

(UNOFFICIAL TRANSLATION)

Codified up to No. 5

As of 28 November 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 Capital Market Supervisory Board
No. Tor Jor. 39/2559
Re: Application for Approval and Granting of Approval for
Offering of Newly Issued Shares

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)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force from 16 November 2016.

Clause 2 The following Notifications shall be repealed:

(1) *Notification of the Capital Market Supervisory Board No. Tor Jor. 28/2551 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares* dated 15 December 2008;

(2) *Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2552 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 2)* dated 20 February 2009;

(3) *Notification of the Capital Market Supervisory Board No. Tor Jor. 42/2553 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 3)* dated 3 December 2010;

(4) *Notification of the Capital Market Supervisory Board No. Tor Jor. 8/2554 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 4)* dated 25 March 2011;

(5) *Notification of the Capital Market Supervisory Board No. Tor Jor. 15/2554 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 5)* dated 25 July 2011;

(6) *Notification of the Capital Market Supervisory Board No. Tor Jor. 32/2554 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 6)* dated 29 December 2011;

(7) *Notification of the Capital Market Supervisory Board No. Tor Jor. 33/2555 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 7)* dated 7 August 2012;

(8) *Notification of the Capital Market Supervisory Board No. Tor Jor. 45/2556 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 8)* dated 12 November 2013;

(9) *Notification of the Capital Market Supervisory Board No. Tor Jor. 42/2557 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 9)* dated 7 November 2014;

(10) *Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2558 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 10)* dated 23 March 2015;

(11) *Notification of the Capital Market Supervisory Board No. Tor Jor. 24/2558 Re: Application for Approval and Granting of Approval for Offering of Newly*

Issued Shares (No. 11) dated 10 July 2015;

(12) *Notification of the Capital Market Supervisory Board No. Tor Jor. 52/2558 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 12)* dated 13 July 2015;

(13) *Notification of the Capital Market Supervisory Board No. Tor Jor. 74/2558 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 13)* dated 28 October 2015.

Clause 3 In this Notification and the Application Form for approval of offering of newly issued shares specified in accordance with this Notification:

The terms “*institutional investor*” “*listed company*” “*juristic person under specific law*” “*parent company*” “*subsidiary*” “*same-level subsidiary*” “*associate company*” “*controlling power*” “*connected person*” “*executive*” “*major shareholder*” “*controlling person*” “*person who may have a conflict of interest,*” and “*consolidated financial Statements*” shall have the same meaning as the definition of such words in the *Notification of the Securities and Exchange Commission Re: Determination of Definitions in the Notifications concerning Issuance and Offering of Securities*;

“*executive director*” means a director holding an executive position, a director responsible for any action deemed to be taken by an executive, and shall include a director authorized to bind a company unless it can be demonstrated that it is a joint authorization with other directors for a transaction that has been approved by the board of directors;

“*governmental agency*” means a central administration under the Law on State Administration;

“*significant shareholder*” means a shareholder who holds shares in any business at an amount exceeding ten percent of the total voting shares, and whose shareholding shall include the shares held by *connected persons*;

“*financial institution business*” means a commercial bank business, finance business, securities business, credit foncier business, life insurance business, and loss insurance business, either operating under Thai or foreign law;

“*local auditor*” means an auditor who meets the qualifications to perform audits in accordance with local law requirements;

“*alien*” means;

(1) a natural person who does not have Thai nationality;

(2) a *juristic person* that is not registered in Thailand unless such *juristic person* has a shareholder who is a person with Thai nationality holding, either directly or indirectly, more than fifty percent of the total voting shares of such juristic person;

(3) a *juristic person* that is registered in Thailand and has the following persons collectively holding more than fifty percent of the total voting shares of such *juristic person*:

(a) a natural person under (1);

(b) a *juristic person* under (2);

(4) a *juristic person* whose shares are held at all levels of the chain of shareholding at a total amount more than fifty percent of the total voting shares, starting with the shareholding of the person under (3);

(5) a *juristic person* wherein a person under (1) (2) (3) or (4) has *controlling power*.

“*foreign company*” means a company established under foreign law;

“*Exchange*” means the Stock Exchange of Thailand.

Part 1

Scope of Effectiveness and Authority of the SEC Office

Clause 4 An offering of newly issued shares shall be in accordance with the following regulations:

(1) a public offering of newly issued shares shall be in accordance with the following regulations:

(a) an initial public offering shall be in accordance with the regulations specified under Chapter 1 of Part 2;

(b) an offering of capital shares issued by a *listed company* shall be in accordance with the regulations specified under Chapter 2 of Part 2, as follows:

1. an offering of newly issued shares in a general case shall be in accordance with the regulations specified under Division 1;

2. an offering of newly issued shares by a *listed company* without any issue related to good corporate governance shall be in accordance with the regulations specified under Division 2;

(c) an offering of capital shares of a company whose shares are not listed securities shall be in accordance with the regulations specified under Chapter 1 of Part 2, *mutatis mutandis*.

(2)³ a private placement of newly issued shares shall be in accordance with the regulations specified in Part 3 except an offering subject to specific regulations prescribed in other notifications. For example:

(a) an offering of shares in accordance with the *Notification of the Capital Market Supervisory Board Re: Approval for Private Placement of Newly Issued Shares by Listed Company*;

(b) an offering of shares in accordance with the *Notification of the Capital Market Supervisory Board Re: Approval for Offering of Newly Issued Shares to Cornerstone Investors for Public Offering of Newly Issued Shares*.

A public offering of newly issued shares in the following cases shall be in accordance with the regulations specified in Clause 10:

(1) An offering of newly issued shares in a general case under the condition that a subscriber shall be a shareholder of the issuing company and the subscription amount shall not exceed the shareholding proportion, and such offering is in accordance with the resolution of the shareholders’ meeting whereby the shares shall be offered impartially to all shareholders except any shareholder who will cause the

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 4)* dated 13 March 2018 (effective on 1 April 2018).

company to be bound by duties under foreign law;

(2) An offering of newly issued shares to the company's creditor in accordance with the rehabilitation plan approved by the Court under the *Bankruptcy Law* only in the case where such rehabilitation plan requires the creditor to accept such newly issued shares in lieu of debt repayment.

Clause 5 The regulations concerning approval of share offering under this Notification shall bind the following persons:

- (1) the promoter of a public limited company under the *Law on Public Limited Company*;
- (2) a public limited company under the *Law on Public Limited Company*;
- (3) a *juristic person* under specific Thai law.

Clause 6 A public limited company shall be approved to offer newly issued shares under this Notification only when no repurchased shares remain unsold unless it is a joint offering with the newly issued shares on the condition that the repurchased shares shall be allocated before the newly issued shares.

Clause 7 In the case where it appears to the SEC Office a fact causing any of the following suspicious grounds, the SEC Office may not approve the application for an offering of shares:

- (1) the applicant or the offering has the characteristics or the structure in accordance with the regulations or the conditions for approval under this Notification, but a certain fact leads to the consideration that the true objective or substance of such offering has the nature of avoiding compliance with the provisions under the *Law on Securities and Exchange* or this Notification;
- (2) the offering may contradict a public or state policy;
- (3) the offering may cause a negative impact on the credibility of the Thai capital market;
- (4) the offering may cause damage or unfairness to the investors, or cause investors not to receive correct or sufficient information for making investment decisions.

Clause 8 In the case where any of the following characteristics exists, the SEC Office may exempt the regulations under this Notification from the consideration of an application, or may not enforce the conditions under this Notification onto an approved offering:

- (1) there is a clear fact leading to the consideration that the regulations or conditions to be exempted are insignificant to the consideration of the application in such case, and that the benefits to be gained from compliance with such regulations or conditions are not cost-effective;
- (2) the applicant is bound by other laws, which causes its inability to comply with the regulations or conditions to be exempted;
- (3) the applicant has other measures that are sufficient and capable of replacing compliance with the regulations or conditions to be exempted.

