otherwise and a waiver has been granted by the SEC Office.

Clause 7 The documents or evidence filed with the SEC Office as required by the provisions under this Notification, both before and after approval, shall be in accordance with the rules, conditions and procedures prescribed and notified by the SEC Office.

Clause 8 For public offering of debt securities in accordance with Part 2, the approved *foreign entity* also has the duty 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 9 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 offer for sale of the debt securities:

(1) the *foreign entity* who submits the application or the offer for sale of the debt securities 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 debt securities constitutes an avoidance of the provisions of the *Law on Securities and Exchange* or this Notification;

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

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

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

Clause 10 If any of the following characteristics is met, the SEC Office may exempt the rules under this Notification from the consideration of an application, or may not enforce the conditions under this Notification to an offer for sale of the debt securities that has been approved:

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

(2) the *foreign entity* who submits the application is subject to restrictions under other laws resulting in its inability to comply with the rules or conditions to be exempted;

(3) the *foreign entity* who submits the application 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, a 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 *foreign entity* shall comply.

Clause 11 In the case where it appears to the SEC Office after an approval for an offer for sale of the debt securities, indicating that the facts and circumstances that the SEC Office used in its consideration of the approval of the offer for sale of the debt securities 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 *foreign entity*, its directors or *executives* to clarify or disclose additional information within a specified period and suspend the approval of the issuance of the debt securities, or suspend the offer for sale of the debt securities until a clarification has been given or correction has been made, and if the approved *foreign entity*, its directors or *executives* fails to give a clarification or make correction within the specified period, the SEC Office may revoke the approval under (2); and

(2) revoke the approval for the offer for sale of the portion of the debt securities that has not yet been offered or not yet been subscribed for.

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

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

Clause 12 In the case 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 the debt securities, as the case may be:

(1) the *foreign entity* which will offer for sale of debt securities lacks 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 debt securities 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 debt securities may cause damage or unfairness to investors, or investors may not have received material information to support their investment decision making.

Clause 13 If, during the term of the program under Clause 23 and Clause 53, a certain fact appears to the SEC Office showing that the approved *foreign 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, accurate and sufficient material information for investors decision making, the SEC Office may suspend or revoke the approval for offer for sale of the debt securities in the program.

Part 2

Public Offering of the Debt Securities

Chapter 1

Approval Rules

Clause 14 A *foreign entity* who applies for approval of an offer for sale of the debt securities shall have the following characteristics:

(1) the *foreign entity* is able to demonstrate that it has operated under the obligations specified and approved by the Ministry of Finance;

(2) the *foreign entity* is able to demonstrate that the offer for sale of the debt securities is legally made under the foreign laws and regulations that such entity registered;

(3) the financial statements of the *foreign entity* and its consolidated financial statements for the most recent accounting year and the financial statements for

the six-month period of the most recent accounting year or the most recent quarterly financial statements prior to filing the application shall comply with the following rules:

(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*, only in the part related to the requirements for preparation for financial statements of foreign companies.

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

1. a disclaimer of opinion on the *foreign entity*'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 *foreign entity* or its directors or *executives*.

The provisions under Paragraph 1 shall not apply to the offer for sale of the debt securities in the name of a foreign government.

(4) the *foreign entity* shall not be in any following processes unless the exemption is granted by the SEC Office:

- (a) has failed to file its financial statements or related reports required under Section 56;
- (b) has failed to file any 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.

(5) the *foreign entity* shall not have any characteristics described under Clause 15 unless it is a *listed company*, in which case the *foreign entity* shall not have any characteristics described under Clause 15(1) (a).

(6) the *foreign entity* has never offered any type of the debt securities, 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;

(7) 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;

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

(9) the *foreign entity* is not in breach of any condition in complying with the *terms and conditions*;

(10) the *foreign entity* shall appoint a contact person in Thailand for the purpose of coordinating and contacting with any person including receiving documents, orders, warrants, or any documents related to the *foreign entity*, and can demonstrate that such person will be able to perform the assigned matter until the maturity date

(11) there is no reasonable ground to suspect that the regulator of the capital market of the country wherein the *foreign entity* is established is unable to provide an assistance to the SEC Office for inspection or provide information related to any violation of, or non-compliance with, the provisions of the *Law on Securities and Exchange* or any rules issued by virtue of law;

(12) in the case where the *foreign entity* is a *foreign juristic person*, there shall be no reasonable ground 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 *foreign entity* can demonstrate that it has adopted a mechanism which will ensure that the management of the business shall be for the best interest of the business and its shareholders as a whole;

(b) having benefits transferred from the business.

