

29 March 2010

To Manager

All securities companies licensed to undertake securities business in the category of mutual fund management

All mutual fund supervisors

President of the Association of Investment Management Companies

No. Nor. (Wor) 18 /2553 Re: Delivery of Notifications and Clarification Notes

The Capital Market Supervisory Board (CMSB) has approved the revisions to three notifications of the SEC Office as follows:

1. Notification No. SorNor. 5/2553 Re: Establishment of Mutual Funds and Execution of Agreements for Management of Private Funds (No.2) dated 16 March 2010 (“Notification No. SorNor. 5/2553”);

2. Notification No. SorKhor/Nor. 6/2553 Re: Rules, Conditions, and Procedures for Management of Funds (No.2) dated 16 March 2010 (“Notification No. SorKhor/Nor. 6/2553”);

3. Notification No. SorNor. 7/2553 Re: Investment and Holding of Assets for Funds (No.3) dated 16 March 2010. (“Notification No. SorNor. 7/2553”).

To allow foreign exchange-traded funds to be listed on the Stock exchange of Thailand (SET) through Thai exchange-traded funds (*Thai ETFs on foreign ETFs*), the amendments cover the provisions on the limitation on establishment of ETFs, the re-definition of Market Maker to include permission for investment in foreign ETFs, the determination of characteristics of foreign ETFs eligible for investment, the determination of categories of establishment of Thai ETFs on foreign ETFs and the overall associated rules for enhancing efficiency of establishment and management of ETFs. The aforesaid notifications shall come into force as from 1 April 2010.

To ensure business operators have uniformed understanding and act in compliance with the Notifications, the SEC Office hereby clarifies the substance of the Notifications and relevant procedures as follows:

1. Notification No. SorNor. 5/2553, the amendment to Notification No. SorNor. 22/2552 Re: Establishment of Mutual Funds and Execution of Agreements for Management of Private Funds dated 28 July 2009 (Re: Establishment).

1.1 Amending the limitation on establishment of ETFs and the definition of Market Maker to allow investment in foreign ETFs:

(1) The limitation on establishment (Clause 58(2)(c));

Allow ETFs to track returns of foreign ETFs;

(2) The definition of Market Maker (Clause 5(2)(n))

Extend the definition of Market Maker to support their role in managing the trading price of ETFs in the organized market to closely reflect the value of the underlying foreign ETFs.

1.2 Determining categories of Thai ETFs on foreign ETFs, which can be set up as feeder fund¹ or fund of funds² with passive management strategies (Clause 58/1 (1)):

Passive management refers to the management strategy which does not require discretion in making investment decisions. Therefore, the Thai ETFs on foreign ETFs should make almost all investments in foreign ETFs to replicate as closely as possible the returns of such foreign ETFs and none in derivatives for speculation purpose.

In case of Thai ETFs on foreign ETFs established as Fund of Funds, the management company must clearly disclose, since the inception of the fund, the investment allocation in each foreign ETF; however, if the invested foreign ETFs experience any problems, replacement with new foreign ETFs will be allowed providing that the management company has identified the terms and conditions of fund replacement in the scheme. In case of foreign ETFs listed on more than one stock exchange, they will be considered as the same fund, for example, SPDR gold trust.

As the Thai ETFs on foreign ETFs fall under the category of Foreign Investment Fund (FIF), which may encounter foreign exchange rate risk, the management company must clearly disclose, in the prospectus, foreign exchange rate risk and risk management policies.

1.3 Determining the characteristics of the eligible foreign ETFs (Clause 58/1(2)):

(1) being non-complicated and tracking widely accepted securities indices or price index such as securities indices, oil price indices, commodity indices or gold price. In case of securities indices, they must be acceptable to the foreign stock exchanges of the World Federation of Exchanges (WFE) member countries, and all securities that comprise the indices must be listed on such foreign stock exchanges;

(2) having passive management strategies; and

(3) being traded on foreign stock exchanges of WFE member countries and having the characteristics specified by Clause 21 of the SEC Office Notification No. SorNor. 24/2552 Re: Investment and Holding of Assets for Funds dated 28 July 2009.³

¹ Feeder Fund means a mutual fund with a policy to invest in or to hold, in each accounting period on an average of not less than 80 percent of its net asset value, investment units of another mutual fund (master fund).