The exemption under Paragraph 1 shall take into primary consideration the appropriateness and adequacy of the information supporting investment decision-making and measures for investor protection. In this regard, the SEC Office may

determine conditions for the applicant to comply with as well.

Clause 9 In the case where it appears to the SEC Office a fact causing any of the following suspicious grounds, the SEC Office may suspend a private placement of newly issued shares under Part 3, or revoke the approval for an offering of newly issued shares in such case:

(1) the approved applicant complies with the conditions after approval of an offering of newly shares defectively or inappropriately, or will be unable to comply therewith;

(2) investors may not receive material information for making investment decisions;

(3) the offering of newly issued shares has a characteristic that may be liable to be an avoidance of compliance with other regulations issued under the *Securities and Exchange Act B.E. 2535(1992)*.

Clause 10 A public limited company engaging in a public offering whereby the subscribers shall be the shareholders of the company under (1) of Paragraph 2 of Clause 4, or a share offering to the creditors in accordance with the business rehabilitation plan under (2) of Paragraph 2 of Clause 4 shall be deemed to have obtained an approval for such offering of newly issued shares.

The company granted an approval under Paragraph 1 shall proceed as follows:

(1) in case of a public offering whereby the subscribers shall be the shareholders of the company under (1) of Paragraph 2 of Clause 4, the company shall complete the offering within six months as from the date on which the shareholders' meeting approves such offering of newly issued shares;

(2) in case of an offering of shares to the creditors of the business rehabilitation plan under (2) of Paragraph 2 of Clause 4, the company shall complete the offering within the period specified in the business rehabilitation plan.

Clause 11 In case of a public offering of newly issued shares under Part 2, the approved applicant has the duty to proceed in accordance with the *Notification of the Capital Market Supervisory Board concerning Offering of Newly Issued Shares and Share Warrants of Equity Issuing Companies* as well.

Part 2

Public Offering of Newly Issued Shares

Chapter 1

Initial Public Offering of Newly Issued Shares

Division 1

Approval Rules and Application Procedure

Clause 12 A public limited company applying for an initial public offering of newly issued shares as specified in Clause 21 shall be granted an approval for such offering, provided that the company can demonstrate to the SEC Office that it has the qualifications in accordance with the rules on good corporate governance and other requirements as follows:

(1) protection of shareholders' rights and fair treatment:

(a) having a shareholding structure that is clear, fair and in accordance with the regulations in Clause 13 and Clause 14;

(b) directors, *executives* and *major shareholders* do not have any interest that may be in conflict with the best interest of the business, unless the applicant can demonstrate that it has adopted a mechanism which ensures that the management of the company shall be for the best interest of the business and its shareholders as a whole;

(c) there is no reason to doubt that the management mechanism will be unable to protect the rights of the shareholders or to treat the shareholders fairly.

(2) roles, duties and responsibilities of directors, *executives* and

controlling persons:

(a) the board of directors has a good understanding of its roles, duties, and responsibilities to the shareholders who are the public and can demonstrate that it can perform such duties;

(b) the structures of the board of directors and the management have sufficient checks and balances, which shall at least be in accordance with the regulations in Clause 17;

(c) the names of directors and *executives* are on the database of directors and *executives* of issuing companies under the *Notification of the Capital Market Supervisory Board concerning Rules for Showing Persons' Names on the Database of Directors and Executives of Securities Issuing Companies*.

In the case where the applicant is a private institution of higher education under the *Law on Private Institution of Higher Education*, it shall not appear that a director of the council of such private institution of higher education has an untrustworthy characteristic under the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives, mutatis mutandis*.

(d) it shall not appear a fact that the controlling person has an untrustworthy characteristic under the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives, mutatis mutandis*.

(3) disclosure of information:

(a)² there is no reason to doubt that the information disclosed to the public or the SEC Office is incomplete, contrary to facts, insufficient for making investment decisions, or contains a statement that may mislead investors;

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 43/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 3)* dated 29 June 2017 (effective on 16 July 2017).

(b)⁴ the following financial statements of the applicant and its consolidated financial statements shall be correct, reliable and in accordance with the regulations under Clause 18:

1. 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.

2. 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.

(c) there is no reason to doubt that the applicant lacks a sufficient system for preparing and disclosing information continuously and reliably in accordance with the specified regulations.

(4) other qualifications:

- (a) not being involved in an illegal business;
- (b) not having the characteristics under Clause 19;
- (c) having received an explicit resolution of the

shareholders' meeting to approve the offering this time, and such resolution shall not have been passed more than one year up until the filing date of the application.

Clause 13 The shareholding structure of the applicant, its subsidiary and *associate company* shall be in accordance with the following regulations:

(1) being able to reflect the *controlling power* and the interest of the shareholders clearly;

(2) not having any *person who may have a conflict of interest* with the applicant holding shares in the subsidiary or *associate company* at an amount exceeding ten percent of the total voting shares of such subsidiary or *associate company* unless it can be demonstrated that the arrangement of the shareholding structure of the subsidiary or *associate company* is for the best interest of the applicant.

Clause 14 The cross-shareholding patterns between the applicant and another company must not be inconsistent with, or contrary to, the regulations under Clause 15 unless the applicant can demonstrate that it meets certain conditions prescribed in Cause 16.

For the interest of the consideration in accordance with Clause 15 and 16:

(1) the calculation of shareholding proportion shall be based on the total voting shares of the *juristic person*;

(2) the term "*another company*" shall also mean a limited partnership.

Clause 15 There shall be no cross-shareholding between the

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

applicant and **another company**, which is inconsistent with, or contrary to, the following regulations:

- (1) in case of shareholding of more than fifty percent:
 - (a) the applicant shall not engage in a cross-shareholding with **another company** in the case where such company holds more than fifty percent of the applicant's shares;
 - (b) in the case where the applicant holds more than fifty percent of another company's shares, it shall not appear that such company engages in a cross-shareholding with the applicant;
 - (c) in the case where the applicant holds more than fifty percent of shares of at least two other companies or more, it shall not appear that such other companies engage in cross-shareholding with each other.
- (2) in case of shareholding of more than twenty-five percent but less than fifty percent:

- (a) the applicant shall not engage in a cross-shareholding with another company at an amount exceeding ten percent in the case where such company holds shares of the applicant at an amount exceeding twenty-five percent but not exceeding fifty percent;

- (b) in the case where the applicant holds shares in another company at an amount exceeding twenty-five percent but not exceeding fifty percent, it shall not appear that another company engages in a cross-shareholding with the applicant at an amount exceeding ten percent.

- (3) in case of shareholding not exceeding twenty-five percent:

- (a) the applicant shall not engage in a cross-shareholding with another company at an amount exceeding twenty-five percent in the case where such company holds shares of the applicant at an amount not exceeding twenty-five percent;

- (b) in the case where the applicant holds shares in another company at an amount not exceeding twenty-five percent, it shall not appear that such company engages in a cross-shareholding with the applicant at an amount exceeding twenty-five percent.

For the interest of the consideration under Paragraph 1:

- (1) the shareholding of the applicant or another company shall be considered by including the shareholding, either direct or indirect, of the following persons as the shareholding of the applicant or another company, as the case may be:

- (a) the applicant or another company, as the case may be, who holds shares indirectly through other **juristic persons** at all levels of the chain of shareholding as long as the amount of shares held at each level still exceeds twenty-five percent of the shares of such other **juristic persons**;

- (b) a shareholder of the applicant or a shareholder of the person under (a) in the line of the applicant, who is a natural person and holds shares of the applicant or the person under (a) at an amount exceeding twenty-five percent of the shares of the applicant or the person under (a);

- (c) a shareholder of another company or a shareholder of the person under (a) in the line of such company, who is a natural person and holds shares in such company or the person under (a) at an amount exceeding twenty-five percent of such company or the person under (a);

- (d) the shareholding of the spouse or a minor child of the shareholder under (b) or (c).

