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Notification of the Capital Market Supervisory Board

No. TorThor. 70/2552

Re: Rules, Conditions and Procedures for Securities Underwriting
(Codified)

By virtue of Section 16/6 and Section 113 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 114, Section 115 and Section 116 of the Securities and Exchange Act B.E.2535 (1992), which contain certain provisions in relation to restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the Constitution of the Kingdom of Thailand, so permits by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board under Section 60 of the Securities and Exchange Act (No. 4) B.E. 2551 (2008) hereby issues the following regulations:

Clause 1. In this Notification:

(1) the term “company,” “parent company,” “subsidiary company,” “major shareholder,” and “controlling person” shall *mutatis mutandis* have the same meanings as defined in the Notification of the Securities and Exchange Commission governing determination of definitions in notifications relating to issuance and offer for sale of securities;

(2) “related person” means a person who has a relationship with a director, an executive, a major shareholder or a controlling person of a securities underwriter in the following manners:

- (a) a spouse or a minor child of such person;
- (b) an individual or a company holding majority shares of such person,

which means:

1. an individual or a company holding shares of such person in a number exceeding fifty percent of the total paid-up shares with voting rights of such person;
2. an individual or a company holding shares of the company under 1. in a number exceeding fifty percent of the total paid-up shares with voting rights of such company;

3. a company holding shares in subsequent levels, beginning with the company under 2., provided that the shareholding in each level exceeds fifty percent of the total paid-up shares with voting rights of the company being held, or an individual holding shares of the company in any subsequent level in a number exceeding fifty percent of the total paid-up shares with voting rights of the company being held;

The holding of shares by an individual under the first paragraph shall include shares held by a spouse and a minor child of such individual;

(c) a company in which such person holds majority shares, which means:

1. a company in which such person or the person under (a) holds shares in an aggregate number exceeding fifty percent of the total paid-up shares with voting rights of such company;

2. a company in which the company under 1. holds shares in a number exceeding fifty percent of the total paid-up shares with voting rights of such company;

3. a company being held in subsequent levels, beginning with the company under 2., provided that the shareholding in each level exceeds fifty percent of the total paid-up shares with voting rights of the company being held;

(3) ¹²“securities” means shares, debentures, bills, sukuk, share warrants, debenture warrants, derivatives warrants and depository receipts ;”

(4) “securities underwriter” means a securities company licensed to undertake securities business in the category of securities underwriting;

(5) “executive” means a manager or an employee holding the position of departmental manager or higher who is responsible for the line of work which takes part in making decisions on securities allotment or the line of work which has an opportunity to obtain inside information relating to an offer for sale of securities or an issuer of underlying shares of underwritten securities, including a person holding a position whose authority is similar to that of such person;

(6) “offering closing date” means the day on which an offer for sale of securities is closed for a securities underwriter in general cases;

(7) “date of providing over allotment shares in full” means the day on which a provider of overallotment shares is able to provide over-allotment shares in full amount as required to be delivered or returned to a securities underwriter who is obliged to provide over-allotment shares in cases where the amount of shares allocated to subscribers exceeds the underwriting amount;

(8) “provider of overallotment shares” means a securities underwriter who is obliged to provide overallotment shares for delivering to allocated persons or returning to lenders according to the obligation of over allotment of shares;

(9) “overallotment of shares” means allotment of shares to subscribers in an amount exceeding the underwriting amount. Such overallotment of shares is made concurrently with the offering of underwritten shares;

¹ As amended by the Notification of the Capital Market Supervisory Board No. TorThor. 3/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 2) date January 10, 2011.

² As amended by the Notification of the Capital Market Supervisory Board No. TorThor. 22/2555 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 6) date March 28, 2012.

