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**Notification of the Capital Market Supervisory Board  
No. TorChor. 48/2555**

**Re: Rules, Conditions and Procedures for Application for and Approval of Offer  
for Sale of Newly Issued Debentures to Investors in Foreign Countries  
(No. 2)**

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By virtue of Section 16/6 and Section 89/27 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 of the Securities and Exchange Act B.E. 2535 (1992) which contain 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.** The following provisions shall be added as (8), (9) and (10) of Clause 2 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“(8) “listed company” means any company having shares listed on the Stock Exchange of Thailand;

(9) “offer for sale of convertible debentures with discount” means offer for sale of convertible debentures by specifying conversion price considered as offer for sale of newly issued shares with discount;

(10) offer for sale of newly issued shares with discount” means offer for sale of newly issued shares by specifying offering price lower than ninety percent of market price, providing that market price and offering price shall be specified under the Notification of the Office of the Securities and Exchange Commission concerning calculation of offer price of securities and determination of market price for consideration of offer for sale of newly issued shares with discount.”

**Clause 2.** Provision in Clause 8 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009 shall be repealed and replaced with the following provision:

“Clause 8 In case where any of the following suspicious grounds is apparent to the SEC Office, the SEC Office may not grant approval for offer for sale of debentures under the application for approval:

(1) although company or offer for sale of debentures having characteristics or form in the manners which comply with requirements or conditions for granting approval under this Notification, certain facts lead the consideration that the objective or substance of such offer for sale of such debentures has the intention to evade provisions under the law on securities and exchange or this Notification;

(2) offer for sale of debentures may cause conflict to public and government policy;

(3) offer for sale of debentures may affect the overall confidence of the Thai capital market;

(4) offer for sale of debentures may cause damage or fail to provide overall investors with fairness or correct or adequate information for making investment decisions.”

**Clause 3.** The following provision shall be added as Clause 8/1 in Chapter 1 General Provisions of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“Clause 8/1 In case where any one of the following characteristics applies, the SEC Office may exempt the requirements under this Notification when considering an application for approval or may not impose certain conditions under this Notification on offer for sale of debentures which has already been approved, providing that appropriateness and sufficiency of the information for making investment decisions and measures for investor protection shall be taken into consideration. In any case, the SEC Office may specify conditions for applicant to act or omit from any act:

(1) there is a clear facts that leads to the consideration that such requirements or conditions to be exempted are immaterial to the consideration of the application for approval in such particular case and the benefit to be gained are not worth the cost of complying with such requirements or conditions;

(2) applicant is subject to restrictions under other laws, which does not allow it to comply with the requirements or conditions to be exempted;

(3) applicant has other measures which are adequate and sufficient to compensate for compliance with the requirements or conditions to be exempted.

**Clause 4.** The following provision shall be added as the second paragraph of Clause 9 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“In case of approval for offer for sale of convertible debentures, approval under the first paragraph shall include approval for offer for sale of underlying shares.”

**Clause 5.** Provision in Clause 11 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009 shall be repealed and replaced with the following provision:

“Clause 11 Offer for sale of newly issued convertible debentures and newly issued shares in support of convertible debentures may be done only when company possesses characteristics and undertakes the followings:

- (1) being public limited company;
- (2) arranging to have a notice calling for shareholders’ meeting of company to seek approval for the issuance of sufficient shares in support of convertible debentures, providing that a notice calling for such shareholders’ meeting shall specify information as specified in Clause 12;
- (3) having obtained a shareholders’ meeting resolution approving the issuance of shares which is sufficient for the exercise of conversion rights, providing that such resolution has been obtained no more than one year prior to the date of filing an application for approval for the issuance of convertible debentures;
- (4) being the issuance and offer for sale of convertible debentures which can be converted into newly issued shares of the company, providing that the underlying shares for the exercise of conversion rights shall not exceed the ratio specified in Clause 13. [The specified ratio shall be] exempted in case of the offer for sale of convertible debentures by the company in need of financial supports or for the purpose of debt restructuring or with the waiver granted by the SEC Office in case of necessity and appropriateness and for the benefit of the company and shareholders as a whole;
- (5) in case where applicant is listed company that intends to offer for sale of convertible debentures to specific person (placement) and is offer for sale of convertible debentures with discount, [it] has complied with additional requirement in Clause 13/1;
- (6) submitting the following documents to the SEC Office:
  - (a) a copy of a notice calling a shareholders’ meeting; and
  - (b) a copy of a shareholders’ meeting resolution.

Provisions in (2), (3) and (5) of the first paragraph shall not be applicable with the following cases:

- (1) offer for sale of convertible debentures and underlying shares of company required to increase its capital under restructuring plan approved by the court under the law concerning bankruptcy, providing that company shall arrange to have sufficient newly issued shares in support of convertible debentures;
- (2) any other cases which is necessary and appropriate with a waiver granted by the SEC Office.”