(2) the SEC Office shall have the power to specify the inclusion of the shareholding of a person with the characteristic of indirect cross-shareholding which affects the clarity of the shareholding structure.

Clause 16 The applicant may be granted a waiver for cross-shareholding, either direct or indirect, with another company without being subject to the regulations under Clause 15 upon compliance with any of the following conditions:

(1) a group of other shareholders who are not a person with relationship holds shares in the applicant or another company, as the case may be, in an aggregate amount exceeding the shareholding proportion of the applicant or such company under Clause 15, as the case may be, which is capable of maintaining checks and balances on the exercise of the **controlling power** over the applicant or such company, as the case maybe;

(2) such cross-shareholding is necessary and appropriate, and does not cause unfair treatment toward shareholders.

For the interest of the consideration in accordance with Paragraph 1, the term “**person with relationship**” shall mean a **person who may have a conflict of interest, mutatis mutandis**.

Clause 17 The structure of the board of directors and the management of the applicant shall be in accordance with the following regulations:

(1) at least one third of the board size shall be independent directors, and in any cases, the number shall not be fewer than three;

(2) each independent director shall have the characteristics in accordance with the following regulations;

(a) holding no more than one percent of the total voting shares of the applicant, **parent company**, subsidiary, **associate company**, **major shareholder** or controlling person of the applicant, including shares held by the **connected persons** of such independent director;

(b) not being or having been an **executive director**, employee, staff, advisor earning regular monthly salary or the controlling person of the applicant, its **parent company**, subsidiary, **associate company**, **same-level subsidiary**, **major shareholder** or controlling person, unless the foregoing status has ended for at least two years prior to the date of filing the application with the SEC Office. In this regard, such prohibited characteristics shall exclude the case where an independent director used to be a government official or advisor of a **governmental agency**, which is a **major shareholder** or the controlling person of the applicant;

(c) not being a person who is related by blood or legal registration as father, mother, spouse, sibling and child, including spouse of child, other directors, **executives**, **major shareholders**, controlling person or person to be nominated as director, executive or controlling person of the applicant or its subsidiary;

(d) not having or having had a business relationship with the applicant, its **parent company**, subsidiary, **associate company**, **major shareholder** or controlling person in a manner that may interfere with independent discretion, which includes not being or having been a **significant shareholder** or the controlling person of any person having a business relationship with the applicant, its **parent company**, subsidiary, **associate company**, **major shareholder** or controlling person, unless such foregoing relationships have ended for at least two years prior to the date of filing the

application with the SEC Office.

The business relationship under Paragraph 1 shall include normal business transactions, rental or lease of real estate, transactions related to assets or services or granting or receipt of financial assistance through receiving or extending loan, guarantee, providing assets as collateral, and any other similar actions, which result in the applicant or the counterparty being subject to indebtedness payable to the other party in an amount starting from three percent of the net tangible assets of the applicant or from twenty million baht or more, whichever amount is lower. In this regard, the calculation of such indebtedness shall be in accordance with the method for calculating the value of related party transactions under the *Notification of the Capital Market Supervisory Board Re: Rules on Execution of Related Party Transactions, mutatis mutandis*. In any case, the consideration of such indebtedness shall include the indebtedness incurred during the period of one year to the date of establishing the business relationship with the related person;

(e) not being or having been an auditor of the applicant, its ***parent company***, subsidiary, ***associate company***, majority shareholder, or controlling person, and not being a ***significant shareholder***, controlling person, or partner of the audit firm which employs the auditor of the applicant, its ***parent company***, subsidiary, ***associate company***, majority shareholder, or controlling person, unless the foregoing relationship has ended for not less than two years prior to the date of filing the application with the SEC Office;

(f) not being or having been a provider of professional services, which includes serving as a legal advisor or financial advisor being paid with a service fee of more than two million baht per year by the applicant, its ***parent company***, subsidiary, associated company, majority shareholder, or controlling person, and not being a ***significant shareholder***, controlling person, or partner of such provider of professional services, unless the foregoing relationship has ended for not less than two years prior to the date of filing the application with the SEC Office;

(g) not being a director who is appointed as the representative of directors of the applicant, ***major shareholder***, or shareholder who is a ***connected person*** of a majority shareholder;

(h) not undertaking any business of the same nature and in significant competition with the business of the applicant or its subsidiary, or not being a significant partner in a partnership, or an ***executive director***, employee, staff, advisor earning regular monthly salary, or holding more than one percent of the voting shares of another company that undertakes a business of the same nature and in significant competition with the business of the applicant or its subsidiary;

(i) not having any other characteristics that cause the inability to express independent opinions on the business operation of the applicant.

After being appointed as an independent director with the characteristics in accordance with (a) to (i), the independent director may be assigned by the board of directors to make a decision on the business operation of the applicant, its ***parent company***, subsidiary, ***associate company***, ***same-level subsidiary***, ***major shareholder*** or controlling person in the form of collective decision.

In the case where the person appointed by the applicant as an independent director has or used to have a business relationship or provision of professional services at a value exceeding the specified amount under (d) or (f) of Paragraph 1, the applicant shall be granted an exemption from such prohibition of having or having had a business relationship or provision of professional services at such

excessive value, provided that the applicant has obtained an opinion of the board of directors indicating that after a consideration in accordance with the principle in Section 89/7, the appointment of such person does not affect the performance of duties and the giving of independent opinions, and that the following information has also been disclosed in the notice calling the shareholders' meeting under the agenda for the appointment of independent directors:

(a) the nature of the business relationship or professional services that deems such person to have characteristics not in compliance with the specified regulations;

(b) the reason and necessity for keeping or appointing such person as an independent director;

(c) the opinion of the board of directors of the applicant concerning the proposal to appoint such person as an independent director.

For the purpose of (e) and (f) of Paragraph 1, the term "partner" means a person assigned by an audit firm or a provider of professional services to affix signature on the audit report or the professional service report (as the case may be) on behalf of such *juristic person*.

(3) there shall be an audit committee with at least three members whose characteristics comply with the following regulations:

(a) being appointed by the board of directors or the shareholders' meeting of the applicant to take up the position in the audit committee;

(b) being an independent director in accordance with (2) and not being:

1. a director assigned by the board of directors to take part in the business decision of the applicant, its *parent company*, subsidiary, associated company, *same-level subsidiary*, *major shareholder*, or *controlling person*, and;

2. a director of the *parent company*, *subsidiary*, or *same-level subsidiary* only in the case where such companies are listed companies.

(c) having duties in the same nature as specified in the *Notification of the Stock Exchange of Thailand Re: Qualifications and Scope of Work of the Audit Committee*;

(d) having adequate knowledge and experiences to perform duties as an audit committee member, provided that at least one member of the audit committee shall have adequate knowledge and experiences to review the reliability of financial statements.