(10) “related securities company” means:

(a) a securities company holding shares of a securities underwriter in the amount of twenty percent or more of the total paid-up shares with voting rights of such securities underwriter;

(b) a securities company being held by a securities underwriter in the amount of twenty percent or more of the total paid-up shares with voting rights of such securities company;

(c) a securities company having a shareholder holding shares of both such securities company and a securities underwriter in the amount of twenty percent or more of the total paid-up shares with voting rights of the securities company and the securities underwriter;

(11) “prospectus” means a prospectus which is identical to a draft prospectus filed with the SEC Office;

(12) “market maker” means a person appointed by a mutual fund management company to perform duty in managing the trading price of investment unit of an ETF fund in an organized market to proximately reflect the value of such investment unit which is calculated from the net asset value of the fund by trading investment units of the ETF fund and securities which are components of the underlying index of the ETF fund;

(13) “ETF fund” means an ETF fund pursuant to the Notification of the Office of the Securities and Exchange Commission governing establishment of mutual funds and execution of agreements for management of private funds;

(14) “mutual fund management company” means a securities company licensed to undertake securities business in the category of mutual fund management;

(15) “Stock Exchange” means the Stock Exchange of Thailand.

Clause 2. This Notification shall apply to securities underwriting made for a securities offeror who is obliged to file the registration statement and draft prospectus with the SEC Office.

Clause 3. A securities underwriter shall not make underwriting of the following securities, except being granted an exemption from the SEC Office with an approval of the Capital Market Supervisory Board:

(1) shares issued or offered for sale by a parent company or a subsidiary company of the securities underwriter;

(2) non-voting depository receipts which have shares as underlying, issued or offered for sale by a parent company or a subsidiary company of the securities underwriter;

(3) non-voting depository receipts which have shares as underlying and such underlying shares are issued by a parent company or a subsidiary company of the securities underwriter.

Clause 4. A securities underwriter shall make securities underwriting in accordance with the procedures indicated in a prospectus.

Clause 5. A securities underwriter shall not subscribe for securities of which it makes underwriting.

Clause 6. Subject to Clause 8, a securities underwriter shall not allocate securities to the following persons:

- (1) itself or a co-underwriter;
- (2) a director, an executive, a major shareholder, a controlling person, a parent company, and a subsidiary company of the person under (1) and their related persons;
- (3) a mutual fund of which the person under (1) or (2) holds investment units in the amount of fifty percent or more of the total outstanding investment units;
- (4) a mutual fund of which the person under (1) or (2) holds investment units in an amount not exceeding fifty percent of the total outstanding investment units and in which the person under (6) makes interference with the subscription or allotment of securities of the securities company which manages such mutual fund so that such mutual fund obtains benefits in such a manner that does not comply with the fair allocation principle; and
- (7) a person to whom an offeror of newly issued securities is not allowed to allocate securities under the Notification of the Capital Market Supervisory Board governing subscription, underwriting and allotment of newly issued securities.

Clause 7. The prohibition of securities subscription under Clause 5 or the prohibition of securities allotment under Clause 6 shall not apply to the following cases:

(1) underwriting of securities offered for sale to the following persons and the securities underwriter under Clause 5 or the person under Clause 6 is eligible for subscription of such securities:

(a) ³ offer for sale of securities in total amount to the following persons and disclosed in the registration statement and prospectus:

1. institutional investor under the Notification of the Securities and Exchange Commission concerning determination of definition in the notification relating to issuance and offer for sale of securities;
2. director and employee of issuing company or subsidiary of issuing company as approved by the board of directors or the resolution of the shareholders' meeting of issuing company;
3. creditor of issuing company under business reorganization plan that approved by the court under law on bankruptcy or debt restructuring agreement;
4. shareholders of issuing company in accordance with previous proportion of shareholding (rights offering);
5. holder of debentures or bill of issuing company for redemption of outstanding debentures or bills (renew);
6. any other person that securities offeror is able to demonstrate to the SEC Office that such person has access to and is capable of examining information necessary to make investment decision in securities being offered and that it is not necessary to apply fair allocation principle to offer for sale of securities to such person;

(b) an offer for sale of securities in which a portion of securities to be offered to the person under (a) 2., 3., 4., or 5. is clearly separated from those to be offered to the public, which is already disclosed in the registration statement and draft prospectus;

³ As amended by the Notification of the Capital Market Supervisory Board No. TorThor. 22/2555 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 6) date March 28, 2012.

