

UNOFFICIAL TRANSLATION

Codified up to No. 3

As of 28 September 2018

*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 Security and Exchange Commission**

**No. Sor Jor. 41/2559**

**Re: Application for and Approval of Offer for Sale of Newly Issued Shares**

By virtue of Clause 21 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2559 Re: Application for and Approval of Offer for Sale of Newly Issued Shares* dated 30 September 2016 (2559), the SEC office hereby issues the following regulations:

**Clause 1** The following Notifications shall be repealed:

(1) *Notification of the Security and Exchange Commission No. Sor Jor. 61/2558 Re: Application for and Approval of Offer for Sale of Newly Issued Shares* dated 10 July 2015;

(2) *Notification of the Security and Exchange Commission No. Sor Jor. 94/2558 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 2)* dated 21 December 2015;

(3) *Notification of the Security and Exchange Commission No. Sor Jor. 2/2559 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 3)* dated 10 February 2016;

(4) *Notification of the Security and Exchange Commission No. Sor Jor. 10/2559 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 4)* dated 24 March 2016.

**Clause 2** The applicant wishing to offer for sale of newly issued shares shall file an application for an approval together with the supporting documents and in accordance with the following criteria:

(1) in case of an offer for sale of newly issued shares to the public for the first time for initial listing on the Stock Exchange or an offer for sale of newly issued shares of the public limited company in normal case as prescribed under Part 1, Chapter 2, Division 2 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2559 Re: Application for and Approval of Offer for Sale of Newly Issued Shares* dated 30 September 2016, the applicant shall file an application for an approval together with

supporting documents as prescribed in Clause 3 via electronic system provided by the SEC Office for such application. The application shall be in the Form 35-1 as provided in the SEC electronic system;

(2) in case where an offer for sale of newly issued shares by a public limited company with no doubt in good corporate governance as prescribed under Part 2, Chapter 2, Division 2 of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2559 Re: Application for and Approval of Offer for Sale of Newly Issued Shares* dated 30 September 2016, the applicant shall file an application for an approval in the Form 35-2 via electronic system provided by the SEC Office, together with one set of supporting documents as prescribed in Clause 4 in the form of printed document to the SEC Office;

(3) in case where an offer for sale of newly issued shares for any cases other than (1) and (2), the applicant shall file an application in the Form 35-1 as provided in the SEC electronic system, together with one set of supporting documents as prescribed in Clause 3 in the form of printed document to the SEC Office.

**Clause 3.** The supporting documents to the Form 35-1 shall be as follows:

(1) a document containing information of the company wishing to offer for sale of newly issued shares in the form and particulars of information set out in the registration statement pursuant to the *Notification of the Capital Market Supervisory Board concerning the Provisions relating to the Filing of Application for Securities Offering* and shall exclude information relating to the securities offering;

(2) a document containing information of the Director, Executive and Controlling Person in the following particulars:

(a) name and Surname (if there is a change, a former name or surname must also be specified);

(b) identification number;

(c) position held as director or executive in other company.

(3) a copy of documents of the applicant and its subsidiary which includes Memorandum of Association certified by the Ministry of Commerce, a copy of certificate issued by the Ministry of Commerce, a copy of the regulations certified by the Ministry of Commerce;

(4) a copy of documents of the applicant which includes the notice calling for the shareholders' meeting, the resolution of the shareholders' meeting approving the

issuance of shares;

(5) a copy of agreement entrusting other persons with power in whole in the management of the company (if any);

(6) a copy of latest audit report issued by a Compliance Unit having a duty in compliance with the regulations and an internal control report (if any);

(7) a copy of letter approving the increase of its capital, issued by a Compliance Unit having a duty in compliance with the regulations (in the case where approval is required by the regulations);

(8) a confirmation letter of the issuer's acknowledgement of the duties and responsibilities after the offer for sale of securities;

(9) a confirmation letter of the directors and executives' acknowledgement of the duties and responsibilities to report securities holding under Section 59;

(10) a letter of confirmation to perform duties of the financial advisor, if any;

(11) a document providing an opinion on the connected transactions by the audit committee;

(12) a document from the company's audit committee and independent director confirming their understanding on roles, duties and responsibilities as audit committee and independent director who are able to express independent opinions on the applicant's business operation;

(12/1)<sup>1</sup> letters of certification from the chief financial officer and the chief accountant, regarding their qualifications in accordance with the *Notification of the Capital Market Supervisory Board concerning the Provisions relating to Application and Approval for the Sale of Newly Issued Shares*;

(12/2)<sup>1</sup> a copy of the minutes of the audit committee's meeting when the audit committee considers the following matters (if any):

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<sup>1</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 30/2560 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 2)* dated 2 June 2017 (effective from 16 June 2017).

<sup>1</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 30/2560 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 2)* dated 2 June 2017 (effective from 16 June 2017).

(a) whether the chief financial officer has work experience which is directly beneficial to the applicant's operation and the duration of such work is in accordance with the *Notification of the Capital Market Supervisory Board concerning the Provisions relating to Application and Approval for the Sale of Newly Issued Shares* in cases where said person has no work experience in accounting or finance as prescribed in the Notification;

(b) whether the training curriculum for the chief financial officer and the chief accountant organized by the applicant consists of the content and the number of hours as specified on the SEC Office's website.

