

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. 35/2557
Re: Application for and Approval of Offer for Sale of Newly Issued
Structured Debentures
(No. 5)

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 of the *Securities and Exchange Act B.E. 2535 (1992)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 The provisions under Clause 12 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009 as amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor.17/2555 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures (No. 2)* dated 28 March 2012 shall be repealed and replaced with the following provisions:

“Clause 12 An applicant to be granted approval for an offer for sale of newly issued structured debenture shall have the following characteristics:

(1) The auditor’s report for the financial statement and the consolidated financial statement for the most recent accounting period, most recent quarterly financial statement prior to the filing of the application shall not express the following:

(a) A disclaimer of opinion on preparation of financial statement and the consolidated financial statement or an adverse opinion;

(b) A qualified opinion due to material transaction that it is non-compliance with the accounting standards for public limited companies, with the exception of the case that the applicant is a financial institution and not a listed company on the Stock Exchange of Thailand and offer only short-term structured debentures for sale, the auditor’s report shall not indicate a qualified opinion towards any material transaction that it is non-compliance with the accounting standards recognized by the lead regulator that directly supervises the business;

(c) An adverse of opinion due to the limitation on audit by any act or omission of the applicant, the directors or executives.

To reflect the ability to repay debt obligation of the branch of a foreign bank under Clause 5 (2) and the possibility to repay to debt obligation of such applicant, if the Thai branch of the foreign bank faces problems with its financial position and business operation, the financial statement under sub-clause (1) of the first paragraph shall mean the financial statement of the Thai branch of such foreign bank.

(2) The applicant has not failed to file the financial statement or a report of its financial position and business operation to the SEC Office or the Stock Exchange of Thailand under Section 56 or Section 199 in conjunction with Section 56, as the case may be, or shall not be in process of rectifying its financial statement or a report is required to be prepared and submitted under Section 56 or Section 57 or Section 199 in conjunction with Section 56 or Section 57 is as ordered by the SEC Office of the Stock Exchange of Thailand, or shall not have an ongoing obligation to comply with the order of the SEC Office or the Stock Exchange of Thailand under Section 58 or Section 199 in conjunction with Section 58, as the case may be, unless an exemption is granted by the SEC Office;

(3) The directors and executives must be listed on the database of directors and executives of issuing companies under the Notification of the Capital Market Supervisory Board concerning the Criteria for Listing Names of Persons on the Database of Directors and Executives of issuing companies;

In case where the applicant is a foreign bank under Clause 5(2), the directors or executives of its Thai branch have the qualifications under the first paragraph.

(4) The controlling persons shall not have any of the prohibited characteristics under the Notification of the Securities and Exchange Commission concerning the Determination of Untrustworthy Characteristics of Directors and Executives of Companies, *mutatis mutandis*;

(5) The applicant has never offered for sale of securities in violation of, or non-compliance with the after-approval conditions significantly prescribed in, the relevant notifications as the case may be;

(6) The applicant has never offered any type of debentures, bills or Sukuk for sale in violation of the criteria for the private placement sale to institutional investors or high net worth investors in the two years prior to filing the application for approval, unless

an exemption is granted by the SEC Office in the case that the applicant has demonstrated that such offering was reasonable and appropriate and sufficient measures for the offer for sale;

(7) The applicant has been licensed or registered to derivatives dealer under the *Derivatives Act B.E. 2546 (2003)*. If the applicant has not been licensed or registered, the applicant shall meet any of the following conditions:

(a) The applicant's flow of revenue or expenses comes from the core business related to the underlying of structured debentures;

(b) The applicant's core business is related to the commodity prices or commodity price index that will be the underlying of the structured debentures;

(c) The applicant has filed a letter to the SEC Office to confirm that prior to the issuance and offer for sale of structured debentures, the applicant shall have the derivative position with a person who is licensed or registered as a derivatives dealer under the *Derivatives Act B.E. 2546 (2003)* in order to prevent all potential risks that may arise from the issuance and offer for sale of structured debentures.”