(2) allotment of securities left from subscription of all subscribers.

(3)⁴ underwriting of securities in the category of debentures, convertible debentures, structured debentures or sukuk offered for sale to the public and securities underwriter under Clause 5 or persons under Clause 6 may, under the following conditions, subscribe such securities so offered:

(a) in book building, the price offered by underwriter shall not be included in the calculation of the price offered by other investors in such book building by securities offeror in order to determine the offering price of such securities;

(b) amount of securities that securities underwriter allotted to itself and all persons under Clause 6 shall not exceed the amount of securities allotted to investors in book building divided by the number of such investors obtained securities from the allotment;

(c) in the registration statement and prospectus, it shall be disclosed that securities underwriter and person under Clause 6 are eligible to subscribe and obtain an allotment of securities under the conditions specified in (a) and (b).

Clause 8. In case of underwriting of shares or non-voting depository receipts which have shares as underlying, a securities underwriter shall not make an allotment to a subsidiary company of the issuer of such shares or underlying shares.

Clause 9. A securities underwriter shall distribute to investors securities subscription forms concurrently with prospectus or information relating to securities offering in the similar form which an offeror of newly issued securities is allowed to distribute under the Notification of the Capital Market Supervisory Board governing subscription, underwriting and allotment of newly issued securities *mutatis mutandis*, except where investors voluntarily declare their intention not to obtain such information.

^{5 6} In case where the requirements specify that in an offer for sale of any types of securities, issuing company shall distribute a summarized substance of instrument (fact sheet), securities underwriter shall arrange to have the distribution of such document which contain substances similar to a summarized substance of instrument that appears in the registration statement in the form of printed documents and CD along with the distribution of securities subscription form under the first paragraph.

Clause 10. A securities underwriter shall not disseminate information relating to securities offering which is not the registration statement or draft prospectus during the period from fifteen days prior to the first offering date to the offering closing date or the date of providing over-allotment shares in full, as the case may be, except for the dissemination of

⁴ As added by the Notification of the Capital Market Supervisory Board No. TorThor. 24/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 4) date August 25, 2011.

⁵ As added by the Notification of the Capital Market Supervisory Board No. TorThor. 3/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 2) date January 10, 2011.

⁶ As amended by the Notification of the Capital Market Supervisory Board No. TorThor. 40/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 5) date December 29, 2011.

information relating to securities offering which is prepared by an offeror under the Notification of the Office of the Securities and Exchange Commission governing dissemination of information relating to securities offering prior to the effective date of the registration statement and draft prospectus.

Clause 11. A securities underwriter shall not disseminate an article or research paper prepared by itself, a co-underwriter or a related securities company which relates to the underwritten securities or other securities relating to the underwritten securities in such a manner that any change in such securities may directly impact the price of the underwritten securities during the period from fifteen days prior to the first offering date to the offering closing date or the date of providing overallotment shares in full, as the case may be.

The provision of the first paragraph shall not apply to an article or research paper which meets the following conditions and does not relate to shares being granted an approval from the SEC Office for an initial public offering for the purpose of listing such shares in the Stock Exchange or non-voting depository receipts which have such shares as underlying:

(1) an article or research paper published in a document provided and disseminated to the public as normal business undertaking;

(2) an article or research paper whose content is an update of or an addition to information previously disseminated;

(3) an article or research paper whose content does not emphasize or focus specifically on the underwritten securities or other related securities, compared to other general articles or research papers previously prepared and disseminated;

(4) an article or research paper which contains a statement indicating the interest, whether directly or indirectly, of the person preparing such article or research paper in the underwritten securities, provided that such statement shall be distinct, easy-to-read, and not smaller in size than the regular font used in such article or research paper, and shall be on the same page of the summary of such article or research paper or at a nearby position which can be seen clearly.