(4) In the case where the board of directors appoints a manager or another person to act on the board's behalf in any matter, such appointment shall be made in writing or clearly recorded in the resolution of the board of directors' meeting, and the scope of power and duties of the authorized person shall be specified clearly;

(5)¹ The person assigned to the highest responsibility in Accounting and Finance shall have the following qualifications:

(a) holding at least a bachelor's degree or equivalent;

(b) having been assigned to the highest responsibility in Accounting and Finance by the applicant for at least one year prior to the filing date of the

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 2)* dated 2 June 2017 (effective on 16 June 2017).

application with the SEC Office unless there is a necessary and appropriate ground to receive a waiver from the SEC Office in any of the following cases:

1. the applicant can demonstrate that such person has worked in Accounting and Finance for the applicant for at least one year before being assigned to the highest responsibility in Accounting and Finance for the applicant;

2. the applicant can demonstrate that the assigned person in direct charge of the supervision of the accounting preparation under (6) or the personnel in Accounting of the applicant has knowledge and understanding of the accounting system of the applicant, and such person has worked in Accounting for the applicant for at least one year prior to the filing date of the application and is responsible for the preparation of the financial statements of the applicant and capable of preparing the financial statements of the applicant for the latest period which shall be submitted to the SEC Office together with the application within the specified period of preparation and submission imposed on listed companies.

(c) having work experiences in any of the following areas:

1 Accounting or Finance for at least three years during the period of five years prior to the filing date of the application;

2 working for any business or organization deemed by the Audit Committee of the applicant to benefit directly to the business operation of the applicant and such work experience has continued for at least five years during the period of seven years prior to the filing date of the application with the SEC Office;

(d) having passed the training concerning preparation in Accounting and Finance or continued development of knowledge in Accounting as specified by the SEC Office on the website of the SEC Office. In the case where the applicant personally organizes a curriculum to accommodate the continued development of knowledge in Accounting, the applicant shall demonstrate that the contents and the training hours of the curriculum have been considered by the Audit Committee of the applicant to be in accordance with the criteria specified by the SEC Office.

(6)¹ The assigned person to the direct responsibility of accounting supervision shall have the following qualifications:

(a) being an account preparer under the Law on Accounting;

(b) having work experience in Accounting for at least three years during the period of five years prior to the date of filing the application with the SEC Office;

(c) having passed the training that demonstrates continued development of knowledge in Accounting as specified by the SEC Office on the website of the SEC Office. In the case where the applicant organizes such curriculum personally, it shall be demonstrated that the contents and the training hours of the curriculum have been considered by the Audit Committee of the applicant to be in accordance with the criteria specified by the SEC Office.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 2)* dated 2 June 2017 (effective on 16 June 2017).

¹ The regulations concerning the qualifications of the assigned person to the highest responsibility in Accounting and Finance and the assigned person to the direct responsibility in accounting supervision of the applicant under (5) and (6) of Paragraph 1 shall apply to applications filed with the SEC Office as from 1 January 2018.

Clause 18⁴ The financial statements as specified in Clause 12(3)(b) 1. or 2., as the case may be, shall be in accordance with the following regulations:

(1) being prepared in accordance with the financial reporting standard and other regulations issued in accordance with Section 56;

(2) having been audited or reviewed (in case of quarterly financial statements) by an auditor whose name appears on the approved list of the SEC Office who has fully performed duties in accordance with the auditing standard;

(3) the audit report prepared by the auditor under (2) shall not contain a statement in the following manners:

(a) the preparation and disclosure of the information in the financial statements are not in accordance with the financial reporting standard governing the preparation of such financial statements;

(b) the auditor's scope of work with regard to auditing or reviewing, as the case may be, is limited by an action or failure to act of the issuing company or its director or *executive*.

In the case where the applicant has a *subsidiary*, the applicant shall demonstrate that such *subsidiary* is able to prepare financial information and other information needed to be disclosed in order for the applicant to prepare financial statements in accordance with the accounting standard specified in Paragraph 1(1).

Clause 19 The applicant shall not have any of the following characteristics unless the conditions specified in Clause 20 are met:

(1) within a period of five years prior to the filing date of an application for an offer for sale of newly issued shares, the applicant shall not have any of the following characteristics:

(a) having a record of contravening a regulation or condition related to securities offering in a significant matter;

(b) having been rejected by the SEC Office regarding an application for an offer for sale of newly issued shares due to a significant suspicious ground regarding management mechanism in any of the following manners:

1. having a possibility to be unable to treat shareholders fairly by giving benefits to any group of shareholders, which will create an advantage over other shareholders or give inappropriately more benefits than other shareholders;

2. being unlikely to be able to protect shareholders' rights by allowing any person to receive financial gain beyond what should be received normally

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 2)* dated 2 June 2017 (effective on 16 June 2017).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

or by causing the company to lose a benefit that should have been received.

(c)² having an application rejected, or an approval for an offer for sale of newly issued shares revoked, by the SEC Office on a suspicious ground related to disclosure of information to the public or the SEC Office that was incomplete, contrary to facts, insufficient for making an investment decision, or that misled investors in a manner of concealing or disguise or making up non-existing facts in material transactions or operation.

(d) having withdrawn an application for an offer for sale of newly issued shares without a clarification of the suspicious grounds under (b) or (c) to the SEC Office or with a clarification that does not contain facts or reasonable ground for refuting the suspicious grounds under (b) or (c).

(2) within a period of ten years prior to the filing date of the application for an offer for sale of newly issued shares, the applicant has been sentenced by a final judgement in an offense concerning property, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(3) being currently subject to a criminal complaint or legal prosecution for an offense concerning property by a relevant agency, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(4) being a person subject to a suspicious ground of being arranged for the person with the characteristics under (1)(2) or (3) to avoid compliance with the regulations for consideration under (1)(2) or (3) imposed by the SEC Office.

Clause 20 The provisions under Clause 9(1) and (2), as the case may be, shall not apply to the applicant who has rectified the cause, work system, management structure and operating control, which has caused the applicant to have the characteristics under Clause 19(1) or (2).

Clause 21 A public limited company intending to issue an initial public offering shall proceed as follows;

(1) file an application with the SEC Office together with supporting documents and evidence according to the forms and procedures specified by the SEC Office;

(2) arrange for a financial advisor on the approved list of the SEC Office to jointly prepare the application;

(3) pay the application fee to the SEC Office when the application together with the supporting documents and evidence have been prepared correctly and completely according to the Licensing Manual for the Public, at the rate prescribed in the *Notification of the Securities and Exchange Commission concerning Determination of Fees on the Application for Offering of Newly Issued Shares and the Application for Securitization Project*.

In the case where the applicant intends to request a waiver of the regulations under this Chapter, the applicant shall submit an application for the waiver

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 43/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 3)* dated 29 June 2017 (effective on 16 July 2017).

together with supporting documents and evidence to the SEC Office before the SEC Office commences the consideration of the application under Paragraph 1 in accordance with the procedures and methods specified in the Licensing Manual for the Public. In this regard, the SEC Office shall complete the consideration of the waiver within the same period of considering the application under Paragraph 1.

In the case where it is necessary for the SEC Office to visit the place of business or any other establishment of the applicant or its *subsidiary* located outside of Bangkok or its periphery, the applicant shall be responsible for all accommodations and travelling expenses incurred from such visit according to the criteria specified by the SEC Office.

Clause 22 After receiving an application together with correct and complete supporting documents and evidence according to the Licensing Manual for the Public, the SEC Office shall proceed as follows:

(1) review the facts according to the procedures and methods specified in the Licensing Manual for the Public and notify the issues and observations derived from the review of such facts for the applicant to clarify within the period specified in the notifying letter. The process, in this regard, shall be completed within 120 days from the date of receiving the application together with the correct and complete supporting documents and evidence according to the Licensing Manual for the Public;

(2) notify the result of the consideration of the application within forty-five days from the date of receiving the clarification to the observations derived from the review of the facts from the applicant.

