

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 Nor. 27/2554
Re: Commitment between the Unitholders of an Infrastructure Fund
and the Management Company

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 119(6) of *the Securities and Exchange Act B.E. 2535 (1992)*, which contains certain provisions relating to the restriction of rights and liberties of persons, which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of *the Constitution of the Kingdom of Thailand* so permit by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall apply to the formation of the *commitment* between the unitholders of an infrastructure fund and the *management company*.

Clause 2 In this Notification:

“*commitment*” means the *commitment* between the unitholders of an infrastructure fund and the *management company*;

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

“*fund supervisor*” means a mutual fund supervisor.

Clause 3 The *commitment* shall contain at least a particular describing the material information as follows:

- (1) name of the mutual fund scheme;
- (2) details of the mutual fund scheme containing the statement requiring that the mutual fund scheme which is approved by the SEC Office or amended in accordance with Section 129 of *the Securities and Exchange Act B.E. 2535 (1992)* attached to the *commitment* shall be deemed as an integral part of the *commitment*;
- (3) authority, duties and responsibilities of the *management company*;
- (4) rights, duties and responsibilities of the unitholders;
- (5) restrictions on dividend payment (if any);
- (6) method of payment of money or other assets;
- (7) issuance and delivery of the entitlement documentation of investment units;
- (8) preparation of the register of investment units, the transfer of investment units, and the transfer restrictions of investment units;
- (9) appointment, authority, duties and responsibilities of the *fund supervisor*;

- (10) change of *management company* and *fund supervisor*;
- (11) revision to the *commitment*;
- (12) criteria and procedures for requesting the unitholders' resolution and effectiveness of the resolution;
- (13) compensation or remedy for damages to the *mutual fund* or the unitholders as well as the dispute resolution between the *management company* and the unitholders;
- (14) liquidation upon dissolution of the mutual fund;
- (15) other particulars as required by the SEC Office.

Clause 4 The particular on the authority, duties and responsibilities of the *management company* shall contain at least the material information as follows:

- (1) provision that the *management company* shall comply with the *commitment*, the mutual fund scheme, *the Securities and Exchange Act B.E. 2535 (1992)* as well as the Notifications, Rules and Orders issued by virtue of such Law;
- (2) provision that in the case where any requirement in the mutual fund scheme or the *commitment* is in conflict or inconsistent with the rules issued by virtue of *the Securities and Exchange Act B.E. 2535 (1992)* or the Notifications, Rules or Orders thereunder, if the *management company* has proceeded in accordance with such Law, Notifications, Rules or Orders, the *management company* shall be deemed to have already complied with the mutual fund scheme and the *commitment*.

Clause 5 The particular on the rights, duties and responsibilities of the unitholders shall contain at least the material information as follows:

- (1) provision that the liability of the unitholders is limited to an amount not exceeding the amount of the investment units that have not been paid to the *management company* in full;
- (2) provision that the unitholders who express their intention to purchase or invest in the investment units of this mutual fund, regardless of which phase, shall be deemed to have accepted the binding in accordance with the requirements in the *commitment* signed by the *fund supervisor* who has been duly appointed by the *management company*
- (3) provision that the unitholders are entitled to demand the *management company* to pay benefits and capital reimbursement at an amount not exceeding the equity of the mutual fund held. In case of classification of the investment units, the unitholders' right to receive benefits or capital reimbursement of each unit type shall be in accordance with the provisions of each unit type;

Clause 6 The particular on the dividend payment and restrictions shall contain at least the material information as follows:

- (1) provision that the *management company* shall not pay dividends to the unitholders for the portion of the investment units that is inconsistent with the investment

limit specified in the rules issued by virtue of *the Securities and Exchange Act B.E. 2535 (1992)*:

(2) provision that the **management company** shall prepare an account and separate the money which is not allowed to be paid as dividend from the account and assets of the mutual fund, and shall not include such money in the net asset value of the mutual fund and submit such money as a public revenue.

Clause 7 The particular on the method of payment of money or other assets shall contain at least the material information as follows:

(1) provision on the method of payment of money or other assets to the unitholders, the **management company**, the **fund supervisor** and other related persons as well as the person who is responsible for the expenses for the debt performance;

(2) provision on the payment of money or other assets to the unitholders whereby the **management company** shall make a payment only to the unitholders whose names appear in the register of unitholders as of a specified period.

Clause 8 The particular on the issuance and delivery of the entitlement documentation of investment units shall contain at least the material information as follows:

(1) provision that the **management company** shall prepare the entitlement evidence of investment units for the unitholders to use as a reference with the **management company** and other persons. In this regard, an example of the entitlement evidence of investment units shall also be provided;

(2) provision that if the unitholders need the investment unit certificate, the **management company** shall prepare and deliver such investment unit certificate to the unitholders.

Clause 9 The particular on the preparation of the register of unitholders, the transfer of investment units and the restrictions of the transfer of investment units shall contain at least the material information as follows:

(1) provision that the **management company** shall prepare the register of unitholders in accordance with the rules issued under Section 125(5) of *the Securities and Exchange Act B.E. 2535 (1992)*;

(2) provision that it shall be assumed that the register of investment units is correct, and that the **management company** has already proceeded in accordance with its authority and duties provided that the payment of money or other assets as well as the granting or restrictions of any rights to the unitholders whose names appear in the register of unitholders have been arranged in compliance with the requirements in the **commitment** or the law;

(3) provision that the **management company** can refuse to display any name in the register of unitholders in the case that the unitholding is inconsistent with the rules issued under *the Securities and Exchange Act B.E. 2535 (1992)*.