(13) a copy of the resolution of the board of directors' meeting whereby the board of directors appointed the general manager or any other person to act on its behalf (if any);

(14) a letter providing an audit committee's opinion on sufficiency and appropriateness of internal control system of the applicant and its subsidiary;

(15) a copy of the updated comment from the auditor concerning the vulnerability of the important internal accounting review (if any);

(16) a report or a copy of the latest internal audit report on significant working system and internal audit follow-up report together with schedule of authority (if any);

(17) a copy of report or opinion of the expert (if any);

(18) a checklist form of due diligence performed by the financial advisor or a copy;

(19) a statement demonstrating that the application for offer for sale of newly issued shares is in accordance with the regulation governing a holding company as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Application and Approval for the Sale of Newly Issued Shares*;

(20) a document or any supporting working papers in preparing pro-forma financial statements of the applicant in the case where its historical financial statements do not reflect the actual results of operations;

(21) a rehabilitation plan (if any);

(22) a document demonstrating that the Directors and Executives' names

are listed in the Database of the applicant's Directors and Executives;

(23)<sup>2</sup> financial statements of the applicant as follows:

(a) in case where the financial statements or consolidated financial statements for the year ended 31 December 2023 is the most recently completed fiscal year at the time the application is filed; the financial statements or the consolidated financial statements for the three most recent years, and the latest quarterly financial statements.

(b) in all other cases which do not fall under (1); the financial statements or the consolidated financial statements for the most recent years, and the latest quarterly financial statements;

(24)<sup>2</sup> in the case where the applicant is a public limited company whose core business is holding shares in other companies (holding company), annual financial statements of the company undertaking the core business and other financial statements or financial reports of said company which the applicant filed with the Stock Exchange of Thailand for the registration of newly issued shares as listed securities shall also be submitted. In this regard, the submission of annual financial statements of the company undertaking the core business shall be in accordance with the regulations specified in (24) *mutatis mutandis*;

The term "the company undertaking core business" under Paragraph 1 means the subsidiary company under Clause 24 (1) or a company as prescribed in Clause 24 (2) of the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2559 Re: Application for and Approval of Offer for Sale of Newly Issued Shares* dated 30 September 2016 in which its proportion is substantial compared to the size of the applicant.

(25) a copy of an applicant's letter of consent for an auditor to disclose the applicant's information gained from performing its duty to the financial advisor;

(26) a summary report concerning information and findings provided by

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<sup>2</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 47/2561 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 3)* dated 28 September 2018 (effective from 1 November 2018).

<sup>2</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 47/2561 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 3)* dated 28 September 2018 (effective from 1 November 2018).

the auditor to the financial advisor including proceedings conducted by the financial advisor on those findings;

(27) other documents as stated in the Guidelines for the Public.

In addition to the documents as prescribed in Paragraph 1, the applicant must also notify the auditor to prepare the audit working papers for the SEC Office.

<sup>1</sup>The documents as prescribed in Paragraph 1(8) (9) (12) (12/1) (12/2) (25) and (26) shall be submitted to the SEC Office in case of application for an approval of an offer for sale of newly issued share to the public for the first time. The documents as prescribed in Paragraph 1 (12/1) and (12/2) shall be submitted together with the application filed to the SEC Office from 1 January 2018 onwards.

**Clause 4** The supporting documents to the Form 35-2 shall be the documents as prescribed in Clause 3(2) (3) (4) (5) (7) and (13).

**Clause 5** In case the applicant cannot provide the information or supporting documents under Clause 3 or 4 due to reasonable and appropriate ground or limitation under other laws, the applicant may request a waiver of filing of such information or documents to the SEC Office. In considering the waiver under Paragraph 1, the SEC Office will take into account the need for submission of the information or documents for which the waiver was requested or other sufficient measures in substitution for the submission of such information and documents as well.

**Clause 6** All orders and circulars or prescribing guidelines or transitional provisions issued pursuant to the *Notification of the Security and Exchange Commission No. Sor Jor. 61/2558 Re: Application for and Approval of Offer for Sale of Newly Issued Shares* dated 10 July 2015 which have been in effect prior to the effective date of this Notification shall remain in effect to the extent that they are not inconsistent with nor contrary to the provisions of this Notification until other orders or circulars or prescribing guidelines are issued under this Notification.

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<sup>1</sup> Amended by the *Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 30/2560 Re: Application for and Approval of Offer for Sale of Newly Issued Shares (No. 2) dated 2 June 2017* (effective from 16 June 2017).

**Clause 7** Any references in other notifications made to the following Notifications of the Securities and Exchange Commission shall mean reference to this Notification:

*(1) Notification of the Security and Exchange Commission No. Sor Jor. 61/2558 regarding Application for and Approval of Offer for Sale of Newly Issued Shares dated 10 July 2015;*

*(2) Notification of the Security and Exchange Commission No. Sor Jor. 35/2552 regarding Application for and Approval of Offer for Sale of Newly Issued Shares dated 3 August 2009;*

*(3) Notification of the Security and Exchange Commission No. Sor Jor. 12/2543 regarding Application for and Approval of Offer for Sale of Newly Issued Shares dated 18 April 2000.*

**Clause 8.** This Notification shall come into force from 16 November 2016.

Notified this 30<sup>th</sup> day of September 2016.

-Signature-

(Mr. Rapee Sucharitakul)

Secretary-General

Office of the Securities and Exchange Commission