Division 2

Additional Rules for Offering of Newly Issued Shares by Holding Company

Clause 23⁴ In the case where the applicant under Clause 12 is a public limited company whose core business is holding shares in other companies (holding company) and does not engage in any other material business, the applicant shall also have the characteristics in accordance with the following regulations:

(1) one or more core businesses is operated through one or more companies that operates core business in accordance with the regulations under Clause 24;

(2) the total size of all companies operating core business under Clause 24 when compared to the size of the applicant shall be not less than seventy-five percent. In this regard, the size of the subsidiaries under Clause 24(1) or the companies under Clause 24(2) shall be not less than twenty-five percent of the size of the applicant;

(3) the operation of the applicant shall not have the characteristics of

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

investment company and there shall not be any other indication that the operation of the applicant is for the purpose of giving investment returns to investors in the same manner as operating an investment management business, except an investment in another company operating the core business under Clause 24, in which case the total size of all other companies shall not be more than twenty-five percent of the size of the applicant;

(4) there shall be an oversight mechanism that enables the applicant to oversee the management and account for the operation of the subsidiaries under Clause 24(1) as if being a unit of the applicant, and there shall be measures for monitoring the management of such subsidiaries to protect the interest of the investment money of the applicant in accordance with the regulations under Clause 25;

(5) the *subsidiary* under Clause 24(1) or the company under Clause 24(2) shall have the same qualifications as the applicant in accordance with the regulations under Clause 12, *mutatis mutandis*, except the regulations concerning the structure of the board of directors and management arrangement under Clause 12(2)(b) and the financial statements under Paragraph 1 of Clause 18;

(6) in the case where the *subsidiary* under Clause 24(1) or the company under Clause 24(2) is a foreign company, the following regulations shall apply:

(a) at least one director of such company shall have residence in Thailand;

(b) it can be demonstrated that the laws and regulations of the home country of such company cover the business management and investor protection in significant matters comparable to the Thai law governing public limited companies, or that a mechanism is put in place to ensure that the business management and investor protection in such significant matters is comparable to the Thai law governing public limited companies.

(7) in the case where the *subsidiary* under Clause 24(1) or the company under Clause 24(2) of the applicant is a *foreign company* whose shares are held by *aliens* at a collective amount exceeding fifty percent of the total voting shares of the applicant or any such *alien* holding shares at any amount has a significant role of managing the applicant, the following regulations shall also apply in addition to the regulations under (6):

(a) at least two directors of the applicant shall have Thai nationality and residence in Thailand, and one of whom shall be a member of the audit committee under Clause 17(3);

(b) there shall not be any suspicious ground that the home regulator of the capital market of the jurisdiction wherein such company is established or operates a material business will be unable to render assistance to the SEC Office in examining or providing information related to contravention or non-compliance with the provisions of the *Law on Securities and Exchange* and the regulations issued by virtue of such law;

(c) the applicant shall be able to demonstrate that a binding contract has been made with the financial advisor who jointly prepares the application for the performance of the duties specified in Paragraph 2 for three consecutive years from the effective date of the registration statement for securities offering and the draft prospectus, and that such contract shall not contain any provision related to the termination of the contract in any manner that may grant the applicant or the financial advisor a ground for avoiding performance of such duties.

The contract under Paragraph 1 shall require that the financial advisor clarify upon occurrence of any incident under the provisions in Clause 21(2)(3) and (4) of the *Notification of the Office of the Securities and Exchange Commission concerning Granting of Approval of Financial Advisor and Scope of Work*, and monitor, supervise and give advice to

the applicant regarding performance of duties after an issuance and offering of securities especially the following duties:

1. preparation and submission of the annual registration statement and other important information of the applicant;
2. compliance with the regulations under Section 57 and Section 58;
3. compliance with the regulations concerning related party transactions and the regulations concerning the execution of material transactions liable to acquisition or disposal of assets, including joint preparation of reports and relevant documents.

The SEC Office shall have the power to grant an exemption from compliance with the regulations under Paragraph 1 and 2, in full or in part, and may also specify conditions to be met by the applicant.

(d) the value of the shares to be offered for sale shall be within the quota specified by the Bank of Thailand for controlling capital market transactions related to foreign currency.

The provisions under Paragraph 1(6)(b) and (7) shall not be applicable to the case where the size of the *subsidiary* under Clause 24(1) or the company under Clause 24(2) which is a *foreign company* is of insignificant proportion compared to the size of the applicant.

The consideration of the size of the company and the size of the company under Paragraph 1(2) and (3) and Paragraph 2 shall be in accordance with the regulations and procedures specified by the SEC Office.

Clause 24 A company to be deemed the company operating a core business under Paragraph 1(1) of Clause 23 of the applicant, which is a public limited company engaging in a business of holding shares in other companies (holding company) under Clause 23 shall be in accordance with the following regulations:

- (1) being a *subsidiary* of the applicant;
- (2) being a company whose shares cannot be held by the applicant up to a proportion qualified to be a *subsidiary* under (1) due to limitation under other laws or subject to the conditions for joint venture with the governmental section whereby the applicant holds shares for at least forty percent of the total voting shares of such company, and the applicant shall be able to demonstrate its participation in the management of such company at least according to the proportion of shareholding in such company;
- (3) being an *associate company* with any of the following characteristics:
 - (a) being a company whose shares are held by the applicant at an amount exceeding twenty-five percent of the total voting shares;
 - (b) being a company whose shares are held by the applicant at an amount starting from twenty percent but not exceeding twenty-five percent of the total voting shares, and the applicant shall be able to demonstrate its ability to participate in the decision making on significant matters of such company in a similar manner as a shareholder in a proportion exceeding twenty-five percent of the total voting shares of the company;
 - (c) being a company whose shares shall be held by the applicant at an amount exceeding twenty-five percent of the total voting shares after the offering of newly issued shares has been approved this time.

Clause 25 The applicant shall be able to demonstrate a mechanism for supervising the *subsidiary* under Clause 24(1) at least in the following manners:

- (1) assigning a person to be a director or *executive* of the *subsidiary* at least according to the proportion of shareholding in the *subsidiary*, and having a rule or requirement that the assignment of such person shall be approved by the board of directors'

meeting of the applicant;

(2) specifying clearly the scope of duties and responsibilities of directors and *executives* appointed under (1), which shall include:

(a) specifying a clear scope of power to exercise discretion that results in the requirement for the voting consideration of such directors and *executives* at the board of directors' meeting of the *subsidiary* to be pre-approved by the applicant;

(b) monitoring and supervising that the *subsidiary* disclose financial and non-financial information, execution of connected transactions and acquisition or disposal of material assets completely and accurately;

(c) monitoring and supervising that directors and *executives* of the *subsidiary* act in accordance with the duties and responsibilities specified by law.

(3) having a supervisory mechanism that results in the requirement for the execution of transactions between the *subsidiary* and *connected persons*, acquisition or disposal of assets, or any other material transactions of the *subsidiary* to be pre-approved by the resolution of the board of directors' meeting or the shareholders' meeting of the applicant. In this regard, such transactions of the *subsidiary* shall be considered in the same manner and size of a transaction of the applicant that requires an approval according to the resolution of the board of directors' meeting or the shareholders' meeting of the applicant.

Clause 26 The regulations under Clause 25(1) and (2) shall apply to the company operating core business under Clause 24(2) and (3), *mutatis mutandis*.

Chapter 2 Offering of Capital Shares by Listed Company

Division 1 Offering of Newly Issued Shares in a General Case

Clause 27 In the case where an applicant is a *listed company*, the applicant shall be granted an approval for an offering of newly issued shares under this Division after complying with the following regulations:

(1)¹ having the characteristics in accordance with the following regulations unless an exemption is granted by the SEC Office:

(a) the regulations under Clause 12(1)(3)(4)(a) and Clause 19(1)(a);
 (b) the regulations under Clause 12(2) except the regulations concerning the qualifications of the person assigned to the highest responsibility in Accounting and Finance and the person assigned to the direct responsibility of supervising accounting preparation under Paragraph 1(5) and (6) of Clause 17.

