

Local listing of foreign exchange traded funds (ETFs)

Background

In November 2010, the Thai Securities and Exchange Commission (SEC) approved in principle the listing of foreign exchange traded funds (Foreign ETFs) on the Stock Exchange of Thailand on the condition that they meet all requirements of the governing regulations, which were to be issued. The SEC has now issued notifications approving qualified Foreign ETFs to be directly sold to investors in Thailand without the need for further approval from, and filing with, the SEC, as well as deregulating related legal requirements on corporate governance and business takeover rules (Notifications). These new Notifications aim to facilitate the operation of Foreign ETFs, enhance the harmonisation of rules and provide a greater variety of investment products. The relevant Notifications became effective from 16 January 2011.

Qualifying Foreign ETFs

To qualify under the Notifications, the Foreign ETFs must be (i) a collective investment scheme in the form of an exchange traded fund governed by the law of a foreign county, (ii) set up in the form of a company or trust under a foreign law and (iii) already listed and traded on an exchange which is a member of the World Federation of Exchanges (WFE). The qualified Foreign ETFs can issue units for investment through unit trusts or the investment company's shares listed on the home exchange.

Public offering exemption

The provisions regarding public offerings under the Securities and Exchange Act B.E.2535 (SEA) will not be applicable to the offering regardless of whether it is in the form of (i) shares in an investment company or (ii) unit trusts issued under the Foreign ETFs provided that such Foreign ETFs can meet the following requirements:

- Foreign ETFs and ETF operators must be under the supervision of a regulator who is a member of the International Organization of Securities Commissions (IOSCO);
- the return on investment in the Foreign ETFs must be based on the gold price, index related to crude oil, index of commodity products or stocks index recognised by a foreign exchange, which is a member of the WFE;
- Foreign ETFs must have a policy of investing in types of assets akin to the types of assets that mutual funds, according to the SEA, are allowed to invest in, and shall operate passive management;
- The ETF operator must not have had its license restricted, suspended, or revoked by foreign regulators; and
- The ETF operator must have an agent in Thailand in order to distribute any necessary information required by the relevant authorities and receive any letters, notifications, orders or documentation for the Foreign ETFs or ETF operator.

Foreign ETFs can submit an application together with supporting documents to request from the SEC a verification that they are entitled to such public offering exemption.

Key Issues

Background

Qualifying Foreign ETFs

Public offering exemption

The deregulation of good corporate governance and business takeover of Foreign ETFs

Listing on the Stock Exchange of Thailand

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Deregulation of good corporate governance and business takeover of Foreign ETFs

In essence, the SEC requires that any Foreign ETFs shall abide by the principles of good corporate governance set forth under the SEA, unless there are special exemptions. In this regards, the SEC has deregulated legal requirements governing Foreign ETFs' governance, as follows:

- any transaction between a director, an executive or a related person and a Foreign ETF does not require any approval from the Foreign ETFs' unit-holders if the relevant laws of the home exchange do not require it;
- any filing of a company report concerning the management and the relationship between a director, executive or a related person and Foreign ETFs, including any significant transaction impacting on the Foreign ETFs, and any actions enticing Foreign ETFs to give a proxy to a person for voting shall be handled according to the laws of the home exchange; and
- any reports with respect to an acquisition or disposition of Foreign ETFs' securities, providing a calculation of voting rights, shall be governed by the laws of the home exchange

In relation to the legal requirements for a business takeover under the SEA, the business takeover rules shall not be applicable to the acquisition of Foreign ETFs' securities.

Listing on the Stock Exchange of Thailand

In order that investments in a Foreign ETF can be remitted out of Thailand, the entity which will offer the Foreign ETF must apply for a foreign investment amount from the SEC. The SEC will allocate the foreign investment amount to the Foreign ETF provided that it does not exceed the amount allocated by the Bank of Thailand and the Foreign ETF lists on the Stock Exchange of Thailand (SET) within 2 months of this allocation. Foreign ETF's will therefore be required to list on the SET. However, the SET is in the process of drafting regulations concerning the listing of Foreign ETFs on the SET, which are expected to be implemented in May 2011.

If you require any further information on the issues raised in this briefing note please do not hesitate to contact the author at the contact details above.

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