

TRANSLATED VERSION

As of May 10, 2011

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. TorThor. 9/2554

**Re: Short Selling of ETF and Securities Being Underlying
of ETF by a Securities Company**

By virtue of Section 16/6 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* and Section 98(5) of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions relating to the restriction of rights and liberties of persons, which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 The *Notification of the Capital Market Supervisory Board No. TorThor. 49/2552 Re: Short Selling of Securities relating to Exchange Traded Mutual Fund by a Securities Company dated 3 August 2009* shall be repealed.

Clause 2 In this Notification:

“**ETF**” means *ETMF* or *foreign ETF*.

“**ETMF**” means exchange-traded fund in form of mutual fund under the law on securities and exchange¹.

“**foreign ETF**” means a collective investment scheme in the category of exchange-traded fund either in form of company or trust under foreign law.

“**short selling**” means selling securities without possessing securities.

“**ETF units**” means investment units of *ETMF* or *units of foreign ETF*.

“**units of foreign ETF**” means shares of investment company or unit trust issued by *foreign ETF*.

¹ The law on securities and exchange means *Securities and Exchange Act B.E. 2535 (1992)*

“*underlying shares of ETF*” means shares which are registered as listed securities in the Stock Exchange of Thailand or foreign exchange, as the case may be, which are in a list of asset that an investor would be able to exchange with *ETF units* according to the requirements of such *ETF*.

“*exchanging in-kind*” means entering into the following transactions with a *management company* or the issuer of *ETF units*, as the case may be:

(1) purchasing *ETF units* by using assets as a payment under the requirement of such *ETF* or;

(2) reselling *ETF units* by accepting assets as a redemption under the requirement of such *ETF*.

“*management company*” means a securities company licensed to undertake securities business in the category of mutual fund management.

“*foreign exchange*” means [i] a juristic person established under foreign law which offers service as the exchange or over-the-counter center under the law of such country and [ii] is regulated by the government or securities regulator.

“*market maker*” means a person who is appointed to provide trading of *ETF units* for ensuring that their market price in the secondary market approximates the net asset value of such *ETF units*.

“*major participating investor*” means any person specified in the ETF scheme that such person would be able to buy or sell *ETF units* with mutual fund management company or operator of *foreign ETF*, as the case may be.

“*clearing house*” means a clearing house under the law on securities and exchange².

Clause 3 This Notification is applicable to a securities company which wishes to engage in a *short selling* of the following securities in the Stock Exchange of Thailand:

- (1) *ETF units*;
- (2) *underlying shares of ETF*.

² Ibid FN1.

Clause 4 For *short selling* of the *ETF units* or *underlying shares of ETF* in the Stock Exchange of Thailand, a securities company shall comply with this Notification and the rules as prescribed by the Stock Exchange of Thailand.

Clause 5 A securities company may engage in *short selling* of *ETF units* or *underlying shares of ETF* for either its proprietary account or client's account on the condition that it is the following cases:

(1) being *short selling* by which borrowing such securities for delivering is required according to the Notification of the Capital Market Supervisory Board in relation to *short selling* of securities by means of borrowing securities for delivering;

(2) being *short selling* by means of *exchanging in-kind* for delivery;

(3) being *short selling* of *ETF units* by means of purchasing such securities from *foreign exchange* for delivery;

Short selling under sub clause (2) or (3) of the first paragraph, shall be engaged in only if the securities company or its client, as the case may be, is a *market maker* or a *major participating investor* under the requirements of such *ETF*. In this regard, the securities company shall comply with the rules as prescribed in Clause 6, Clause 7 and Clause 8.

Clause 6 A securities company engaging in *short selling* shall proceed or arrange its client to comply with the following rules in order to deliver *ETF units* or *underlying shares of ETF* according to the short selling transactions within the period as specified by the *clearing house* or within the period agreed by parties.

(1) in case of *short selling* for proprietary account:

(a) there shall be [i] an asset for exchanging with the *ETF units* or [ii] the *ETF units* for exchanging with *underlying shares of ETF* subject to ETF scheme, as the case may be, in the possession of the securities company or its client during placing short selling order, in case of *short selling* by means of entering into *exchanging in-kind* for making delivery;

(b) there has been an order to purchase *units of foreign ETF* while placing short selling order, in case of *short selling* of *ETF units* by means of purchasing such units from *foreign exchange* for making delivery;

(2) in case of *short selling* for client's account:

(a) the client shall demonstrate that it has [i] the enabling asset to be exchanged for *ETF units* or [ii] *ETF units* which would be able to exchange with *underlying shares of ETF* subject to ETF scheme, as the case may be, while placing short selling order, in case of *short selling* by means of entering into *exchanging in-kind* for making delivery;

(b) the client shall demonstrate that it has been an order to purchase *units of foreign ETF* while placing short selling order, in case of *short selling* of *ETF units* by means of purchasing such units from *foreign exchange* for making delivery;

Clause 7 In order to have sufficient *ETF unit* or *underlying share of ETF* for delivering according to *short selling* within settlement period specified by the *clearing house* or within performance period specified by counterparty, a securities company shall provide an operating system to support such having sufficient securities, in case the securities company or its client has not yet received *ETF units* or *underlying shares of ETF* from purchasing order.

Clause 8 A securities company shall keep the information and prepare report relating to *short selling* as stipulated by the Notification of the SEC Office.

Clause 9 All Notifications of the Office of the Securities and Exchange Commission, orders and circulars issued under or prescribing guidelines for compliance with the *Notification of the Securities and Exchange Commission No. KorThor. 10/2550 Re: Short Selling of Securities relating to ETF Mutual Fund, dated 24 August 2007* which have been in effect prior to the effective date of this notification shall remain in full force to the extent that they are not inconsistent with or contrary to the provisions of this Notification until notifications, orders and circulars issued under or prescribing guidelines for compliance with this Notification come into force.

Clause 10 Any reference made in any other Notifications to the *Notification of the Securities and Exchange Commission No. KorThor. 10/2550 Re: Short Selling of Securities relating to ETF Mutual Fund, dated 24 August 2007*, shall mean reference to this Notification.

Clause 11 This Notification shall come into force as from 1 June 2011.

Notified this 10th day of May 2011.

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(Thirachai Phuvanatanarubala)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board