

AQUA PRODUCT LABELS AND NAMING CONSIDERATIONS

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> As a licensed market operator, ASX is expected to satisfy itself that the trading name of an AQUA Product is generally true to label, and support the labelling conventions specified in ASIC Information Sheet 230 Exchange traded products: Admission guidelines (“INFO 230”). This Guidance Note explains how ASX interprets and meets those regulatory expectations.
<p>The main points it covers</p>	<ul style="list-style-type: none"> ASX’s interpretation of ASIC’s ‘generally true-to-label’ expectations INFO 230 guidance regarding Primary and Secondary labels Additional practical guidance on the application of Primary and Secondary labels, information on ASX ticker codes, Product Short names and Abbreviated names What actions ASX may take in relation to Product naming
<p>Related materials you should read</p>	<ul style="list-style-type: none"> ASIC Information Sheet 230: <i>Exchange traded products: Admission guidelines</i> ASX Operating Rules Guidance Note 12 <i>Warrants and AQUA product liquidity requirements</i> ASX Operating Rules Guidance Note 16 <i>Removal of AQUA Products from Trading Status</i>

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References in this Guidance Note to ASIC Information Sheet 230: Exchange Traded Products Admission Guidelines are based on the version of INFO 230 issued in November 2022.

Important notice: ASX has published this Guidance Note to assist AQUA Product Issuers to understand and comply with their obligations under the ASX Operating Rules. It sets out ASX’s interpretation of the ASX Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note binds ASX in the application of the ASX Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and AQUA Product Issuers should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without notice to any person.

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1. Introduction

This Guidance Note is published by ASX Limited (**ASX**) to explain how ASX:

- interprets and meets ASIC’s expectations that ASX:
 - satisfy itself that the trading name of an AQUA Product is “generally true to label” and
 - supports the labelling conventions specified in INFO 230; and
- enforces compliance with Schedule 10A of the ASX Operating Rules¹ relating to AQUA Product naming.²

This includes explaining the circumstances in which ASX might have concerns in relation to the name of a Product (defined below), and what steps ASX may take to address those concerns.

The circumstances set out in this Guidance Note when ASX may exercise its powers in connection with the ASX Operating Rules are not intended to be exhaustive. In exercising its discretion to take or not to take action in respect of a matter, ASX will have regard to the ASX Operating Rules and the facts and circumstances applicable at the time.

In applying this guidance, ASX’s objective is a consistent, reasonable and efficient process, which demonstrably meets regulatory expectations of a market operator.

¹ Unless otherwise indicated, references in this Guidance Note to a rule or procedure relating to AQUA Products are to the “**AQUA Rules**” in Schedule 10A of the ASX Operating Rules and the procedures under those rules respectively.

² See AQUA rules 10A.5.1(a) and 10A.5.3(a) in respect of ETF Securities and Structured Products, respectively.

1.1 What this Guidance Note applies to

This Guidance Note applies to the following features of an AQUA Product or a prospective AQUA Product seeking admission (each a **Product**) only:

- (a) the trading name of the Product;
- (b) the Primary Label and Secondary Label (as applicable) applied to the Product by its issuer; and
- (c) its ASX ticker code, Short name and Abbreviated name.

2. Regulatory expectations

2.1 INFO 230 guidance on ETP product naming

ASIC's primary guidance regarding naming requirements for ETF Securities and Structured Products is set out in INFO 230³. ASIC expects ASX to:

- satisfy itself that the product's trading name is generally true to label and supports the labelling conventions set out in Table 1 (**Primary Labels**) and Table 2 (**Secondary Labels**) of INFO 230. Section 3 below sets out how ASX meets this expectation.
- have operating rules that implement the Primary Labels and Secondary Labels.⁴ Section 4 below sets out how ASX meets this expectation.
- verify that issuers have adopted appropriate product trading names and descriptions in marketing exchange traded products (**ETPs**) to retail investors. Section 2.4(b) below sets out how ASX meets this expectation.
- encourage naming that helps retail investors clearly differentiate between the different types of risks associated with the different types of Products – in particular, the difference in risks between:
 - Products that are structured as collective investment vehicles (**CIVs**) (such as managed investment schemes and corporate collective investment vehicle (**CCIV**) sub-funds) and other ETPs;
 - passive and active investment strategies; and
 - Products that are more complex than funds that have direct long-only exposure to the underlying assets (e.g. where the fund employs levered or inverse positions, has payoffs that are not one-for-one with the underlying assets, or where the exposure is obtained through derivatives);

ASX meets this expectation by satisfying itself that the product's trading name is generally true to label and having operating rules that implement the Primary Labels and Secondary Labels.

2.2 Consistent implementation

ASIC has emphasised that a key objective of its guidance regarding Primary Labels and Secondary Labels is to promote consistency in the use of terminology.⁵ ASIC also expects licensed exchanges active in admitting ETPs to trading status to consider whether it is possible to develop rule frameworks that are more consistent with each other to support the implementation of ASIC guidance.⁶ Section 6.2 provides further detail regarding how ASX achieves this objective.

³ <https://asic.gov.au/regulatory-resources/markets/market-supervision/exchange-traded-products-admission-guidelines/>

⁴ See Rule 10A.5.1(a) and Rule 10A.5.3(a) of the AQUA Rules and their related Procedures. The name of an ETF or Structured Product must comply with ASIC guidance regarding naming requirements for exchange traded products.