² Fund of Funds means a mutual fund with a policy to invest in or to hold, in each accounting period on an average of not less than 65 percent of its net asset value, investment units of many mutual funds.

³ The characteristics of foreign ETFs according to Clause 21 of the Notification No. SorNor. 24/2552 are:

In case of Thai ETFs aiming to invest in foreign gold ETFs, the SEC Office will grant an approval for establishment of such Thai ETFs after the SET has issued the rules on member registration for execution of trading orders of gold-linked securities.

1.4 Repealing the minimum seven-day period of the initial public offering of ETF (Clause 60(2)).

2. Notification No. SorKhor/Nor. 6/2553, the amendment to Notification No. SorKhor/Nor. 23/2552 Re: Rules, Conditions and Procedures for Management of Funds dated 28 July 2009 (Re: Management).

2.1 Amending the definition of Market Maker to support investments in foreign ETFs (Clause 116):

Extending the definition of Market Maker to support its role in managing the trading price of ETFs in the organized market to closely reflect the value of the underlying foreign ETF;

2.2 The one-third rule⁴ shall be exempted for participating dealers or market makers appointed by the management company for a period of one year from the first trading day on the organized market of such Thai ETFs (Clause 120);

2.3 The management company is required to disclose an indicative NAV and tracking errors⁵ of Thai ETFs to provide investors with information for decision-making (Clause 121/1):

(1) The disclosed indicative NAV does not need to be certified by the fund supervisor and should be presented in an appropriate decimal. The frequency of such disclosure must be in line with the disclosure of value or price of the underlying of such Thai ETFs;

(2) The difference between NAV of Thai ETFs and the value of the ultimate underlying (tracking errors). As the Thai ETFs on foreign ETFs aim to replicate the return of foreign ETFs, which in turn aim to replicate the return of their underlying, the management company is required to disclose the tracking errors prior to the opening of the first

(1) Regulated by ordinary members of the International Organisation of Securities Commissions (IOSCO) or traded on securities exchanges of the World Federation of Exchanges (WFE) member countries;

(2) Investing only in categories or types of assets that the funds are allowed to invest in or to hold, except foreign funds with a policy to invest directly in gold;

(3) being an investment unit of foreign funds established for retail investors (retail fund); and

(4) not being a hedge fund.

⁴ the one-third rule prohibits investor from holding more than one third of total investment units sold.

⁵ tracking errors means the disparity between the returns of the Thai ETFs and the value of the ultimate underlying.

trading session on the SET to ensure that investors will be aware of the difference between the performance of the Thai ETFs and that of the ultimate underlying. The disclosure of such tracking errors can be in numbers or graphs, as seen appropriate.

3. Notification No. SorNor. 7/2553, the amendment to Notification No. SorNor. 24/2552 Re: Investment and Holding of Assets for Funds dated 28 July 2009 (Re: Investment and Investment Limit):

3.1 The group limit rule shall not be imposed on investments in investment units of the mutual funds (Clause 67/1);

Whereas all mutual funds are required to comply with the group limit rule, the amendment to such rule is to curb concentration in any particular business, not in investment in other mutual funds managed by other management companies. The amendment clarifies relevant practice without any effect on the details of mutual fund schemes.

3.2 The compliance with the group limit rule of the Fund of Funds and the Feeder Funds (Clause 66);

Although the investment portion in investment units of the Fund of Funds and the Feeder Funds is not subject to the group limit rule, both types of funds must comply with the investment limit rule whereby, in each accounting period, the Fund of Funds and the Feeder Funds must invest in investment units in the amounts of no less than 65 percent and 80 percent of NAV, respectively. The rest can be invested in other assets and thus the investment portion of other assets must comply with the group limit rule.