Clause 15 A *foreign entity* who submits an application for approval shall not have any of the following characteristics unless otherwise in compliant with the requirements under Clause 16:

(1) within five years prior to the filing date of the application for approval of an offer for sale of the debt securities, the *foreign entity* 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 *foreign entity* 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 16 The provisions under Clause 15(1) and (2), as the case may be, shall not apply to the *foreign entity* applying for approval who has rectified the cause, work system, management structure and operating control, which has caused the *foreign entity* to have the characteristics under Clause 15(1) and (2).

Clause 17 A *foreign entity* who submits an application for approval shall arrange a bondholders' representative with the following characteristics:

(1) be listed as a qualified person to serve as a 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 Duties*;

(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* is 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 Procedures and Consideration of Application on an Issue Basis and Program Basis

Clause 18 A *foreign entity* applying for an offer for sale of the debt securities shall file an application together with the *registration statement* with the SEC Office according to the procedures specified under Clause 7. In this regard, the application shall be

filed in any of the following manners:

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

An application for approval for an offer for sale of *subordinated bonds* and perpetual bonds shall be filed on an issue basis only.

Clause 19 In filing an application for approval for an offer for sale of bonds under Clause 18, the *foreign entity* shall file an application for approval 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 20 A *foreign entity* who submits an application for approval 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 21 A *foreign entity* who submits an application for approval shall have a *financial advisor* jointly prepare the application.

Clause 22 After the SEC Office receives the application for approval of an offer for sale of the debt securities and a complete set of the 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 notify the *foreign entity* of any observation from the due diligence in order for the *foreign entity* 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 *foreign entity* of any observation within ninety days from the date on which the SEC Office receives the 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 receives the clarification upon observation from the due diligence from the *foreign entity*.

In the case where a *foreign entity* intends to apply for a waiver of the rules under this Notification, the *foreign entity* 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 for approval 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 23 An approved *foreign entity* to offer for sale of the debt securities on a program basis may offer debt securities 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 22 until the end of the program, and it shall be deemed approved to offer debt securities for sale in a private placement to *high net worth investors* on a program basis. In this regard, the term of the approval for the offer for sale of the debt securities on a program basis shall be two years from the date of approval from the SEC Office.

Clause 24 If, within the period specified in Clause 23, it appears that the approved *foreign entity* for an offer for sale of the debt securities on a program basis is unable to maintain its qualifications in accordance with Chapter 1, the approved *foreign entity* may not offer debt securities for sale under Clause 23 until it has rectified the qualifications prior to the end of the period in Clause 23. If the *foreign entity* offers debt securities for sale prior to rectification of its qualifications, the offer for sale is made without approval under this Notification. In this regard, the approved *foreign entity* shall also have the duty to comply with Clause 29 or Clause 42, as the case may be.

Chapter 3

Post-approval Conditions

Clause 25 An approved *foreign entity* for public offering of the debt securities denominated in Thai Baht under Chapter 2 shall comply with the following conditions:

- (1) in case of bond offering, the conditions specified in Division 1 shall apply;

(2) in case of corporate bond offering, the conditions specified in Division 2 shall apply;

Division 1
Offering for Sale of Bonds

Clause 26 A *foreign entity* granted an approval for public offering of bonds shall arrange for the bonds to have the following characteristics:

- (1) a specific title with clearly specified maturity year;
- (2) the interest rate is fixed or floating rates according to the interest rates of *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) there is no agreement which makes such bonds to have similar characteristics to *structured note*, with the exception of the bonds 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 rate of a *financial institution* or at a particular interest rate and without any condition for returns that relies on other underlying.

Clause 27 An approved *foreign 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) issue rating for each of the bonds being offered for sale;
- (2) 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.