⁵ See ASIC Report 750: Response to submissions on CP 356 ETP naming conventions: Updates to INFO 230 (**REP 750**) at paragraph 16.

⁶ See REP 750 at paragraph 36.

2.3 Other regulatory guidance

This Guidance Note focuses on ASX's application of ASIC's INFO 230 expectations. ASIC has provided additional guidance in relation to naming considerations for specific product types. ASX expects issuers to have regard to this guidance to the extent that it is relevant to their Products.⁷

2.4 Interaction with other laws

For the avoidance of doubt, neither ASX's assessment of whether or not a Product is generally true to label, nor a decision to admit a Product to Trading Status, is an assessment, representation, confirmation or guarantee that any name attributable to a Product, or the offer, issue, sale, advertising, marketing or any other distribution activity in relation to the Product complies with Australian laws relating to competition, product design and distribution or financial product disclosure, distribution or marketing.

Refer to sections 6.2 and 6.3 below for further information about what action ASX will take if it has any concerns about a matter covered in this section 2.4.

(a) No interference in or prejudice to ASIC regulation and enforcement

If there is a concern that a representation, action or omission by a Product issuer, or any other person involved in the design, manufacture or distribution of a Product, may contravene laws relating to:

- competition or other related prohibited conduct (including misleading or deceptive conduct or making false or misleading statements);
- product design and distribution (including deficiencies in a target market determination or if an investor in a Product is not in the relevant target market); or
- product disclosure (including if there are any deficiencies in product disclosure documentation),

these will typically be matters over which ASIC exercises proper jurisdiction. It would be inappropriate and improper for any considerations or decisions of ASX to prejudice, compromise or otherwise interfere with ASIC's proper oversight and exercise of power in relation to such matters.

(b) Product naming vs. Product marketing

As set out in sections 3 and 4 below, ASX must satisfy itself that AQUA Product Issuers have adopted appropriate product names and adhere to ASIC's naming conventions. For the avoidance of doubt, ASX:

- is not responsible for the oversight or regulation of Product distribution or marketing by AQUA Product Issuers; and
- will not have regard to the broader context of an AQUA Product Issuer's product marketing or distribution materials unless we become aware or otherwise requested by the AQUA Product Issuer for the purposes of considering a matter under this Guidance Note.

Again, these will typically be matters over which ASIC exercises proper jurisdiction and it would be inappropriate and improper for any considerations or decisions of ASX to prejudice, compromise or otherwise interfere with ASIC's proper oversight and exercise of power in relation to such matters.

If ASX becomes aware of a material concern regarding the product trading names and descriptions used by an AQUA Product Issuer in marketing its ETPs to retail investors, ASX may advise ASIC of those concerns (see section 6 below for further detail).

⁷ For example, see ASIC guidance regarding hedge funds (ASIC Regulatory Guide 240: Hedge funds), cash and money market funds (ASIC Report 324: Money market funds (December 2012)), crypto-asset based funds (ASIC Information Sheet 225 Crypto-assets) and funds marketed as having a 'sustainability' focus (ASIC Information Sheet 271 How to avoid greenwashing when offering or promoting sustainability-related products). See also ASIC Regulatory Guide 168: Disclosure: Product Disclosure Statements (and other disclosure obligations) and ASIC Regulatory Guide 234: Advertising financial products and services (including credit): Good practice guidance.

2.5 Product naming and labels are not a replacement for financial advice or product disclosure

ASX notes ASIC's observations in INFO 230 that:

- retail investors frequently trade ETPs through execution-only brokers and may not receive a PDS; and
- product names that more clearly reflect the nature of the product, combined with the use of a small number of defined labels, can help alert retail investors to the type of product and associated risks.

For the avoidance of doubt, neither ASX's assessment of whether or not a Product is generally true to label, nor a decision to admit a Product to Trading Status, is an assessment, representation, confirmation or guarantee in connection with the type of product or its associated risk. Such a decision does not constitute financial product advice. ASX does not guarantee the performance of any AQUA Products, nor does it give any representation or guarantee in connection with the accuracy of their product disclosure statements.

Investors must make their own assessment of appropriateness of any AQUA Products and ASX emphasises that the name of, or label applied to, an AQUA Product is not an adequate replacement for reading the relevant product disclosure statement or seeking financial product advice.

3. The meaning of "generally true to label"

The assessment of whether a Product's trading name is "generally true to label" is the primary regulatory expectation for the purposes of ASX's assessment of a Product's trading name and label. In simple terms, when making this assessment ASX needs to be satisfied that the Product's name matches the Product.

In ASX's opinion, the expectation that Product trading names (and any Primary Labels or Secondary Labels applied) are "generally true to label" requires that the name applied to a Product is not:

- (a) inappropriate having regard to the key features of the Product; or**
- (b) reasonably likely to be confusing to a reasonably informed prospective investor in the Product.**

ASX considers that in the context of the phrase "generally true to label", the word "generally" does not require ASX to make a positive assessment that a particular Product's trading name is, in fact, "true to label" or that one Product name is more or less "true to label" than another. Rather, ASX is expected to be satisfied that the trading name of, and any labels applied to,⁸ the Product are not inappropriate or reasonably likely to be confusing.