3.3 In amending details of the scheme of the Fund of Funds and the Feeder Funds, the management company shall submit the details through the fast track method on the first opportunity.

4. The approval and control of offshore investment quota for Thai ETFs on foreign ETFs (details on the charts attached hereto):

4.1 In establishing Thai ETFs on foreign ETFs, the management company shall follow the same procedures for seeking approval for an investment quota for Foreign Investment Fund (FIF) and the quota usage of ETFs must also be reviewed periodically as in the case of FIFs.

4.2 The Thai ETFs' buying procedures for Participating Dealer (PD) or Market Maker (MM) whereby the payment is made in units of foreign ETFs (**in-kind creation**) are as follows:

- (a) In case PD/MM is a Thai person or Thai juristic person ("Thai PD/MM")

Thai PD/MM shall seek approval for an offshore investment quota⁶ for the purpose of buying investment units of foreign ETFs on foreign stock exchanges. After the buying transaction and the delivery of investment units of foreign ETFs to the management company (in-kind transaction), the user of such quota will be changed to Thai ETFs. In this regard, Thai PD/MM shall notify to the management company the cost⁷ of investment units of foreign ETFs so that additional investment in foreign ETFs will be recorded at such cost. Thai PD/MM is also required to submit the Return of Offshore Investment Quota Report thereafter. (The report must be submitted via FIA System if Thai PD/MM has obtained a quota approval through the system).

(b) In case PD/MM is a foreign person or foreign juristic person (“Foreign PD/MM”)

Following the buying of Thai ETFs and the Foreign PD/MM has delivered investment units of foreign ETFs to the Thai ETFs, the management company shall record the additional investment of foreign ETFs with the market price⁸.

The management company shall submit a report on the outstanding investment in foreign ETFs to the Bank of Thailand at the end of each month.

4.3 The Thai ETFs’ selling procedures for PD/MM whereby the PD/MM receives payment in units of foreign ETFs (**in-kind redemption**) are as follows:

(a) Thai PD/MM: Approval for an offshore investment quota is required when Thai PD/MM receives investment units of foreign ETFs from redemption of investment units of Thai ETFs, which means the quota usage will be changed from Thai ETFs to the Thai PD/MM who therefore must report the quota usage with the cost as notified by the management company who in turn shall record the decrease of investment in foreign ETFs with the same cost.

After receiving investment units of foreign ETFs, if the Thai PD/MM sells those investment units directly on foreign stock exchange⁹ and bring the money back to Thailand, the Thai PD/MM must submit the Return of Offshore Investment Quota Report by following the same procedure as in the case of investment in foreign countries.

(b) Foreign PD/MM: When Foreign PD/MM redeems investment units of Thai ETFs and receives payment in investment units of foreign ETFs, the

⁶ the private fund (PF), the securities company (broker), or the securities company’s proprietary portfolio shall apply for the quota via Foreign Investment Allotment System (FIA) provided by the Office, the other institution investors shall comply with the rules issued by the Bank of Thailand.

⁷ using average cost.

⁸ the market price used in the calculation of the NAV of Thai ETFs on any particular day to estimate the amount of quota used.

⁹ The SEC is drafting regulations on permission for securities companies to sell securities traded on foreign stock exchanges without possession of such securities (short foreign securities).

management company shall record the decrease of investment in foreign ETFs with acquired cost.

The management company shall submit a report on the outstanding investment in foreign ETFs to the Bank of Thailand at the end of each month.

Please be informed and comply accordingly.