Clause 10 The particular on the appointment, authority, duties and responsibilities of the *fund supervisor* shall contain at least the material information as follows:

(1) provision that the *fund supervisor* has the authority, duties and responsibilities as specified in the agreement on the appointment of *fund supervisor* and in compliance with *the Securities and Exchange Act B.E. 2535 (1992)* as well as the duty to preserve the benefits of all unitholders. In addition, in the event of change of *fund supervisor*, the former *fund supervisor* shall proceed as necessary to ensure that the new *fund supervisor* can continue duty performance. In this regard, such proceeding shall include signing in the certification of accuracy and completeness of the items delivered to the new *fund supervisor*;

(2) provision that in the case that the *fund supervisor* acts or omits to act or neglects the performance of duty to preserve the benefits of the unitholders, the unitholders may exercise their rights under Section 132 in conjunction with Section 47 of *the Securities and Exchange Act B.E. 2535 (1992)* to initiate and execute a lawsuit against the *fund supervisor* for the benefits of all unitholders;

(3) provision that the *fund supervisor* shall not act in conflict with the benefits of the mutual fund and the unitholders, regardless of whether such action is conducted for the benefit of the *fund supervisor* itself or other persons, except for the case of charging a remuneration for the performance of duty as *fund supervisor* or an action performed in a fair manner and sufficiently disclosed to the unitholders in advance, and the acknowledging unitholders have not expressed an objection;

(4) provision that in the case that the *fund supervisor* acts in conflict with the benefits of the mutual fund or the unitholders, which is illegible for an exception, if it is a significant case and unable to be rectified, the *management company* shall be authorized to terminate the agreement on the appointment of the *fund supervisor*;

(5) provision that in the case that the *management company* fails to request the unitholders' resolution for any act that requires such resolution, the *fund supervisor* shall be authorized to proceed as necessary to request the unitholders' resolution.

Clause 11 The provision on the change of *management company* shall contain the requirement that any change of *management company* whether by the order of SEC Office or for any reason under *the Securities and Exchange Act B.E. 2535 (1992)*, the *management company* shall proceed as necessary to ensure that the new *management company* can continue the duty performance, and such proceeding shall include the delivery of evidentiary documentation to the new *management company*.

Clause 12 The particular on the revision to the *commitment* shall contain at least the material information as follows:

(1) provision that if a revision to any part of the *commitment* complies with the requirements in the *commitment* and the material information is not in conflict or contravention of *the Securities and Exchange Act B.E. 2535 (1992)* as well as the rules

issued by virtue of such Law, it shall be deemed that the revision to the *commitment* binds the contractual parties;

(2) provision that any revision to the *commitment* in any matter that affects the rights of the unitholders significantly shall receive the resolution by the majority votes of the unitholders;

(3) provision that the matter affecting the rights of the unitholders under (2) shall include:

(a) provision on benefits and reimbursement of capital to the unitholders;

(b) any matter deemed by the *fund supervisor* to affect the rights of the unitholders significantly.

(4) provision that the revision to the *commitment* in the following manners shall be binding upon approval of the *fund supervisor* without necessarily acquiring the resolution of the unitholders:

(a) a revision to the material information in the *commitment* to be consistent with the mutual fund scheme that has been revised by the majority votes of the unitholders or the approval of the SEC Office; or

(b) a revision viewed by the *fund supervisor* to be appropriate, necessary or reasonable, and not affecting the rights of the unitholders significantly.

(5) provision that a revision to the *commitment* in any case shall be in writing with the binding signature of the authorized person of the *management company* and the *fund supervisor* together with the Company's seal (if any), and a provision that the *management company* shall disclose the *commitment* at its office and website for the unitholders' review, and deliver a summary of all revisions to the *commitment* during the accounting year accompanied with the reasons and the necessity thereof to the unitholders at the time of submitting the annual report of the mutual fund.

Clause 13 The particular on the criteria and procedures for requesting the resolution of the unitholders and the effectiveness of the resolution shall contain at least the material information as follows:

(1) provision on the criteria and procedures for requesting the resolution shall specify at least the following matters:

(a) method of requesting the resolution such as delivery of the request letter to the unitholders or calling the unitholders' meeting, etc.;

(b) the record date of the register of the unitholders for the request of resolution;

(c) quorum (if any) in case of requesting the resolution by calling the unitholders' meeting;

(d) restrictions of the voting right of the unitholders such as the unitholding inconsistent with the investment limit specified in accordance with the rules issued by virtue of *the Securities and Exchange Act B.E. 2535 (1992)*, or the unitholders having a special interest, whether directly or indirectly, in the matter seeking resolution, etc.;

(e) number of votes required for the resolution and the method of vote counting, including at least a provision to support the following cases:

1. requesting the resolution by delivering the request letter to the unitholders;
2. requesting the resolution by calling the unitholders' meeting;
3. requesting the resolution for a mutual fund with multiple classes of investment units (if any).

The provisions under Paragraph 1 shall be in accordance with and not in conflict or contravention of the rules specified for the request of resolution and the exercise of the voting right under *the Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for the Establishment and Management of Infrastructure Fund*.

(2) provision that any act subject to the unitholders' resolution as specified in the mutual fund scheme or by Law shall be deemed to have been approved by all unitholders and have the binding effect according to the resolution, provided that the **management company** has proceeded in accordance with the unitholders' resolution duly received;

(3) provision that any resolution of the unitholders which approves any act in conflict or contravention of the rules specified by law shall be void.

Clause 14 This Notification shall come into force as from 16 September 2011.

Notified this 6th Day of September 2011.

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(Mr. Chalee Chantanayingyong)

Deputy Secretary-General

Acting for the Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board