(2) not being in the process of the following actions:

(a) pending the submission of its financial statements or reports

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 39/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 2)* dated 2 June 2017 (effective on 16 June 2017).

required under Section 56 or Section 199 in conjunction with Section 56, as the case may be.

(b) pending the preparation and submission of any report to the SEC Office or the Stock Exchange of Thailand under Section 57 or Section 199 in conjunction with Section 57, as the case may be;

(c) amending its financial statements or reports required under Section 56 or Section 57 or Section 199 in conjunction with Section 56 or Section 57 as ordered by the SEC Office or the Stock Exchange of Thailand, as the case may be;

(d) complying 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.

(3) not in the process of complying with the order of the SEC Office or the Stock Exchange of Thailand in a matter concerning failure to protect shareholders' rights, unfair treatment toward shareholders or disclosure of information to shareholders and general investors, unless an exemption is granted by the SEC Office;

(4) having explicitly obtained an approval from the resolution of the shareholders' meeting for the securities offering this time for no more than one year until the filing date of the application. In the regard, the notice calling the shareholders' meeting to seek such approval shall be sent to the shareholders in advance and shall contain the information as specified in the *Notification of the Capital Market Supervisory Board concerning Particulars in the Notice of Shareholders' Meeting of Listed Company for Approval of Securities Offering*;

(5) in case of a private placement of newly issued shares at discount lower than ninety percent of the market price, the following regulations shall also apply unless an exemption is granted by the SEC Office on a necessary and appropriate ground:

(a) in calling for a shareholders' meeting to obtain the shareholders' resolution for the company's offering of newly issued shares at such discount, the company shall send a notice calling the shareholders' meeting in advance at least fourteen days prior to the shareholders' meeting date;

(b) the notice calling a shareholders' meeting under (a) shall contain the information as specified in the *Notification of the Capital Market Supervisory Board concerning Particulars in the Notice of Shareholders' Meeting of Listed Company for Approval of Securities Offering* in the part governing approval of private placement at discount, *mutatis mutandis*;

(c) a proxy form shall be attached to a notice calling a shareholders' meeting, indicating details of at least one independent director whom may be appointed as proxy of shareholders who are unable to attend the meeting and cast their votes by themselves. In the case where such independent director may be allocated securities applied for approval, the special interest of such independent director shall also be stated;

(d) the resolution of the shareholders' meeting for an offer for sale of newly issued shares at discount shall be obtained with not less than third fourths of the total votes of the shareholders who attend the meeting and have voting rights and there shall be no more than ten percent of the total votes of the shareholders who attend the meeting voting against such offer for sale of shares at discount.

The methods for calculating the offer price and determining the market price under Paragraph 1 shall be in accordance with the regulations specified by the SEC Office.

Clause 28 In the case where the applicant wishing to offer for sale of

newly issued shares under this Division is a public limited company whose core business is holding shares in other companies (holding company) and does not engage in any other material business, the applicant shall also comply with the additional regulations as follows:

(1) operating the core business through the *subsidiary* under Clause 24(1) or the company under Clause 24(2); |

(2) having a supervisory mechanism over the *subsidiary* under Clause 24(1) in compliance with Clause 25 or the company under Clause 24(2) in compliance with Clause 26, as the case may be;

(3) the operation of the *listed company* shall not have the characteristics of investment company and there shall not be any other indication that the operation of the *listed company*, the management of the directors and *executives* as well as the public disclosure of the operational policy of the *listed company* is for the purpose of giving investment returns to investors in the same manner as operating an investment management business, except an investment in another company not operating the core business under Clause 24 in accordance with the regulations under Clause 29, or an investment in another company not in compliance with Clause 29 before 1 September 2012, and the *listed company* has not invested more in another company since such date;

(4) in the case where the *subsidiary* under Clause 24(1) or the company under Clause 24(2) is established under foreign law, the following regulations shall apply unless the size of such company is of insignificant proportion compared to the size of the company, in which case the regulations under (b) and (c) shall not apply;

(a) at least one director of such company shall have residence in Thailand;

(b)⁴ such company has complied with the regulations under Clause 23(6)(b);

(c) in case of the *listed company* having the characteristics under Clause 23(7), its compliance with the regulations under Clause 23(7) and (d) shall also apply.

Clause 29 An investment in other companies that do not operate core business under Clause 24, having obtained an exemption under Clause 28(3), shall be at a proportion not exceeding twenty-five percent of the size of the *listed company* after calculating the total size of all such other companies. The consideration of the proportion of such investment shall exclude the following investment proportions:

(1) in the case where the *subsidiary* under Clause 24(1) operates a financial institution business, the investment of the *subsidiary* in securities issued by other companies not engaging in the core business (portfolio investment) shall be excluded;

(2) an investment in another company that the *listed company* can prove to be an investment intended to make for more than one year, only in the case where such company operates business in the same category as the company operating core business under Clause 24;

(3) an investment in another company through right offering;

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

(4) increase in the investment proportion of the *listed company* that is not derived from additional investment in another company such as appreciation of the market value of the investment or depreciation of the asset value of the company operating core business under Clause 24.

Clause 30 The procedures and methods for filing and considering an application under Clause 21 and Clause 22 of Division 1 of Chapter 1 shall apply to the application for an offering of newly issued shares of *listed company* under this Division, *mutatis mutandis*.

Division 2

Offering of Newly Issued Shares by Listed Company Without Issues on Good Corporate Governance

Clause 31 An applicant, being a *listed company*, shall be granted an approval for an offering of newly issued shares under this Division upon compliance with the following regulations:

- (1) there shall be no fact representing issues on good corporate governance as specified under Clause 32 or Clause 33, as the case may be;
- (2) the total number of newly shares seeking approval shall not exceed twenty-five percent of the total sold shares of the applicant on the filing date of the application;
- (3) the offering has the following characteristics:
 - (a) being an offering of newly issued shares at a price not lower than ninety percent of the market price as specified under Clause 34;
 - (b) not being an offering of newly issued shares as a compensation for a share purchase in another company (share swap).
- (4) an approval shall be explicitly obtained from the resolution of the shareholders' meeting for the securities offering this time for no more than one year until the filing date of the application. In the regard, the notice calling the shareholders' meeting to seek such approval shall be sent to the shareholders in advance and shall contain the information as specified in the *Notification of the Capital Market Supervisory Board concerning Particulars in the Notice of Shareholders' Meeting of Listed Company for Approval of Securities Offering*;
- (5) there shall be directors and *executives* whose names appear on the name list of the directors and *executives* of securities issuing companies in accordance with the *Notification of the Capital Market Supervisory Board concerning Rules for Disclosing Persons' Names in the Information System of Directors and Executives of Securities Issuing Companies*.

In the case where the applicant is a higher education institution under the *Law on Private Higher Education Institutions*, there shall not appear any fact indicating that any member of the council of such private higher education institution possesses any untrustworthy characteristics specified in the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives, mutatis mutandis*;

- (6) the *controlling persons* shall not possess any untrustworthy

characteristics specified in the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives, mutatis mutandis*;

Clause 32 Any of the following cases shall be deemed to have an issue on good corporate governance:

(1) being in the process of the following actions:

(a) pending the submission of its financial statements or reports required under Section 56 or Section 199 in conjunction with Section 56, as the case may be;

(b) pending the preparation and submission of any report to the SEC Office or the Stock Exchange of Thailand under Section 57 or Section 199 in conjunction with Section 57, as the case may be;

(c) amending its financial statements or reports required under Section 56 or Section 57 or Section 199 in conjunction with Section 56 or Section 57 as ordered by the SEC Office or the Stock Exchange of Thailand, as the case may be;

(d) complying 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.