Yours sincerely,

(Prakid Punyashthiti)

Director

Investment Management Supervision Department
For Secretary-General

Enclosure:

1. Copy of the SEC Office's Notification No. SorNor. 5/2553 Re: Establishment of Mutual Funds and Execution of Agreements for Management of Private Funds (No. 2) dated 16 March 2010;
2. Copy of the SEC Office's Notification No. SorKhor/Nor. 6/2553 Re: Rules, Conditions, and Procedures for Management of Funds (No.2) dated 16 March 2010;
3. Copy of the SEC Office's Notification No. SorNor. 7/2553 Re: Investment and Holding of Assets for Funds (No.3) dated 16 March 2010;
4. Chart of Procedure for Approval and Control of Offshore Investment Quota in respect of establishment of Thai ETFs on foreign ETFs.

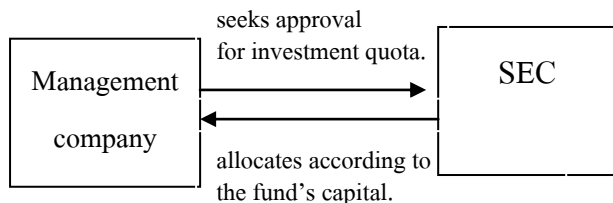
Investment Management Supervision Department

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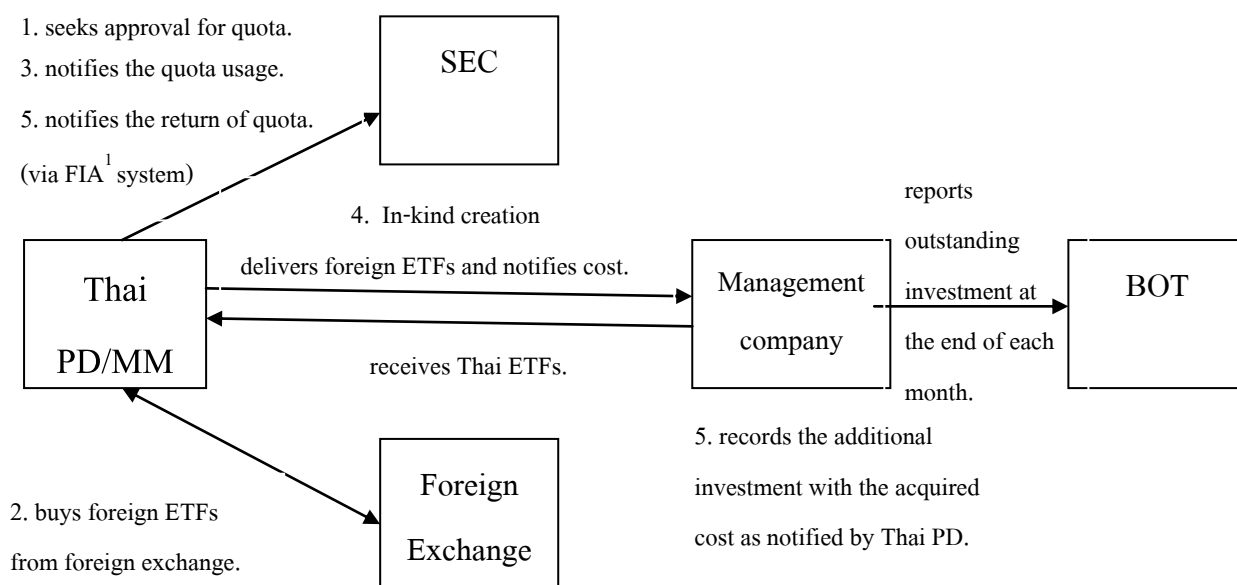
Chart of Procedure for Approval and Control of Offshore Investment Quota in Respect of Establishment of Thai ETFs on foreign ETFs