Without limiting any other discretions ASX may have under the AQUA Rules, if ASX is satisfied that the trading name of a Product is not inconsistent with paragraph 3(a) or 3(b) above, ASX will proceed on the basis that it is satisfied that the trading name of the Product is generally true to label.

3.1 The "key features" of a Product

The choice of legal name or trading name of a Product, or a determination to change that name, is generally a matter for the Product issuer. ASX acknowledges that:

- in some cases, Product issuers may act on instructions from third parties, such as investment managers, in connection with the naming and operation of particular Products; and
- different AQUA Product Issuers may adopt internal naming conventions for their Products for various reasons,

and so, ASX considers that a "one size fits all" approach to Product naming is neither appropriate nor practical.

ASX takes a pragmatic approach to assessing whether or not a Product's trading name is "generally true to label" and considers the key features of a Product when making this assessment.

⁸ See ASIC's response to submissions at paragraph 31 of REP 750 (page 12).

The “key features” of a Product may differ on a case by case basis. Based on ASX’s experience, some key features that commonly inform the name of a Product include, but are not limited to:

- the name of the AQUA Product Issuer;⁹
- the name of the investment manager, or sub-investment manager, for the Product;¹⁰
- the Underlying Instrument(s) of the Product or the asset class of those Underlying Instruments; or¹¹
- the investment objective, investment strategy or investment mandate¹² of the AQUA Product.

Where appropriate, ASX may, but is not required to, take into account:

- the trading names of other comparable AQUA Products or ETPs that are already admitted to Trading Status in Australia or other comparable jurisdictions;¹³
- widely accepted industry terminology to assess whether or not a product name is not inappropriate or confusing.¹⁴ In these instances, AQUA Product Issuers must demonstrate to ASX’s satisfaction that any terminology or phrases used in the name or label of a Product are not inconsistent with the widely accepted meaning of those terms or phrases; and
- reasonable submissions from AQUA Product Issuers in relation to the trading name of a particular Product or type of Product.

Some more detailed examples of matters that ASX may take into consideration regarding a Product’s investment objective, strategy or mandate for the purposes of a “generally true to label” assessment are set out in **Annexure A** and on the ASX website.¹⁵

4. Supporting INFO 230 labelling conventions

ASIC expects ASX to have operating rules that implement the Primary Labels and Secondary Labels. (Refer to Table 1 and Table 2 in INFO 230¹⁶)

AQUA Rules 10A.5.1(a) and Rule 10A.5.3(a) and their related Procedures require that the name of an ETF or Structured Product (as applicable) must comply with ASIC guidance regarding naming requirements for exchange traded products (ETPs).

4.1 Primary Labels: Exchange Traded Fund, ETF, Structured Product and Structured

Each ETP must have a Primary Label that complies with Table 1 of INFO 230, being either:

- “*Exchange Traded Fund*” or “*ETF*”, or
- “*Structured Product*” or “*Structured*”.

To avoid confusion and to facilitate an orderly transition to the new naming convention, ASX has amended the definition of AQUA Product under ASX Operating Rule [7100] to reflect ASIC’s new Primary Label guidance.

⁹ This is typically the operator (generally the trustee or responsible entity) of the AQUA Product. ASX considers that the practice of including the AQUA Product Issuer’s name in the trading name of an AQUA Product is commonplace and typically will not be considered controversial when assessing if a Product is “generally true to label”.

¹⁰ ASX considers that the practice of including the investment manager’s name in the trading name of the AQUA Product is commonplace and typically will not be considered controversial when assessing if a Product is “generally true to label”.

¹¹ For example “Australian Equities”, “Global Equities”, “Fixed Income”, currencies or commodities.

¹² A Product’s investment mandate generally comprises the investment objective and the investment strategy.

¹³ Refer to section 6.2 below.

¹⁴ Based on ASX’s experience as an ETP market operator, we expect that this will most commonly be required where a Product name is based on a particular investment objective, strategy or mandate.

¹⁵ See [ASX Compliance downloads](#)

¹⁶ <https://asic.gov.au/regulatory-resources/markets/market-supervision/exchange-traded-products-admission-guidelines/>

With effect from 15 April 2024 (**Commencement Date**) each new AQUA Product will be categorised as either:

- an Exchange Traded Fund, i.e., a collective investment vehicle (such as a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001*), or
- a Structured Product, i.e., a security or derivative that gives financial exposure to the performance of one or more underlying instruments.

Refer to section 4.3 below for guidance relating to the transition of existing AQUA Products to the new naming convention.

4.2 Secondary Labels: Active and Complex

(a) Active

INFO 230 states that:

“The term ‘Active’ should be used immediately before the primary label of any ETP that is structured and marketed as employing an active investment objective. This is where underlying investments are held or traded in a way that does not track or replicate the returns of a robust and transparent index or benchmark (i.e. the objective is to outperform an index, or is benchmark unaware) or track the performance of a specific security.”

Based on the guidance above, ASX considers that an “Active” Secondary Label should be applied by reference to the investment objective of the particular Product.