Clause 12. During the period of thirty days from the offering closing date or the date of providing overallotment shares in full, as the case may be, a securities underwriter may disseminate an article or research paper prepared by itself, a co-underwriter, or a related securities company, which relates to the underwritten securities or other securities relating to the underwritten securities in such a manner that any change in such securities may directly impact the price of the underwritten securities upon complying with the following conditions:

(1) an article or research paper shall contain a statement indicating the interest, whether directly or indirectly, of the person preparing such article or research paper in the underwritten securities, including the amount of securities which the securities underwriter is obliged to purchase according to the securities underwriting agreement;

(2) the statement under (1) shall be distinct, easy-to-read, and not smaller in size than the regular font used in such article or research paper, and shall be on the same page of the summary of such article or research paper or at a nearby position which can be seen clearly.

Clause 13. In making securities underwriting, a securities underwriter shall proceed as follows:

(1) deposit subscription money into a securities subscription account of an offeror or segregate subscription money from an asset account of the securities underwriter within the next business day from the date on which the securities underwriter collects money from subscribers. Such subscription money shall not be used for any other business;

(2) make an agreement with an offeror in the following matters:

(a) returning of subscription money to unallocated subscribers within fourteen days from the offering closing date. In cases where such money cannot be returned within such period of time, there shall be an entitlement of unallocated subscribers' rights to receive interest at the rate of not less than seven point five percent per annum from the date after such period ends;

(b) prohibition of using subscription money in excess of the total amount expected to obtain from the offering for any other business before returning money to unallocated subscribers completely;

(3) report securities allotment results to the SEC Office jointly with an offeror as per the rules prescribed by the Notification of the Office of the Securities and Exchange Commission governing report on results of securities sales to the public;

(4) In case of initial public offering of shares for the purpose of listing such shares on the Stock Exchange, if any securities underwriter does not follow the fair allocation procedures, such securities underwriter shall also proceed as follows:

(a) prepare a name list of the top one hundred largest allocated persons, together with the reason for allocating securities to each person, categorized by underwriters, and submit it to the SEC Office together with reports on securities sales results.

The name list of the largest allocated persons under the first paragraph shall exclude persons who are allocated as a result of their position as director, employee, or patron of the issuer.

(b) prepare a summary report of securities allotment categorized by client groups, that are, those who have trading accounts and transactions with the securities underwriter prior to this offering and those who have not, showing the number of allocated persons, the amount and value of shares allocated to the persons in each group;

(c) keep documentary evidence or information supporting the reason for allocating shares to any persons in the value of one hundred million baht or more at the main office of the securities underwriter for the period of at least one year from the offering closing date in such a manner that can be promptly presented to the SEC Office upon request.

The fair allocation under the first paragraph shall exclude allocation of shares in a portion which is separated for institutional investors, directors or employees of the issuer, clients who have trading accounts and transactions with the securities underwriter prior to this offering, or patrons of the issuer (if any).

For the purpose of the first paragraph, the "fair allocation procedures" shall mean the procedures in which a securities underwriter sets a subscription board lot and allocate shares to all subscribers equally once in a subscription board lot until the underwritten shares are completely allocated or any other procedures approved by the SEC Office.

(5) not make an offer for sale of any securities together with other securities, unless specifically indicated in the prospectus;

(6) In case of underwriting of securities offered for sale by a director, an executive, a major shareholder, a controlling person, a parent company, or a subsidiary company of any securities underwriter, or their related persons, which does not fall into the prohibited underwriting under Clause 3, such securities underwriter shall also disclose a relationship between itself and such person to investors;

(7) notify a related securities company of the obliged duty under Clause 16;

(8) provide a name list of persons to whom the securities underwriter is not allowed to allocate securities under Clause 6 to a securities company licensed to undertake securities business in the category of mutual fund management or private fund management which shows interest in subscribing for securities.