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

- (1) 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 a reasonable ground which is not caused by the *foreign entity*, 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 28 The approved *foreign entity* shall submit an application with the *Thai Bond Market Association* for registration of bonds offered for sale within thirty days after the issuing date.

Clause 29 If an approved *foreign entity* for offer for sale of bonds on a program basis is unable to maintain its qualifications in accordance with Clause 14(3) or Clause 15(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 *foreign entity* becomes aware or should have been aware of such situation.

Clause 30 An approved *foreign entity* for offer for sale of bonds shall submit the following reports to the SEC Office in accordance with the procedures specified in Clause 7:

- (1) report of early redemption of bonds;
- (2) report of the key financial ratios of the approved *foreign entity* on a yearly basis.

Clause 31 The rules on the particulars and substances of the *terms and conditions* for corporate bonds under Clause 37 and the rules related to amendment to the *terms and conditions* of corporate bonds under Clause 38 shall apply to an offer for sale of bonds, *mutatis mutandis*.

Division 2

Offering for Sale of Corporate Bonds

Clause 32 An *foreign entity* granted an approval for public offering of bonds shall arrange for the corporate bonds to have the following characteristics:

- (1) a specific title shall be assigned to the corporate bonds for the purpose of reference to the corporate bonds offered for sale in each issue. Such title shall clearly indicate the maturity year and the special features of the corporate bonds (if any);

(2) the interest rate shall be fixed or floating rates according to the interest rates of a *financial institution* or at any other interest rate;

(3) the total redemption value is equivalent to the par value of the corporate bonds, either with single or multiple redemptions;

(4) there shall not be the following characteristics:

(a) being securitized bonds;

(b) being *structured notes*, with the exception of the bonds whereby the issuer is entitled to early redemption of the bonds (callable), or the holder is entitled to early redemption from the issuer of the bonds (puttable) where the rate of return is fixed or floating rates according to the interest rates of a *financial institution* or any other interest rate and without any condition for returns that depends on other underlying.

(5) the appointment agreement of the bondholders' representative shall be in accordance with the rules in Clause 39.

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

(1) the *foreign entity* is subject to the court's receiving order or declared by the court as insolvent entity; or

(2) the *foreign entity* 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 *foreign entity*, the rights of 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 *foreign entity*;

(2) the bondholders have right to redeem such *bonds* prior to the dissolution of the *foreign entity* 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 case of secured bonds where the collateral is an immovable property or a movable property in the type required by law to be registered, the approved *foreign entity* shall assure that the bondholders' representative is a legally assignee of the collateral.

Clause 37 The approved *foreign 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 *foreign entity* and affixed with the entity's seal (if any). In this regard, the *terms and conditions* for the bonds shall contain at least the particulars and substances as specified under Section 42.

Clause 38 Any amendment to the rights, duties, liabilities, or collateral of the corporate 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 *foreign entity* shall notify the SEC Office and the *Thai Bond Market Association* of 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 An approved *foreign 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 *foreign 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 An approved *foreign entity* shall provide for *credit rating* by a credit rating agency approved by the SEC Office prior to the offer for sale of the corporate bonds and for continuous *credit rating* throughout the maturity date of the corporate bonds. Such *credit rating* shall be in accordance with any of the following criteria:

- (1) issue rating for each of the corporate bonds being offered for sale;
- (2) guarantor rating only in the case where the corporate bond is fully guaranteed and the guarantor is obliged to liabilities jointly with the debtor without revocability before the maturity date;

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 corporate bonds due to a reasonable ground which is not caused by the issuer of the corporate 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 a necessary and reasonable ground or in the cases where it can be considered that *credit rating* arrangement is not needed.

Clause 41 An approved *foreign entity* shall file an application with the *Thai Bond Market Association* for registration of corporate bonds offered for sale within thirty days after the issuing date of the corporate bonds.

Clause 42 If an approved *foreign entity* for an offer for sale of corporate bonds on a program basis is unable to maintain its qualifications in accordance with Clause 14(3) or Clause 15(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 *foreign entity* becomes aware or should have been aware of such situation.

Clause 43 An approved *foreign entity* shall submit the following documents to the SEC Office in accordance with the procedures specified in Clause 7:

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

Part 3

Offer for Sale of the Debt Securities in a Private Placement

Clause 44 The rules under this Part shall apply to an offer for sale of the debt securities denominated in Thai Baht by a *foreign entity* in a private placement in accordance with the rules under Chapter 1.