For the purposes of AQUA Rules 10A.5.1(a) and 10A.5.3(a), and subject to section 4.2(b) below, AQUA Product Issuers should apply the “Active” Secondary Label if the investment objective of the Product:

- (a) Seeks to outperform a particular benchmark (such as an index, commodity, currency pair, or other stated financial benchmark);¹⁷ or
- (b) Is “benchmark unaware”, focused on “absolute returns” or will seek to achieve superior risk-adjusted returns to comparable funds.

(b) Complex

INFO 230 states that:

“The term ‘Complex’ should be used immediately before the primary label of any ETP where the investment strategy:

- uses debt or leverage to make a financial investment
- uses short selling
- uses derivatives, other than disclosed hedging of exchange rate or interest rate risks, to:
 - gain non-temporary material economic exposure to implement the underlying investment strategy, or
 - create a net leveraged or net inverse position for the portfolio, or
- otherwise meets the hedge fund criteria in *Regulatory Guide 240 Hedge funds: Improving disclosure (RG 240)*.

Where the ‘Complex’ label is applied, it is good practice for the full product trading name to indicate the specific risks, strategies or features that gave rise to the application of this label (e.g. leveraged, inverse, synthetic, hedge fund, long-short, etc.).”

¹⁷ ASX acknowledges that further consideration may be appropriate in the case of certain types of Products. Some types of ETPs have unique characteristics which may be relevant for the purposes of assessing “generally true to label” or appropriate secondary labels.

To illustrate, ASX understands that most deposit products regularly outperform those cash benchmarks, and so cash-based ETPs also typically seek to outperform those benchmarks. In ASX’s experience, despite those ETPs’ outperformance objectives, they may not necessarily exhibit other features typically associated with active management (e.g. research, analysis and professional judgment). ASX may have regard to these matters when considering whether an Active Secondary label is “generally true to label”.

Subject to paragraph 4.2(b)(i) below, ASX considers that the above guidance is capable of being applied in accordance with its ordinary meaning. For the purposes of AQUA Rules 10A.5.1(a) and 10A.5.3(a), AQUA Product Issuers should apply the “Complex” Secondary Label if:

- (a) **(Debt or leverage)** the investment strategy permits the use of debt or leverage for the dominant purpose of making a financial investment. For the avoidance of doubt, any derivatives use that has the effect of creating an inverse or leveraged exposure will require the “Complex” Secondary Label to be applied.
- (b) **(Short selling)** the investment strategy permits the use of short selling; or
- (c) **(Hedge Fund or Fund of Hedge Funds)** the Product must also comply with the requirements applicable to hedge funds or funds of hedge funds as set out in ASIC Regulatory Guide 240 Hedge funds: Improving disclosure.

ASX does not expect to exercise any discretion in relation to the application of the “Complex” Secondary Label in the circumstances above.¹⁸

(i) *Use of derivatives*

ASX acknowledges that Product issuers may need to undertake a detailed assessment of complex and nuanced portfolio management issues when determining whether or not the “Complex” Secondary Label should be applied to a Product.

ASX has set out its guidance in relation to the derivatives limb of the Complex Secondary Label in **Annexure B** to this Guidance Note.

(ii) *Master/Feeder Funds*

Consistent with ASIC’s expectations in INFO 230,¹⁹ ASX will adopt a ‘look through’ approach to the holdings of the underlying asset to determine appropriate naming and labels, such as when the Underlying Instrument of an AQUA Product is an interest in another collective investment vehicle.

(iii) *Good practice guidance to indicate the specific risks, strategies or features*

ASX expects AQUA Product Issuers to have regard to ASIC’s good practice guidance when determining the trading name for a Product. ASX will consider the appropriateness of a Product’s trading name in accordance with the principles set out in **section 3** of this Guidance Note.

4.3 Practical guidance regarding the application of Primary Labels and Secondary Labels

(a) **ASIC guidance**

INFO 230 states that:

“All labels should appear at the end of the product trading name. If a secondary label is applied:

- *it should appear immediately before the primary label. For example, ‘ABC ETF’, ‘XYZ Active ETF’, ‘LMN Structured’*
- *only one secondary label should be applied to a product. Where a product would meet the requirements to apply the ‘Active’ and the ‘Complex’ labels, only the ‘Complex’ label should be applied, and*
- *the ETP must be marketed as having an investment strategy consistent with that label.”*

¹⁸ ASX notes that ASIC has acknowledged that there would be problems in multiple licensed exchanges applying discretion as to the application of the “Complex” label, so updated INFO 230 to remove any discretion applied by the exchanges in its application.

¹⁹ INFO 230 states: “Licensed exchanges should satisfy themselves that the product’s trading name is generally true to label and supports the labelling conventions in Table 1 and Table 2 below. This includes: ... adopting a ‘look through’ approach to the holdings of the underlying asset to determine appropriate naming and labels, such as when an ETP’s underlying asset is a CIV (e.g. feeder fund).”