**Clause 6.** Provision in (4) of Clause 12 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009 shall be repealed and replaced with the following provision:

“(4) in case where applicant is listed company that intends to offer for sale of convertible debentures to specific person (placement) and is offer for sale of convertible debentures with discount, a notice calling for a shareholders’ meeting shall additionally have the following details:

(a) objective for offer for sale of convertible debentures with discount;  
(b) details related to newly issued convertible debentures and underlying shares in matter related to amount that offer for sale, offering price of convertible debentures and price of conversion rights which shall specify exact price or specify the highest exact discount;

(c) market price used in comparing offering price of convertible debentures and conversion price under convertible debentures including calculation method;

(d) in case of specifying exact offering price, a group of persons expected to be the target of offer for sale shall be specified;

(e) impact to shareholder from offer for sale of convertible debentures with discount that seek approval at this time, providing that at least the impact to market price of shares (price dilution) shall be specified when having offered for sale convertible debentures with discount and impact to share of profit or voting rights of existing shareholders (control dilution);

(f) rights of shareholder to object offer for sale of convertible debentures with discount;

(g) opinion of board of directors that demonstrates necessity to offer for sale of convertible debentures with discount by explaining worthiness of the benefit that the company is eligible to receive as compared to the difference of offering price of convertible debentures plus conversion price and market price that the company will give up including suitability and reason supporting determined market price and determination of such offering price.”

**Clause 7.** The following provision shall be added as (5) of Clause 12 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“(5) any other information as specified by the SEC Office to protect interest of company’s shareholders;”

**Clause 8.** The following provision shall be added as Clause 13/1 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re:

Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“Clause 13/1 In case where approved company is listed company that intends to offer for sale of convertible debentures to specified person (placement) and is offer for sale of convertible debentures with discount, company shall additionally comply with following requirements:

(1) in calling for shareholders’ meeting to seek shareholders’ meeting resolution approving company to offer for sale of newly issued convertible debentures with discount, company shall send to its shareholders a notice calling for shareholders’ meeting at least fourteen days prior to meeting date;

(2) sending proxy statement together with a notice calling for shareholders’ meeting and demonstrating details related to at least one independent director that any shareholder unable to attend the meeting and exercise voting rights may give a proxy to exercise vote on behalf of shareholder. In case where such independent director is person who may be entitled to allotment of convertible debentures that sought approval, special interests of such independent director shall also be demonstrated;

(3) obtaining shareholders’ meeting resolution approving offer for sale of convertible debentures with discount with the vote not less than three quarter of total number of voting rights exercised by shareholders who attend the meeting and entitled to exercise voting right, providing that there shall be no more than ten percent of total voting rights, in aggregate, exercised by shareholders who attend the meeting against offer for sale of such convertible debentures or underlying shares.”

**Clause 9.** The following provision shall be added as Clause 14/1 in Chapter 3 Conditions for Approval of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“Clause 14/1 In case where it is apparent to the SEC Office after granting approval for offer for sale of debentures that facts and circumstances taken into the SEC Office’s consideration for granting approval for offer for sale of debentures has changed, and if such facts and circumstances had appeared to the SEC Office prior to granting such approval, the SEC Office would not grant an approval for offer for sale of such debentures. The SEC Office shall have the authority as follows:

(1) order approved person, director or executive of approved person to clarify or disclose additional information within specified period and suspends approval for issuance of debentures or order approved person to suspend offer for sale of debentures until clarification and correction has been made and if approved person, director or executive of approved person is unable to clarify or rectify within specified period, the SEC Office may revoke the approval under (2);

(2) order a revocation of approval for offer for sale of debentures in the portion which has not been offered for sale or has no subscriber.

In giving order under the first paragraph, the SEC Office shall consider the following factors into consideration:

- (1) severity of facts or circumstances that have been changed;
- (2) impact to investor that subscribers such debentures.”

**Clause 10.** The following provisions shall be added as Clause 17/1 and Clause 17/2 of the Notification of the Capital Market Supervisory Board No. TorChor. 16/2552 Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Debentures to Investors in Foreign Countries dated 13 March 2009:

“Clause 17/1 In case where newly issued convertible debentures approved to offer for sale under this Notification specify conversion price and ratio variable to market price of underlying shares and it is necessary to issue new shares in support of exercise of such conversion right, company shall be eligible to issue such additional new shares only when having shareholders’ meeting resolution granting approval for issuance of sufficient amount of shares in support of exercise of such conversion rights has been filed with the SEC Office.

Clause 17/2 Company approved for issuance of newly issued convertible debentures under this Notification shall arrange to have agreement related to damages and other remedial measures that convertible debentures holder is entitled to receive in case where approved company is unable to arrange to deliver underlying shares of convertible debentures.”

**Clause 11.** This Notification shall come into force as from 16 October 2012.

Notified this 20<sup>th</sup> day of September 2012.

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(Vorapol Socratyanurak)  
Secretary-General

Office of the Securities and Exchange Commission  
Chairman  
Capital Market Supervisory Board