Clause 45 An approval for a private placement of the debt securities denominated in Thai Baht by a *foreign entity* shall be in accordance with the following rules:

- (1) an offer for sale of the debt securities to *high net worth investors* shall be done upon approval from the SEC Office in accordance with the rules on approval and submission of application under Division 1 and Division 2 of Chapter 2.

The approved *foreign entity* shall also comply with the conditions prescribed under Division 3 of Chapter 2;

(2) an offer for sale of the debt securities to investors other than *high net worth investors* pursuant to (1) shall be deemed approved upon compliance with the provisions prescribed under Division 1 of Chapter 3. The approved *foreign entity* shall also comply with the conditions prescribed under Division 2 of Chapter 3.

Chapter 1

Manners of Private Placement of the Debt Securities

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

(1) an offer for sale to no more than ten specific investors in 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 any waiver which is granted by the SEC Office whereby the approved *foreign entity* can prove that such offering:

(a) is necessary and reasonable;

(b) shall have no broadly impact to the investors;

(c) has adopted adequate measures for investor protection.

Clause 47 The consideration of the characteristics of an offer for sale of the debt securities in a private placement under Clause 46 shall be in accordance with the following rules:

(1) for a private placement under Clause 46(1), in cases where the Thailand Securities Depository, custodian, securities broker, securities dealer or any person holds the debt securities on behalf of other persons, the number of investors shall be counted based on the actual owners of those debt securities;

(2) an offer for sale to *institutional investors* under Clause 46(2) or an offer for sale to *high net worth investors* under Clause 46(3), excluding an offer for sale to such investors with registration of transfer restrictions for no more than ten investors

in any four-month period, shall be deemed an offer for sale in a private placement under Clause 46(1);

(3) an offer for sale to *high net worth investors* under Clause 46(3) shall include an offer for sale to *high net worth investors* including *institutional investors*.

Chapter 2

Offer for Sale of the Debt Securities to High Net Worth Investors in a Private Placement

Clause 48 The provisions under this Chapter shall apply to an offer for sale of the debt securities in a private placement to *high net worth investors* under Clause 46(3).

Division 1

Approval Rules

Clause 49 A *foreign entity* shall be granted an approval for an offer for sale of the debt securities in a private placement to *high net worth investors* when the following criteria are met:

(1) the *foreign entity* is fully qualified under Clause 14(1)(2)(3)(4)(5)(6)(10) and (11) and shall also comply with the rules under Clause 15 and Clause 16;

(2) information is fully disclosed in the *registration statement*. In cases where the application for 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.

Clause 50 A *foreign entity* who submits an application for approval shall appoint a *bondholders' representative* with any of the following characteristics:

(1) be a *bondholders' representative* under the provisions in Clause 17;

(2) entitled to serve as a trustee in accordance with foreign law or be a foreign *financial institution* complying with Clause 14(11);

(3) be any other person approved by the SEC Office on a case-by-case basis.

Division 2
Submission of Application

Clause 51 A *foreign entity* intending to offer the debt securities for sale in a private placement to *high net worth investors* shall submit an application and register the transfer restrictions with the SEC Office.

The provisions in Clause 18, Clause 19 and Clause 20 shall apply to the submission of application under Paragraph 1, *mutatis mutandis*.

Clause 52 The SEC Office shall notify its consideration result within fifteen days after the date the SEC Office receives the application and complete set of supporting evidentiary documentation in accordance with the *Licensing Manual for the Public*.

In cases where a *foreign entity* intends to apply for an exemption of the rules under this Notification, the *foreign entity* 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 53 An approved *foreign entity* for an offer for sale of the debt securities to *high net worth investors* on a program basis may offer the debt securities for sale in all manners in unlimited value and number of offers from the date the approval is granted by the SEC Office under Clause 52 until the end of the program. In this regard, the term for the approval for offer for sale of the debt securities on a program basis shall be two years from the date of approval for the offer for sale of debt securities by the SEC Office .