(b) General stylistic guidance

(i) *All Primary and Secondary labels are to appear at the end of the product name*

- The Primary and/or Secondary labels are to appear at the end of each ETP name in the format:

[FUND NAME] [SECONDARY LABEL] [PRIMARY LABEL]

(ii) *No adulteration of the Primary and/or Secondary labels*

- No words, punctuation marks or other typographic notes are to appear between or with the Primary and/or Secondary labels, e.g.:

- *ABC Active – ETF, XYZ E.T.F., DEF Structured *Product** **are unacceptable**

(c) Use of typographic markings

(i) *Use of brackets*

- Brackets are not to be used to encapsulate any of the Primary or Secondary labels required by ASIC Information Sheet 230, e.g.:

- *ABC Active ETF* **is acceptable**,
- *ABC (Active ETF)* **is not acceptable**

- Brackets can be used for other purposes provided these appear before the Primary or Secondary labels, e.g.:

- *ABC (Currency Hedged) ETF* **is acceptable**,
- *ABC ETF (Currency Hedged)* **is not acceptable**

(ii) *Use of dashes*

- Dashes may be used prior to the Primary or Secondary labels where the Issuer considers this to be appropriate, e.g.:

- *ABC Fund – Active ETF, or XYZ – Complex ETF* **is acceptable**

- Dashes must not be used in between the Primary and Secondary labels, e.g.:

- *ABC Fund Active – ETF* **is not acceptable**

5. ASX ticker codes, Product Short names and Abbreviated names

For the avoidance of doubt, ASX may apply the principles in section 3 and 4 of this Guidance Note to other identifiers attributable to a Product (including ASX ticker codes, nine-character Product short names and twenty-character abbreviated names) to the extent ASX considers it appropriate, having regard to any other applicable policies or procedures.²⁰

6. How and when ASX will consider taking action

6.1 If ASX is not satisfied that a Product is “generally true to label”

If, having regard to the matters set out in **section 3** of this Guidance Note, ASX is not satisfied that a Product is generally true to label, ASX will typically inform the AQUA Product Issuer of this assessment.

²⁰ For example, in respect of ticker codes, ASX will have regard to the Issuer Code Allocation framework available at: <https://www.asx.com.au/documents/products/asx-issuer-code-allocation-2017.pdf>.

ASX may, but is not required to, discuss alternative Product names with the AQUA Product Issuer to assist the AQUA Product Issuer to determine if any modifications can be made to satisfy ASX of the matter described in section 3(a) and 3(b) of this Guidance Note.

If the AQUA Product Issuer is unable or unwilling to modify the name of the Product, or otherwise provide an acceptable explanation, to satisfy ASX that it is generally true to label, then:

- In the case of a Prospective AQUA Product, ASX will not accept the relevant application for assessment or admit the product to Trading Status (as applicable); and
- In the case of an existing AQUA Product, ASX may exercise its right to halt or suspend trading of any AQUA Product where it considers that the AQUA Product Issuer has failed to comply with its obligations under the AQUA Rules.²¹ ASX may also consider referring such matters to ASIC.

6.2 ASIC Queries

For the avoidance of doubt, if ASX considers that:

- The application of a particular Secondary Label to a Product would be potentially inappropriate, confusing or misleading despite technically complying with Table 2 of INFO 230; or
- It is unclear whether or not a particular Secondary Label should be applied in accordance with Table 2 of INFO 230; or
- The application of a particular Secondary Label to a Product on ASX would not be consistent with the Secondary Label already applied to a comparable ETP on another market,

then ASX will typically raise that matter with ASIC. In the case of the first two bullet points above, this may delay further consideration of the Product by ASX unless and until ASIC advises that it has no objection.

If ASX has any concerns about potential misleading and deceptive conduct or disclosure defects, including in relation to the name of the product, ASX will refer those concerns to ASIC for review.²²

ASX will typically advise AQUA Product Issuers of its concerns and seek to resolve them before raising the matter with ASIC.

6.3 ASIC Referrals

If ASX has reason to suspect that a particular matter constitutes a significant contravention of the ASX Operating Rules or the Corporations Act, ASX must notify ASIC of that matter.²³

²¹ ASX may halt or suspend trading of any AQUA Product under Rule 10A.8.1.

²² INFO 230 states that "If a licensed exchange has any concerns about potential misleading and deceptive conduct or disclosure defects, including in relation to the name of the product, those concerns should be referred to ASIC for review."

²³ Section 792B(2)(c) of the Corporations Act.

Annexure A: “Generally true to label” in relation to investment mandates

A.1 Widely accepted meanings of investment mandate terminology

ASX is familiar with AQUA Product Issuers naming Products that they issue by reference to the relevant investment mandate.²⁴

The terminology and phrases used by Issuers to label their AQUA Products must follow the widely accepted meanings of those phrases. In ASX’s experience, certain investment objectives and strategies are commonly described using specific terms of art, words or phrases that have well-understood meanings in the funds industry. Where a certain word or phrase is used in the name of a Product, it must be used consistently with its understood meaning.²⁵

Examples: Active and passive strategies

1. An **‘active’** or **‘actively-managed’** ETF’s investment objective might be to outperform a stated benchmark. The way this ETF tries to achieve its objective would be through “active” investment techniques such as research, analysis and forecasts of the investments it makes, and ultimately selecting the investments that the investment manager believes will outperform others in the investible universe. In this example, the research, analysis and forecasts, and the selection of investments is the investment strategy. This is in contrast to an “index-tracking” ETF (sometimes called ‘passive’) that invests in the constituents of a stated index.
2. A **‘passive’** or **‘index-tracking’** ETF typically seeks to track the performance of a specific asset, benchmark or index (**Reference Asset**) (i.e., a tracking objective). The way that it achieves that objective is by purchasing all of the constituents of the Reference Asset (e.g., acquiring each component of the S&P/ASX 200 index in the exact proportions of the index (i.e. a physical replication strategy)).