(2) in the process of complying with the order of the SEC Office or the Stock Exchange of Thailand in a matter concerning failure to protect shareholders' rights, unfair treatment toward shareholders or disclosure of information to shareholders and general investors;

(3) having any of the following characteristics during a period of five years prior to the filing date of the application for offering of newly issued shares:

(a) having a record of contravening rules or conditions related to securities offering in a significant matter;

(b) having a record of being subject to suspension of securities offering or termination of the approval for an offering of newly issued shares in the part pending registration of change in paid-up capital.

(4) having any of the following characteristics during a period of one year prior to the filing date of the application:

(a) having a record of being ordered to rectify financial statements by the SEC Office;

(b) causing the SEC Office or the Stock Exchange of Thailand to issue a warning to investors or the shareholders of such company regarding the consideration of information for making investment decisions or exercising the voting rights of the shareholders regarding any action of the company;

(c) being ordered by the SEC Office or the Stock Exchange of Thailand or receiving a warning against failure to protect shareholders' rights, unfair treatment toward shareholders or disclosure of information to shareholders and general investors.

(5) being subject to the Notice Pending sign (NP) of the Stock Exchange of Thailand or being temporarily banned from trading its listed securities under the Trading Suspension sign (SP);

(6) having directors, *executives* or *controlling persons* having the following characteristics:

(a) a director or executive is subject to an order or a warning of the SEC Office or the Stock Exchange of Thailand regarding failure to perform duties of directors or *executives* with responsibility, due care and honesty or failure to comply

with the law, objectives, the company's articles of association, the resolution of the board of directors or the resolution of the shareholders' meeting during a period of one year prior to the filing date of the application;

(b) a director, executive or controlling person is being ordered by the SEC Office to clarify the suspicious ground that such person may be involved in the commission of an offense, prohibited action or any action causing prohibited characteristics, only in the following cases currently under the consideration of the SEC Office;

1. dishonest act or gross negligence;
2. disclosure or dissemination of information or a false statement that may be misleading or concealment of facts that should have been notified explicitly in material matter that may affect the decision making of the shareholders, investors or **connected persons**;
3. unfair treatment or exploitation of investors in trading of securities or derivatives or participating or having participated or supported such acts.

(c) a director, executive or controlling person is currently subject to a criminal complaint by the lead regulator of the company or legal prosecution as a result of such complaint for a cause arising from a deceitful, fraudulent or dishonest act concerning property that results in widespread damage, either under Thai or foreign laws;

(7) the audit report prepared by the auditor regarding the latest annual financial statements and the financial statements for the latest quarter prior to the filing date of the application contain a statement in the following manners:

- (a) the preparation and disclosure of the information in the financial statements are not in accordance with the financial reporting standard governing the preparation of such financial statements for whatever cause;
- (b) there is limitation on the auditor's scope of auditing or reviewing
- (c) the auditor expresses a qualified opinion or provides additional explanation or emphasizes in a bold statement in the audit report regarding the accuracy and reliability of the items in the financial statements or the uncertainty or possible impact of the items that have not been shown or disclosed in the financial statements.

Clause 33 In the case where the applicant being a **listed company** and wishing to offer for sale of newly issued shares under this Division is a public limited company whose core business is holding shares in other companies (holding company) and does not engage in any other material business, and the **subsidiary** under Clause 24(1) or the company under Clause 24(2) is established under foreign law, the applicant shall have the characteristics as specified under Clause 32 and comply with the following regulations as well:

- (1) at least one director of the **subsidiary** under Clause 24(1) or the company under Clause 24(2) shall have residence in Thailand;
- (2) the **listed company** having the characteristics under Clause 23(7) shall be able to demonstrate its compliance with the regulations under Clause 23(7)(a) and (d) unless in the case where the size of the **subsidiary** under Clause 24(1) or the company under Clause 24(2) is of insignificant proportion compared to the size of the **listed company**.

Clause 34 The market price under Clause 31(3)(a) shall be calculated from the weighted average prices of shares on the Stock Exchange at least during the past seven consecutive business days but not more than fifteen consecutive business days prior to the date of setting the offer price of such shares. The price used for averaging shall come from the daily average trading prices and the date of setting the offer price shall not be longer than three business days before the first date of offering to investors.

Clause 35 The procedures and methods for filing an application under Clause 21(1) and (3) of Division 1 of Chapter 1 shall apply to the filing of an application for offering of newly issued shares of *listed company* having no issues on good corporate governance, *mutatis mutandis*.

The SEC Office shall notify the result of the consideration of the application within fourteen days from the date of receiving correct and complete supporting documents and evidence according to the Licensing Manual for the Public.

Chapter 3

Conditions for Approval

Clause 36 The approved person under Chapter 1 and Chapter 2 in this Part shall comply with the conditions specified under this Chapter.

Clause 37 In the case where it appears to the SEC Office after an approval of securities offering has been granted any change to the facts and circumstances used as criteria for considering the application, which may have been the cause for rejecting the applicant if it had been known to the SEC Office before the approval, and if the approved person has not registered the change to the paid-up capital of the approved shares, the SEC Office shall have the power to take the following actions:

(1) order the approved person or its directors or *executives* to clarify or disclose additional information within a specified period and suspend the approved offering of securities or instruct the approved person to put the offering on hold temporarily until a clarification or rectification has been completed. In the case where the approved person or its directors or *executives* are unable to clarify or arrange for a rectification within the specified period, the SEC Office may revoke the approval under (2);

(2) revoke the approval for the offering of newly issued shares in the part that has not been offered or a change in the paid-up capital has not been registered.

In taking actions under Paragraph 1, the SEC Office shall take the following factors into consideration:

- (1) the degree of severity of the change to such facts or circumstances;
- (2) impacts on the subscribers of such shares.

Clause 38 The approved person shall comply with the following conditions:

(1)² The approved person intending to have its shares listed on the Stock Exchange of Thailand shall proceed as follows:

(a) not determine the price for partial shares offered for sale to the public higher than the price of the shares allocated for a private placement no matter if the private placement will take place during the same period as the public offering or from the filing date of the application to the first trading date of the company's shares on the Stock Exchange unless such private placement has any of the following characteristics:

1. being an employee stock option plan of the company or its *subsidiary* as approved by the board of directors or the shareholders' meeting;
2. being an offer for any person under a state enterprise privatization project as approved by the Cabinet;
3. being a necessary and appropriate case as exempted by the SEC Office.

(b)³ In case of an initial public offering of newly issued shares, there shall be an agreement with the person who will acquire such shares of the approved person at discount during a period of six months before filing an application for the share offering this time regarding the deposit of the offered shares with the securities depository in the same manner as the deposit of securities of persons prohibited from selling their shares in accordance with the Regulation of the Stock Exchange concerning Acceptance of Ordinary Shares or Preferred Shares as Listed Securities, and there shall be an opinion of a legal advisor that such agreement is enforceable by law unless such acquisition of shares at discount is a result of a transaction executed at least twelve months before the acquisition of such shares.

(2) An approved person who falls under the following criteria shall provide a warning statement in the registration statement and prospectus to ensure that investors are aware of relevant facts and understand risks of share price decrease once such shares are traded in the Stock Exchange of Thailand:

(a) the approved person intends to have the offered shares listed on the Stock Exchange for the first time;

(b) the approved person has offered for sale of the shares of the same category to any person at a price lower than that of this offer during a period of six months prior to this offer and the aggregate number of shares having been offered during such period exceeds ten percent of the total number of shares under this offer.