Clause 14.⁷ Securities underwriter is prohibited from purchasing or selling the following securities from five business days prior to the offer for sale of securities until the closing of the offer for sale or on the date of providing the over-allotment shares in full, as the case may be:

(1) shares of such issuing company or depository receipt whose underlying securities are such shares, in case of underwriting of shares, convertible bonds or share warrants;

(2) underlying shares of derivative warrants or structured notes, or depository receipts whose underlying securities are such shares, in case of underwriting of derivative warrants or structured notes;

(3) underlying shares of depository receipts or such depository receipts, in case of underwriting of depository receipts whose underlying securities are such shares.

Provision in the first paragraph shall not be applicable to the purchase or sale in the following cases:

(1) purchase from securities offeror or sale to investor under securities underwriting agreement;

(2) purchase or sale according to a client's order which is not guided or solicited by the securities underwriter (unsolicited purchase or sale);

(3) purchase or sale for its own proprietary portfolio resulted from an error in making trading orders for clients;

(4) purchase for its own proprietary portfolio in compliance with the requirement of purchase of shares in the Stock Exchange for delivering to subscribers who are allocated overallotment shares or returning to lenders under the Notification of the Capital Market Supervisory Board governing over allotment shares;

(5) purchase for its own proprietary portfolio in which case the securities underwriter performs duty as market maker for an ETF fund, providing that such securities underwriter has put in place a system for prevention of conflicts of interest under the Notification of the Office of the Securities and Exchange Commission governing providing of work systems for proprietary securities investment;

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As amended by the Notification of the Capital Market Supervisory Board No. TorThor. 11/2554 Re: Rules, Conditions and Procedures for Securities Underwriting (No. 3) date May 13, 2011.

(6) purchase or sale for its own proprietary portfolio to manage risk associated with the case where such securities underwriter becomes issuer of instrument whose underlying securities has been underwritten by itself, providing that such securities underwriter has put in place a system for prevention of conflicts of interest under the Notification of the Office of the Securities and Exchange Commission governing providing of work systems for proprietary securities investment.”

Clause 15. In cases where the underwritten securities are shares and the securities underwriting agreement indicates an obligation of over-allotment of shares, a securities underwriter who is a provider of over-allotment shares shall monitor and prohibit its employees who take part in providing over-allotment shares from purchasing or selling shares under the first paragraph of Clause 14 *mutatis mutandis*.

Clause 16. The provisions under Clause 11, Clause 12, and Clause 14 shall apply to a related securities company *mutatis mutandis*.

Clause 17. All notifications of the Office of the Securities and Exchange Commission, orders and circulars issued under or prescribing guidelines for compliance with the Notification of the Securities and Exchange Commission No. KorThor. 14/2546 Re: Rules, Conditions and Procedures for Securities Underwriting dated 11 July 2003 which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with nor contrary to the provisions of this Notification until notifications, orders and circulars issued under or prescribing guidelines for compliance with this Notification come into force.

Clause 18. Any reference made in any other notifications to the Notification of the Securities and Exchange Commission No. KorThor. 14/2546 Re: Rules, Conditions and Procedures for Securities Underwriting dated 11 July 2003 shall mean reference to this Notification.

Clause 19. This Notification shall come into force as from 1 September 2009.

Notified this 3rd day of August 2009.

-Signature-

(Vijit Supinij)

Chairman

Securities and Exchange Commission

Remark: The rationale for issuing this Notification: As the Securities and Exchange Act (No. 4) B.E. 2551 (2008) stipulates that the issuance of rules, conditions and procedures for securities underwriting is under the authority of the Capital Market Supervisory Board, it is therefore deemed appropriate to issue this Notification as a replacement for the Notification of the Securities and Exchange Commission No. KorThor. 14/2546 Re: Rules, Conditions and Procedures for Securities Underwriting dated 11 July 2003.