A.2 Investment mandates

Investment mandates can be categorised in a variety of ways.²⁶ For example:

- **Investment style:** Such as, actively managed, index-tracking, benchmark unaware
- **Asset class** Such as, equities, fixed income, money market securities, currencies, commodities, alternatives
- **Geographies** Such as, global, Australia, world ex-Australia, US, emerging markets, Europe, India, UK, Asia ex Japan
- **Sectors** Such as, financials, consumer discretionary, healthcare, battery technology, crypto assets
- **ESG** Such as, Environmental, Social or Governance, Sustainable, Socially Responsible, Ethical, Christian values, Shariah/Islamic compliant
- **Factors/Smart Beta** Such as, mid-cap, small-cap, micro-cap or broad market, growth, high dividend/yield, large cap, quality, low volatility
- **Exposure** Such as, Inverse and Leveraged exposure

²⁴ ASX considers that the investment mandate is comprised of the Product’s investment objective (the purpose that the Product seeks to achieve) and investment strategy (how the Product seeks to achieve the investment objective).

²⁵ ASX will have regard to its own education materials, ASIC’s Moneysmart website, ASIC Regulatory Guides, Reports and Information Sheets, and mainstream financial news outlets (e.g. the Australian Financial Review, The Economist, Bloomberg News, The Wall Street Journal, Financial Times, and other reputable secondary academic sources) in considering whether an investment products’ investment objective and investment strategy is consistent with the widely accepted meaning of certain phrases.

²⁶ Refer to the table at [ASX Compliance downloads](#) for further detail.

- **Fixed Income characteristics** Such as, government / treasuries, semi-government, corporates, interest rate / duration hedged, asset-backed securities, mortgage-backed securities, short duration, investment grade, high yield.
- **Currency** Such as, AUD/USD, AUD/GBP.
- **Commodities** Such as, gold, silver, bitcoin, wheat, precious metals basket

Annexure B: “Complex” Secondary Label and derivatives use

B.1 ASIC Expectations and policy guidance

For ease of reference, ASIC’s INFO 230 guidance in relation to the ‘derivatives limb’ of the “Complex” Secondary Label is extracted below:²⁷

“The term ‘Complex’ should be used immediately before the primary label of any ETP where the investment strategy: ...

- *uses derivatives, other than disclosed hedging of exchange rate or interest rate risks, to:*
 - o *gain non-temporary material economic exposure to implement the underlying investment strategy, or*
 - o *create a net leveraged or net inverse position for the portfolio, ...*

Note: In assessing materiality of the exposure under the derivatives usage limb, licensed exchanges should consider whether the investment strategy of the ETP would permit it to hold notional derivative exposures that in aggregate relate to underlying assets valued at 10% or more of the NAV of the ETP (disclosed hedging of exchange rate or interest rate risks can be excluded from the 10%). This 10% threshold should be used as a guide and is not itself determinative. An exposure of less than 10% could still be considered ‘material’ depending on other circumstances. Similarly, exposure above 10% may not be considered ‘material’, though we expect that in this case the issuer should provide the licensed exchange with clear reasons and relevant analysis explaining why the exposure should not be considered material. In considering materiality and whether the derivatives use limb applies, licensed exchanges should focus on the likely effect or outcome for investors. The ‘Complex’ label should be applied if the derivatives use:

- *is likely to have the overall effect of increasing the risk profile of the ETP on an ongoing basis from an investor perspective, or*
- *is of a nature that investors should be alerted to, to differentiate the ETP from more ‘standard’ physically replicating products.*

For example, we do not expect that derivatives used to more efficiently gain an economic exposure to underlying assets on a temporary basis will be captured by this definition.”

ASIC provided additional policy guidance in relation to the purpose and intention of the Complex Secondary Label in REP 750.²⁸ ASX considers that the application of a “Complex” Secondary Label should be considered having regard to its purpose,²⁹ in particular:

- a key objective of ASIC’s guidance regarding Primary Labels and Secondary Labels is to promote consistency in the use of terminology;
- consideration of appropriateness in relation to the full trading name of a Product includes consideration of any Primary Labels or Secondary Labels applied;
- the purpose of the “Complex” secondary label is to “*flag to investors that there may be elements of the product that require more detailed consideration*”; and
- the policy intention of the derivatives limb is “*to identify products with a higher risk profile because of non-temporary material exposure to derivatives to implement the underlying investment strategy.*”

B.2 How ASX applies the ‘derivatives limb’ of the “Complex” Secondary Label

Based on ASIC’s expectations set out in section B.1 above, and for the purposes of AQUA Rules 10A.5.1(a) and 10A.5.3(a) (as applicable), in ASX’s opinion the following principles should be applied in relation to the application of the “Complex” Secondary Label to a product on the basis of derivatives use:

1. **(Generally true to label)** ASX will have regard to whether or not the application of the “Complex” Secondary Label for the purposes of assessing whether or not the Product is “generally true to label” in accordance with sections 3 and 6 of this Guidance Note and ASIC’s guidance that the derivatives limb is intended “*to identify*

²⁷ Refer to <https://asic.gov.au/regulatory-resources/markets/market-supervision/exchange-traded-products-admission-guidelines/> for a full extract of ASIC’s expectations in relation to ETP labels and naming considerations.