(3) from the effective date of the registration statement and draft prospectus, if an approved person wishes to make an advertisement concerning its securities by a method other than a distribution of the prospectus, the information to be used in the advertisement shall be in accordance with the following criteria:

(a) not being false, exaggerating, distorting, concealing or misleading;

(b) the essence of the information shown in the advertisement not exceeding the information shown in the registration statement and draft prospectus

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 43/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 3)* dated 29 June 2017 (effective on 16 July 2017).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 4)* dated 13 March 2018 (effective on 1 April 2018).

submitted to the SEC Office;

In the case where the approved person fails to comply with the regulations under Paragraph 1, the approved person shall comply with the order of the SEC Office that requires one or more of the following actions:

(a) end the advertisement or sale promotion, either in full or in part;
 (b) revise the information or statement in the advertisement or sale promotion;

(c) clarify to ensure that investors will receive information that is complete, correct, consistent with facts or not misleading;

(d) act or omit to act in any way within a specified period so that investors will be able to make a decision or review a decision based on the information that is complete, correct, consistent with facts and not misleading.

(4) An approved person shall complete its offer for sale of shares within six months from the date on which the SEC Office notifies its approval. If the approved person is unable to complete the offer within such period and wishes to continue to make such offer, it shall request an extension of the offering period in writing from the SEC Office at least thirty days prior to the expiration of such period. In this regard, the rationale for such request together with the information concerning material changes to the characteristics of the approved person under Chapter 1 or Chapter 2, as the case may be (if any) shall be provided. The SEC Office shall be empowered to extend the offering period as deemed appropriate, provided that such extension shall not exceed twelve months from the date on which the SEC Office notifies its initial approval.

(5) from the date on which the SEC Office notifies its approval for an offer for sale of newly issued shares to the date prior to the registration of the change of paid-up capital in respect of the offer, the approved person shall not call for a shareholders' meeting to obtain any resolution which may affect any person wishing to invest in such approved newly issued shares, unless an exemption is granted by the SEC Office on a necessary and appropriate ground;

(6)⁴ during the period when an approved person is obliged to comply with the rules prescribed in the Notification of the Capital Market Supervisory Board issued under Section 56, the approved person shall comply with its obligations given in the application or the registration statement and draft prospectus, and shall ensure that its **major shareholders**, directors, **executives**, and **controlling persons** comply with such conditions as well, unless:

(a) the company obtains shareholder approval with counting votes not less than three-fourths of the entire votes of the attending shareholders qualified to vote and no more than ten percent of the total votes of the shareholders who attend the meeting vote against the proposal

(b) there is no material change of the use of proceeds which shall be in accordance with the regulations specified by the SEC Office.

(7) in the case where the financial advisor who has jointly prepared the application wishes to obtain or review any information in order to perform its duties concerning the approved person under the *Notification of the Office of the*

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2561 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

Securities and Exchange Commission concerning Approval of Financial Advisor and Scope of Work, the approved person shall cooperate in providing such information to the financial advisor throughout the period on which the financial advisor has the duties under such Notification;

(8) within a period of three years from the effective date of the registration statement and draft prospectus, the approved person who is a public limited company whose core business is holding shares of other companies (holding company) and has the characteristics under Paragraph 1(7) of Clause 23 shall proceed as follows:

(a) complying with the agreement made between the approved person and the financial advisor under Paragraph 1(7)(c) of Clause 23;

(b) in the case where the financial advisor under (a) is unable to perform duties for whatever reason, the approved person shall arrange to have a new financial advisor from the approved list of the SEC Office perform duties under Paragraph 1(7)(c) of Clause 23 in lieu of the former financial advisor without delay.

The SEC Office shall have the power to grant an exemption from the regulations under Paragraph 1, either in full or in part, on a necessary and appropriate ground.

In the case where the approved person is a public limited company whose core business is holding shares of other companies (holding company), the approved person shall have a supervisory mechanism to oversee that the subsidiary under Clause 24(1) or the company under Clause 24(2) comply with the conditions specified under Paragraph 1(5) and (6), *mutatis mutandis*.

Private Placement of Newly Issued Shares by Company Whose Shares Are Not Listed Securities

Chapter 1 Approval

Clause 39 A private placement of newly issued shares means an offering with any of the following characteristics:

(1) an offer for sale of newly issued shares to specific investors which do not exceed fifty investors during a twelve-month period;

(2) an offer for sale of newly issued shares with an aggregate value not exceeding twenty million baht during a twelve-month period, provided that the aggregate value of such offering shall be based on the offering price of such shares;

(3) an offer for sale of newly issued shares made to the *institutional investors*;

(4) an offer for sale of newly issued shares in the whole amount by a *juristic person under specific law* to its shareholders according to their shareholding proportion with full settlement of the offered shares by the shareholders.

The number of investors under (1) or the aggregate value of the offering under (2) shall exclude the value of any offer made to the investors under (3), regardless of whether such offering is made simultaneously or at different time.

Clause 40 A promoter of a public limited company, a public limited company or a *juristic person under specific law* shall be deemed to have received an approval from the SEC Office to make a private placement of newly issued shares. In this regard, the approved person shall comply with the conditions after approval prescribed under Chapter 2 of this Part.

In case of a private placement of newly issued shares due to a capital increase requirement under a rehabilitation plan under the bankruptcy law which is already approved by the court, the company shall comply with the post-approval conditions under Clause 41(1) and (2) and shall complete its offer for sale of newly issued shares within the period of time required by the rehabilitation plan.

Chapter 2 **Conditions after Approval**

Clause 41 The approved person under Chapter 1 of this Part shall comply with the following conditions:

(1) The approved person is prohibited from advertising an offer for sale of newly issued shares to the public, and if a distribution of documents concerning the shares to be offered or being offered is made, the approved person shall distribute such documents to specific persons or other persons as deemed necessary to ensure that such offering falls within the criteria prescribed in Clause 39(1) (2) (3) or (4) only, and the approved person shall provide a statement under (2) in the said documents;

(2) Within two years from the registration date of the change of paid-up capital in which there shall not be shares or underlying shares available for offer for sale and deemed to have received approval from the SEC Office, the approved person shall not sign to certify the accuracy of information in the registration statement and draft prospectus for an offer for sale of such shares to the public filed with the SEC Office by its shareholder, or arrange to have such shares listed on the Stock Exchange of Thailand, unless an approval for an offer for sale of newly issued shares to the public under Part 2 is granted to the approved person by the SEC Office;

(3) The approved person shall complete its offer for sales of shares within one year from the date on which the shareholders' meeting resolves to approve an offer for sale of newly issued shares;

(4) The approved person who is a *juristic persons* under specific law and makes a private placement of newly issues shares under Clause 39(1)(2) or (3) shall arrange to have supporting documents for the offering with a statement that the offered shares are not issued by a public limited company and thus the investors may have different rights and protection from those of the shareholders of a public limited company.

Part 4
Transitional Provisions

Clause 42 In the case where the SEC Office has received an application for an offer for sale of newly issued shares prior to the effective date of this Notification, such application and approval shall be in compliance with this Notification. An applicant who wishes to have the application considered by the SEC Office in accordance with the regulations under Division 2 of Chapter 2 of Part 2 of this Notification shall inform the SEC Office in writing within thirty days from the effective date of this Notification.

Clause 43 *The Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 39/2551 Re: Calculation of Securities Offer Price and Determination of Market Price for the Consideration of Offering of Newly Issued Shares at Discount* dated 24 December 2008 shall remain in force until other notifications of the Office of the Securities and Exchange Commission are issued in accordance with Paragraph 2 of Clause 27.

Clause 44 A person who has been approved under the *Notification of the Capital Market Supervisory Board No. Tor Jor. 28/2551 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares* dated 15 December 2008 prior to the effective date of this Notification and has the duty to comply with the conditions after approval shall remain subject to such conditions after approval under such Notification.

Notified this 30th day of September 2016.

(Mr. Rapee Sucharitakul)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board