1. Procedure for establishment of Thai ETFs on foreign ETFs.

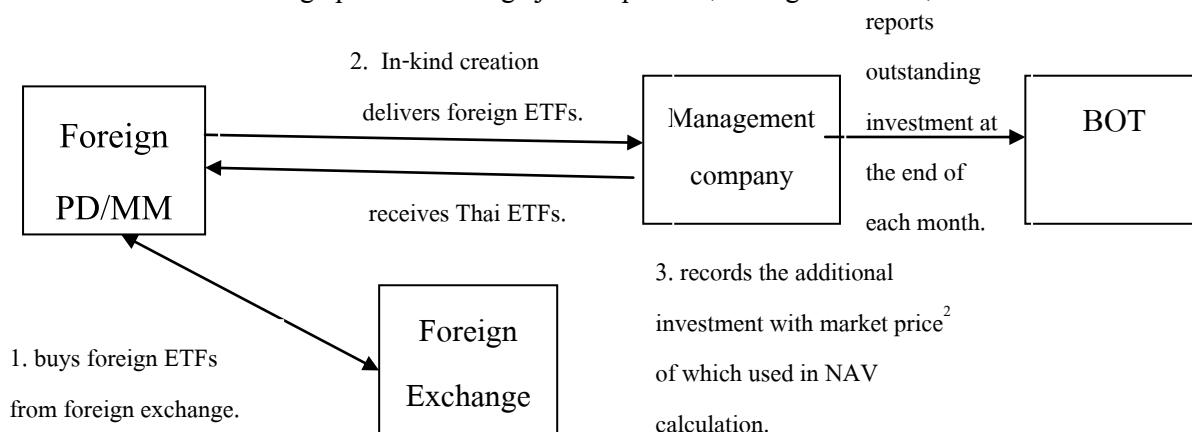


2. Procedure for in-kind creation of Thai ETFs on foreign ETFs:

2.1 In case PD/MM is Thai person or Thai juristic person ("Thai PD/MM")



2.2 In case PD/MM is foreign person or foreign juristic person ("Foreign PD/MM")



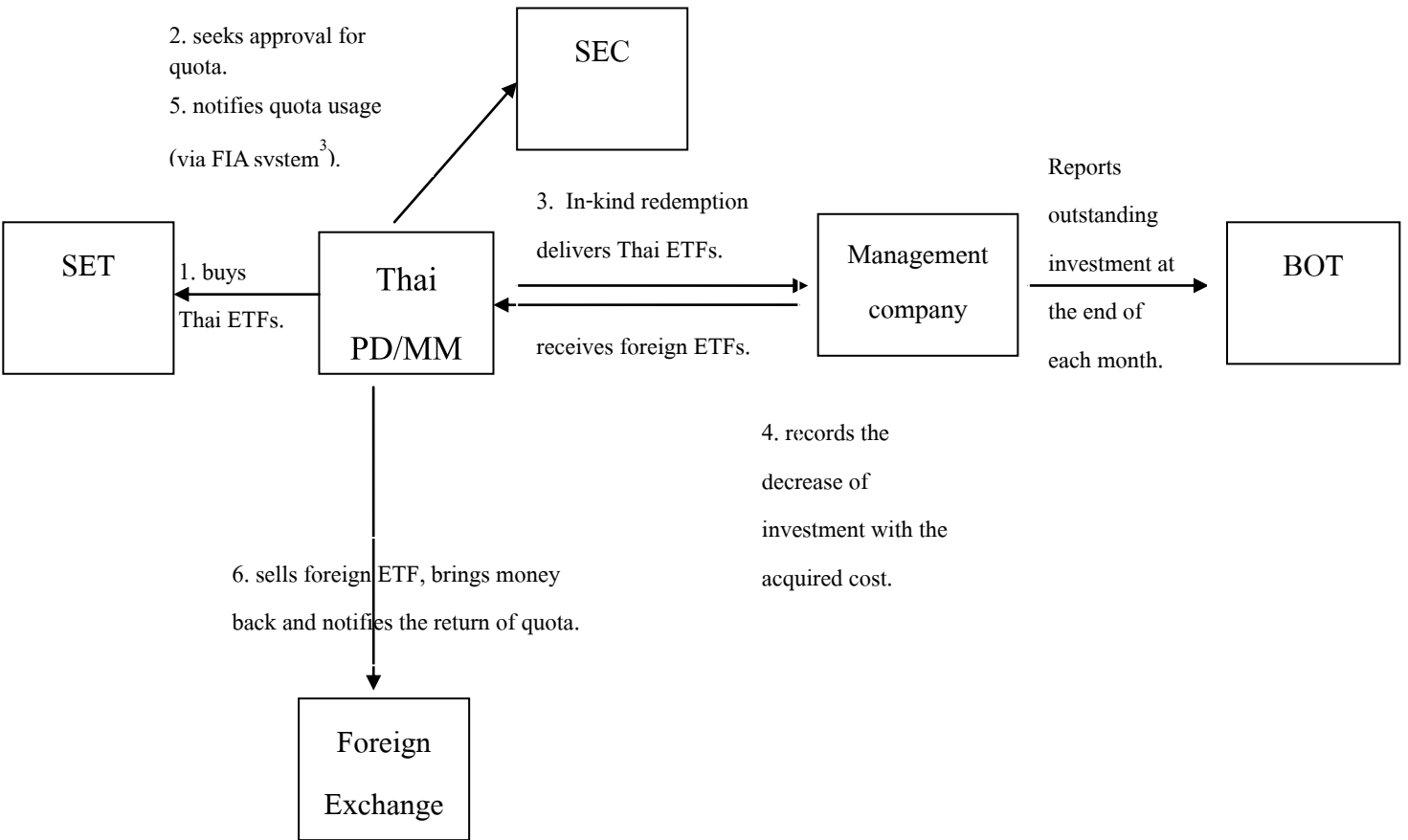
¹ FIA System, for investment made through private funds, securities companies (broker), or broker's proprietary portfolio.