²⁸ Refer to ASIC’s response to submissions in paragraph 31 of REP 750 (pages 12 to 14).

²⁹ Refer to ASIC’s response to submissions in paragraph 31 of REP 750 (pages 12 to 14).

products with a higher risk profile because of non-temporary material exposure to derivatives to implement the underlying investment strategy”;

2. **(Included derivatives use)** In general, ASX expects that a “Complex” Secondary Label will be applied to a Product if the permitted derivatives use is either:
 - a. non-temporary and material, having regard to the circumstances/key features of the product (refer to Section B.3 below); or
 - b. used to create a net leveraged or net inverse position for the Product’s portfolio (refer to Section B.4 below).
3. **(Excluded derivatives use)** derivatives may be used for the dominant purpose of managing foreign exchange risk or interest rate risk³⁰ without triggering a “Complex” Secondary Label requirement. Provided the hedging purpose of derivatives use is expressly disclosed in the relevant Product disclosure documentation,³¹ such derivatives are not included for the purpose of considering whether a “Complex” Secondary Label is requirement is triggered.³²

B.3 Non-temporary, material derivatives use

In ASX’s opinion, the following principles should be applied when considering whether or not derivatives are used to gain non-temporary material economic exposure to implement the underlying investment strategy:

1. **(Non-temporary use)** ASX considers derivatives use to be “non-temporary” if the period during which the derivative(s) position is held in the portfolio before it is closed out is 28 days or more (including rollover or replacement of the derivative).³³ Derivative positions that are held and closed out within less than 28 days are not included for the purpose of considering materiality for the purposes of the “Complex” Secondary Label.
2. **(Materiality)** In ASX’s opinion, the materiality of derivatives use in relation to a Product will depend on the circumstances of that derivatives use in the context of the Product’s portfolio and investment mandate.
 - (a) **(Aggregate notional exposure)** Where the investment mandate of a Product permits it to hold notional³⁴ derivative exposures that in aggregate relate to underlying assets valued at:

³⁰ ASX considers that this requirement is consistent with ASIC’s guidance in relation to the use of derivatives for foreign exchange or interest rate risk management purposes in Regulatory Guide 240 Hedge funds: Improving disclosure (“RG 240”): see RG 240.11(a).

³¹ ASX acknowledges that AQUA Product Issuers that use derivatives for defensive strategies may describe the use of derivatives in a PDS in terms of outcomes, for example:

- to ‘hedge’ an exposure,
- to ‘reduce the risk’ of an exposure, or
- to ‘manage the risk’ of an exposure,

to the relevant reference asset. ASX considers that this exemption applies only if the PDS of the relevant AQUA Product expressly discloses the dominant purpose of derivative use is to hedge the foreign currency risk or interest rate risk.

ASX does not define “hedging”. ASX considers that, where an AQUA Product’s PDS discloses a hedging purpose, investors would reasonably expect there to be a meaningful negative correlation between the derivative’s price movements to those of the reference asset. ASX recognises that:

- offsetting exposures of the same asset on the same terms is one form of hedging (see ASIC Regulatory Guide 240 *Hedge funds: Improving disclosure* at RG240.14); and
- effective hedging strategies do not necessarily require a perfect mathematical hedge of the price movements in one asset being offset by inversely correlated movements in the ‘hedging asset’.

³² ASX may require an applicant to provide back testing (or real world examples) of the proposed use (or actual use) of derivatives by the AQUA Product demonstrating that the derivatives hedge the relevant risks.

³³ ASX considers that this requirement is consistent with ASIC’s guidance in relation to the temporary use of derivatives in Regulatory Guide 240 Hedge funds: Improving disclosure: see RG 240.11(b).

³⁴ As distinct from the market value of derivative exposures. In general, the “notional value” of a derivative is the total amount of that derivative’s underlying asset at its spot price, whereas the “market value” of the derivative is the price of the derivative as set by the trading of or quotation of the derivative (on a market-based trading venue or OTC quote).

- (i) **less than 10% of NAV:** in general, where a Product's investment mandate limits permitted notional derivatives exposure to less than 10% of NAV ASX will not consider to trigger a "Complex" Secondary Label requirement.

Note: having regard to the matters set out in section 3 of this Guidance Note and subparagraph (b) below, ASX may require an AQUA Product Issuer to provide ASX with a written submission setting out clear reasons and relevant analysis explaining why, having regard to the particular circumstances of the Product, a notional exposure valued at less than 10% of NAV should not be considered material.

- (ii) **10% of NAV or greater:** ASX expects the AQUA Product Issuer to either:
- (A) apply the "Complex" Secondary Label to the name of the Product in accordance with ASIC's guidance; or
 - (B) provide ASX with a written submission setting out clear reasons and relevant analysis explaining why, having regard to the particular circumstances of the Product and the matters set out in **section 3** of this Guidance Note, that notional exposure should not be considered material.