Clause 54 If, within the period specified in Clause 53, it appears that the approved *foreign entity* for the offer for sale of the debt securities to *high net worth investors* on a program basis has failed to maintain its qualifications in accordance with Clause 49(1), the approved *foreign entity* may not offer the debt securities for sale under

Clause 53 until it has rectified the qualification prior to the end of the period in Clause 53. If the approved *foreign entity* offers the debt securities for sale prior to rectification of qualifications, it shall be deemed that such debt securities are offered for sale without approval under this Notification. In this regard, the approved *foreign entity* also has the duty to comply with Clause 58(8).

Division 3

Post-approval Conditions

Clause 55 An approved *foreign entity* for an offer for sale of the debt securities to *high net worth investors* in a private placement shall comply with the conditions under this Division.

Clause 56 An approved *foreign entity* shall be assured that the debt securities 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 26 in case of bonds, and having the characteristics in accordance with Clause 32(1) (2) (3) and (4) in case of corporate bonds;

(2) being registered debt securities and having a statement in the certificate of debt securities offered for sale each time that the *foreign entity* shall not accept transfer registration of debt securities 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 or 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 a transfer restriction and in the case of an offer for sale of *subordinated bonds*, such subordination shall be clearly defined.

Clause 57 If the approved *foreign 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 the bonds being offered, the approved *foreign 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 *foreign 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 58 An approved *foreign entity* for an offer for sale of the debt securities in a private placement to *high net worth investors* shall comply with the following criteria:

(1) a solicitation or any giving advice on trading or investment in debt securities to *high net worth investors* shall be made through securities companies that are capable of providing such services with respect to debt securities;

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

(3) the approved *foreign entity* shall undertake any act with respect to the *terms and conditions* under Clause 37 and Clause 38, and comply with the rules under Clause 39 in case of an offer for sale of the corporate bonds;

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

(5) the approved *foreign entity* shall file an application to *Thai Bond Market Association* for registration of the issued and offered debt securities within thirty days after the issuing date;

(6) in the case where a person expresses his or her intention to the approved *foreign entity* to register a transfer of the debt securities, the approved *foreign entity* shall verify the proposed transfer of the debt securities. If the approved *foreign entity* finds that the proposed transfer is contrary to the transfer restriction registered with

the SEC Office, the approved *foreign entity* shall not register the transfer of the debt securities except a transfer by inheritance.

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

(7) the approved *foreign entity* shall submit reports to the SEC Office in accordance with the procedures specified in Clause 43, *mutatis mutandis*;

(8) the approved entity for an offer for sale on a program basis who fails to maintain the qualifications under Clause 14(3) and Clause 15(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 59 The provisions under this Chapter shall apply to an offer for sale of the debt securities in a private placement pursuant to Clause 46 (1) (2) and (4).

Division 1

Approval

Clause 60 An offer for sale of the debt securities under this Chapter shall be deemed approved by the SEC Office when the *foreign entity* has the characteristics under Clause 14(1)(2)(6)(10) and (11) and has complied with the following rules:

(1) the approved *foreign entity* shall report the features of the debt securities to be offered for sale to the SEC Office in accordance with the procedures specified in Clause 7;

(2) the approved *foreign entity* shall register the transfer restriction for the debt securities to be offered for sale with the SEC Office. The transfer restriction shall contain a statement that the issuer of the debt securities shall not accept registration of any transfer of debt securities at any level if such transfer of the debt securities will make

such offer for sale of the debt securities unqualified as a private placement under Clause 46 except a transfer by inheritance;

(3) in the case of the offer for sale of secured bonds or bonds where a *bondholders' representative* is appointed, the entity has proposed the draft *terms and conditions* and the draft *bondholders' representative* appointment agreement, together with the registration of transfer restriction under (2);

(4) in the case where a *bondholders' representative* is appointed, the *bondholders' representative* shall have the characteristics in accordance with Clause 50.

Clause 61 The SEC Office shall be deemed accepted the registration of transfer restriction in accordance with Clause 60(2) on the date which the SEC Office receives the intention of registration of transfer restriction with such statement under Clause 60(2).