Clause 2 The provisions of the first paragraph under Clause 24 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009 shall be repealed and replaced with the following provisions:

“Clause 24 The applicant shall arrange for credit rating by a credit rating agency approved by the SEC Office in accordance with the following criteria:

(1) For the offer for sale of short-term structured debentures that are not subordinated, any of the following credit ratings may be provided:

(a) Credit rating of each issue of the structured debentures offered for sale;

(b) Credit rating of the guarantor, only in the case of a fully guarantee and the guarantor is obliged to liabilities jointly with the debtor without revocability before the maturity of structured debentures;

(c) Credit rating of the applicant. If the applicant is a foreign bank under Clause 5(2), the credit rating of the Thai branch of such foreign bank shall also be

provided, with an exception in the case that, on the application date, the branch of such foreign bank is able to maintain the capital ratio based on the following calculation:

$$\frac{\text{Total capital of the branch of a foreign bank}}{\text{Risk-weighted assets} + X} \geq 1.5 \text{ times the capital ratio prescribed by the Bank of Thailand}$$

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

(2) For the offer for sale of structured debentures other than those in (1), any of the credit ratings under (1) (a) or (b) shall be provided.”

Clause 3 The following provision shall be added as Clause 25/1 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009:

“Clause 25/1 The approved entity which is a foreign bank under Clause 5(2) that has been granted an exemption of the credit rating of a branch of foreign bank under Clause 24(1) (c) shall disclose information relating to the total capital ratio it has maintained as at the last business day of a month by the 25th day of the following month on the website of the branch of foreign bank until the claims on the structured debentures are ended.”

Clause 4 The following provision shall be added as (1/1) of the first paragraph under Clause 34 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009:

“(1/1) The approved entity has never offered any type of debentures, bills or Sukuk in violation of the criteria for the private placement for sale to institutional investors or high net worth investors in the two years prior to the filing of the transfer restriction unless an exemption is granted by the SEC Office whereby the approved entity has demonstrated that such offering was reasonable and appropriate and sufficient measures for the offer for sale.”

Clause 5 The following provision shall be added as sub-clause (3) of the first paragraph under Clause 35 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009:

“(3) The approved entity has never offered any type of debentures, bills or Sukuk in violation of the criteria for the private placement for sale to institutional investors or high net worth investors in the two years prior to the filing of the transfer restriction unless an exemption was granted by the SEC Office whereby the approved entity has demonstrated that such offering was reasonable and appropriate and sufficient measures for the offer for sale.”

Clause 6 The provisions under Clause 40 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009 shall be repealed and replaced with the following provisions:

“Clause 40 In offering newly issued structured debentures for sale to institutional investors incorporated under Thai law or high net worth investors under Clause 32(1), the approved entity is not required to arrange for a credit rating, with the exception of the offer for sale of subordinated structured debentures or perpetual structured debentures to high net worth investors, in which case the approved entity shall arrange for any of the following credit ratings by a credit rating agency approved by the SEC Office prior to the offer for sale of the structured debentures:

- (1) Credit rating of each issue of the structured debentures offered for sale;
- (2) Credit rating of the guarantor, only in the case of a fully guarantee and the guarantor is obliged to liability jointly with the debtor without revocability before the maturity of the structured debentures.

The provision relating to the exemption of a credit rating prescribed in the second paragraph under Clause 24 and the continuous credit rating under Clause 25 shall apply to any case under the first paragraph.”

Clause 7 The provision of sub-clause (4) under Clause 41 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application*

for and Approval of Offer for Sale of Newly Issued Structured Debentures dated 13 March 2009 as amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor.15/2556 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures (No. 4)* dated 11 March 2013 shall be repealed and replaced with the following provision:

“(4) In the case of the offer for sale of newly issued structured debentures to institutional investors incorporated under Thai law or high net worth investors under Clause 32(1), the approved entity shall be required to register with the Thai Bond Market Association in accordance with the criteria prescribed in Clause 26. ”

Clause 8 The following provision shall be added as (5) under Clause 41 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 12/2552 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures* dated 13 March 2009 as amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor.15/2556 Re: Application for and Approval of Offer for Sale of Newly Issued Structured Debentures (No. 4)* dated 11 March 2013:

“(5) In offering for sale of structured debentures to high net worth investors under Clause 32(1), the approved entity must offer for sale of structured debentures through securities companies that are permitted to solicit or give advice on trading or investing in structured debentures, unless the approved entity is a securities company under that particular category, provided that the approved entity shall comply with the criteria prescribed for solicitation or giving advice on trading or investing in structured debentures.”

Clause 9 This Notification shall come into force as from 1 November 2014.

Notified this 29th day of September 2014.

(Vorapol Socratyanurak)
Secretary-General
Office of the Securities and Exchange Commission

Chairman
Capital Market Supervisory Board