

ASSOCIATION OF GLOBAL CUSTODIANS

Communication of the Association of Global Custodians, Asia Focus Committee¹

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Via email: PAKORNPE@set.or.th, president.office@set.or.th

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Dear Dr. Peetathawatchai,

Corporate Actions announcements - standardization.

At a recent meeting of the Association of Global Custodians² (AGC) Asia Focus Committee, we discussed Corporate Actions announcements in Thailand and certain challenges faced by member banks in their ability to provide standardized, accurate and unambiguous information to foreign investor clients. Specifically there is an inconsistent approach applied by Issuers for pre-emptive rights events. In summary these were:

- Certain issuers impose a restricted countries condition on non-resident eligibility to their pre-emptive rights corporate action. Often the Issuers' announcements are unclear and inconsistent. For example, there is a lack of clarity on the definition of an address (corporate address compared to registered mailing address). Many foreign investors, for very practical reasons, have their registered address for announcements and notifications, the same as their local custodians' address. This is a common practice in many markets.

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² The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide and administer collectively over USD150 trillion of assets. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

However, some Issuers specifically state in their announcements that custodian banks in Thailand are not allowed to be the registered address of the foreign shareholder if they wish to apply to take-up their Pre-emptive Rights entitlement.

- There is often inconsistent information received from either issuers, agents or the Thai NVDR Company: for some pre-emptive rights events the issuers have confirmed that foreign investors are ineligible to participate, whether they hold foreign shares or NVDRs, but when foreign clients insisted on their right to subscribe, these foreign investors were able to participate. In addition responses from different officers in the issuing companies sometimes gave different answers to the same questions about the same pre-emptive rights announcement.
- There also appears to be different treatment of foreign investors which invest via NVDR's in the Thailand market compared to those which invest directly in the foreign share line.

These confusions have led to disparate outcomes between those foreign clients who insisted on participating and those who did not participate because the latter took the issuers' word that they were not eligible to participate.

Therefore, the lack of standards to support uniformity of these announcements and information across the market creates confusion and presents challenges to foreign investors, especially those who use more than one Global Custodian, with each of those Global Custodians potentially using a different sub-custodian in the Thailand market.

Additionally the Stock Exchange of Thailand may be concerned that the inability to participate in a corporate action to which an investor, whether local or foreign, should be entitled to is a quite negative consideration whether to invest in a market or not.

Examples in 2022 of announcements nullifying foreign investors entitlements are:

- Thai Union Group PLC Rights announcement, where the Record Date was 1 November 2022 and the Payment Date on 22 November 2022. The issuer was not specific and clear on whether NVDR holders were entitled to the rights offering and there was confusion between the information provided by the issuer and that of the Thai NVDR company.
- Asian Sea Corporation Pre-emptive Rights Announcement of 22 September 2022 allowed only NVDR foreign shareholders to participate.
- Singer (SGC IPO) Announcement of 11 November 2022, invoked the "US Securities Act" to impose the following restrictions on entitlements to foreign investors:
 - a) "Pertaining to the allocation of ordinary shares to the Eligible Shareholders of SINGER, SGC reserves its right to exclude the

Eligible Shareholders of SINGER whose mailing addresses as appear in SINGER as at the Record Date are outside Thailand from the offering and allocation”, but then;

- b) “The Eligible Shareholders of SINGER do not include nominees, Custodians or any person having their mailing addresses in Thailand and hold shares on behalf of or for the benefit of any other person or client who resides outside Thailand.”

It appears that Issuers may be invoking the United States Securities Act of 1933, as amended (the “US Securities Act”), to deny Pre-emptive Rights to entitled foreign shareholders, because the IPO is not registered with the US SEC. The regularity, circumstances and details surrounding such an invocation needs to be clearly understood by all parties as it is affecting entitlement of foreign shareholders.

The AGC suggests that there is a need to establish a standard, template announcement by Issuers and the Thai NVDR Company for Corporate Actions involving pre-emptive rights entitlement, which unambiguously details which shareholders have pre-emptive rights to participate in the Corporate Action and what actions they should take.

The Thailand Custody Club, of which AGC member banks providing custodial services in Thailand are members, would be most grateful if the Stock Exchange of Thailand would agree to meet with them to discuss the contents of this letter and any other related matters.

Please feel free to contact either the undersigned or our Chairman, Mr. Rafizain Rafii, should you have any questions in regard to the content of this letter.

Yours sincerely,



Robert Edwards, (as attorney in fact)
For and on behalf of, Mr. Rafizain Rafii,
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