Division 2

Post-approval Conditions

Clause 62 An approved *foreign entity* who offers for sale of the debt securities 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 43 (1) and (2);
- (2) requirements regarding features of the debt securities pursuant to Clause 56;
- (3) requirements regarding *financial advisor* (if any) pursuant to Clause 57;
- (4) requirements regarding transfer registration of debt securities pursuant to Clause 58 (6).

Clause 63 For an offer for sale of the debt securities in a private placement to specific investors under Clause 46(1), the approved *foreign entity* shall comply with the following additional rules:

- (1) an offer for sale to one or many persons as follows:
 - (a) institutional investors;
 - (b) high net worth investors;
 - (c) investors related to the approved *foreign entity* pursuant to Clause 64 only in the case where the *foreign entity* is a *foreign juristic person*;
- (2) the approved *foreign entity* shall not advertise the offer for sale of such debt securities. If a distribution of documents is made, the approved *foreign entity* shall distribute such documents to the persons with the characteristics or the number specified in the private placement as specified in Clause 46(1) only;
- (3) in the case of a private placement to *high net worth investors*, a *foreign entity* shall arrange that a solicitation or any giving advice on trading or investment in debt securities to *high net worth investors* be done through securities companies that are capable of providing such services, except where the investors are related to the *foreign entity* which is a *foreign juristic person*.

Clause 64 Investors related to the approved *foreign entity* under Clause 63(1)(c) shall meet the criteria approved by the board of directors of the foreign juristic person where the clients suitability and availability of investment information to the investors shall be taken into account.

The investors who are related to the approved *foreign entity* under Paragraph 1 are the persons who are related to the approved *foreign entity* in terms of business relationship, investment, or administration and management of the approved *foreign entity*, for example, customers, suppliers of raw materials, potential business partners of the approved *foreign entity*, the affiliated companies of the approved *foreign entity* (*parent company, subsidiaries, subsidiaries* of the same level or associated companies), any shareholder of the approved entity who holds five percent or more of the total shares, the directors, *executives*, employees of the approved entity, the directors and *executives* of the affiliated companies.

In the interest of the provisions under Paragraph 2, the term, “*subsidiaries at the same level*” means at least two subsidiaries that have the same *parent company*, no matter at which level such subsidiaries are.

Clause 65 For an offer for sale of the debt securities in a private placement to *institutional investors* pursuant to Clause 46(2), the approved *foreign entity* shall comply with the following additional criteria:

(1) in case of an offer for sale of the debt securities to *institutional investors* incorporated under Thai law, the following actions shall be taken:

(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 a 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 debt securities within thirty days after the issuing date.

Clause 66 For an offer for sale of the debt securities in a private placement with a waiver from the SEC Office under Clause 46(4), the approved *foreign entity* shall not advertise the offer for sale of such debt securities. If a distribution of sales documents is made, the *foreign entity* shall distribute such documents only to the persons who have been granted a waiver.

Part 4

Transitional Provisions

Clause 67 An application submitted to, or approved by, the SEC Office pursuant to the *Notification of the Capital Market Supervisory Board No. Tor Jor. 58/2559 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities Denominated in Thai Baht* dated 22 December 2016 before the effective date of this Notification shall remain subject to such Notification and related Notifications.

Clause 68 The debt securities granted an approval for offer for sale pursuant to the *Notification of the Capital Market Supervisory Board No. Tor Jor. 58/2559 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities*

Denominated in Thai Baht dated 22 December 2016 before the effective date of this Notification shall remain subject to the post-approval conditions of such Notification.

Clause 69 Any reference in other Notifications to the *Notification of the Capital Market Supervisory Board No. Tor Jor. 58/2559 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities Denominated in Thai Baht* dated 22 December 2016 shall be deemed reference to this Notification.

Clause 70 Notifications of the SEC Office, orders and circulars issued or prescribing guidelines under the *Notification of the Capital Market Supervisory Board No. Tor Jor. 58/2559 Re: Rules for Approval of Foreign Company to Offer for Sale of Newly Issued Debt Securities Denominated in Thai Baht* dated 22 December 2016 which have been in effect before the effective date of this Notification shall remain in force to the extent that they are not inconsistent with or contrary to the rules under this Notification until new Notifications, orders and circulars issued or prescribing 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
Chairman
Capital Market Supervisory Board.