² market price used for estimating investment quota usage, due to the Foreign PD exchanges Thai ETFs with foreign ETFs.

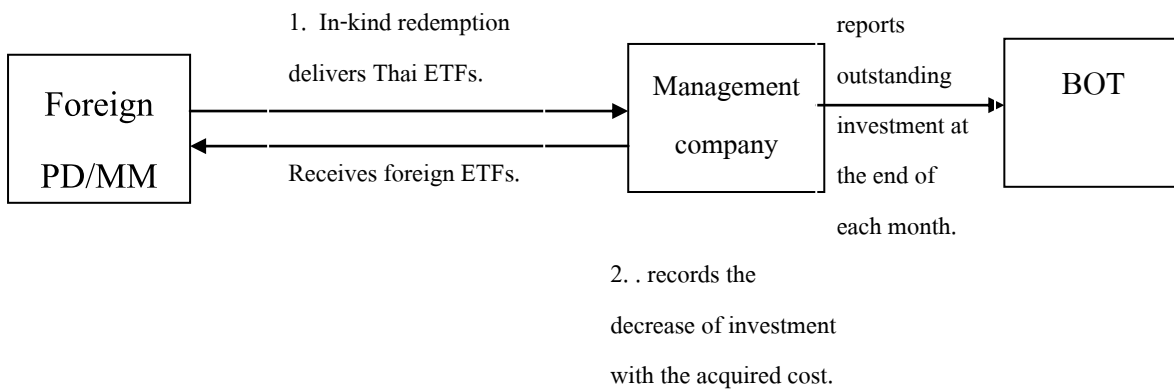
3. Procedure for in-kind redemption of Thai ETFs on foreign ETFs

3.1 In case PD/MM is Thai person or Thai juristic person (“Thai PD/MM”)

- 2. seeks approval for quota.
- 5. notifies quota usage (via FIA system³).



3.2 In case PD/MM is foreign person or foreign juristic person (“Foreign PD/MM”)



³ FIA System, for investment made through private funds, securities companies (broker), or broker’s proprietary portfolio.