- (b) **(Likely effect or outcome for investors)** ASX acknowledges derivatives may be used in an AQUA Product for a variety of reasons. Derivative use does not, of itself, necessarily increase the risk profile of a Product. Depending on the nature and circumstances of a particular fund, a specific type of derivative instrument may, in fact, increase the risk profile of one Product but reduce the risk Profile of a different Product.

If an AQUA Product Issuer has determined not to apply a "Complex" Secondary Label to a Product that uses derivatives other than for disclosed excluded hedging, ASX will apply an "if not, why not" approach to that determination. In these circumstances, ASX expects the AQUA Product Issuer to provide a written submission to ASX setting out clear reasons and relevant analysis explaining why, having regard to the particular circumstances of the Product and the matters set out in section 3 of this Guidance Note, the use of derivatives in that Product:

- (i) is not likely to have the overall effect of increasing the risk profile of the ETP on an ongoing basis from an investor perspective; or
- (ii) is not of a nature that investors should be alerted to, to differentiate the ETP from more 'standard' physically replicating products.

At a minimum, ASX expects that such a submission would address the following matters and that those matters are also reflected in the Product's PDS:

- The basis on which the applicant considers that the proposed trading name is consistent with the matters set out in **section 3** of the Guidance Note in the absence of a "Complex" Secondary Label;
- The purpose of the proposed derivatives use (e.g. to hedge exposure to certain risks, manage risk, more efficiently gain exposure to underlying instruments) and that use does not increase the risk profile of the fund.³⁵
- How the Product's disclosure documentation disclose that derivatives use in relation to the Product is not intended to have the overall effect of increasing the risk profile of the Product.

³⁵ Note In this regard, ASX expects applicants to demonstrate that the overall risk profile of the Product is either reduced or not affected by the proposed use of derivatives.

ASX may take into account evidence regarding the relevant underlying asset pool, index type (if applicable), payoff formula or profile, maturity and trading venues of derivatives used by a Product for the purposes of assessing the impact that derivatives use has on the risk profile of the relevant fund. Applicants should support submissions with quantitative analysis (e.g. standard deviation of fund returns, VaR, Sharpe/Sortino ratios, portfolio risk factors) to demonstrate the impact of the proposed derivatives use on the overall risk profile of the fund. This quantitative analysis may be presented as compared against the benchmark of the fund or comparable index which does not utilise derivatives.

If the Product is a new fund, ASX will consider quantitative analysis based on portfolio behaviour.

- The details of any derivative exposure limits (expressed as a percentage of the NAV of the Product), including the expected impact of these limits on the risk profile of the Product.
- The expected notional value and market value of the target derivative positions. If possible, the calculation should be presented so as to demonstrate the exposure the fund has to derivatives does not increase the risk profile of the fund.
- Reasons why the Product is not of a nature that should be differentiated from 'standard' physically replicating products.
- If the Product is an OTC Derivatives Based ETF, confirmation that the AQUA Product Issuer will meet the requirements of AQUA Rule 10A.4.6.
- Any relevant examples of other Products or ETPs with the same or similar derivative use that ASX has not considered to be material. If appropriate, ASX may take into account examples of derivatives use in ETFs admitted to trading on other ETP markets.³⁶

ASX may consider, but is not required to accept, a submission in relation to the matters set out in this section B.3.

Refer to section 6 of this Guidance Note for a summary of the various steps that ASX may take once it has considered the matters above. In practice, and in the interests of promoting the consistent application of ASIC's product naming and labelling guidance, ASX considers it very likely that submissions relating to the non-application of the "Complex" Secondary Label will be referred to ASIC for consideration in accordance with section 6.2 of this Guidance Note. AQUA Product Issuers should allow for this when preparing and planning for the admission of a Product to Trading Status.

B.4 Inverse or leveraged portfolios

ASX expects AQUA Product Issuers to apply the "Complex" Secondary Label to each Inverse Product or Leveraged Product that they operate or issue.

For the purposes of AQUA Rules 10A.5.1(a) and 10A.5.3(a) (as applicable), ASX considers that:

- An "**Inverse Product**" is a Product that aims to deliver the opposite performance of its Underlying Instruments over a particular period.³⁷
- A "**Leveraged Product**" is a Product that aims to deliver a multiple of the performance of its Underlying Instruments over a particular period.³⁸

Based on ASIC's guidance, ASX considers that the use of derivatives in Inverse Products and Leveraged Products is deemed to comprise a non-temporary material exposure that increases the risk profile of the Product, and so inherently require more detailed consideration by investors.

ASX expects that a "Complex" Secondary Label will be applied in relation to all Inverse Products and Leveraged Products.

³⁶ Refer to sections 2.2 and 6.2 of this Guidance Note. A key regulatory objective regarding Primary Labels and Secondary Labels is to promote consistency in the use of terminology.

³⁷ See ASIC Report 282: *Regulation of exchange traded funds ("REP 282")* at paragraph 52. For example, an inverse share index ETF would seek to give a positive return when the share index goes down, and should lose value when the share index increases.

³⁸ See REP 282 at paragraph 53. For example, a US share index ETF with two times leverage would aim to provide a 10% return when the market increases by 5%. And conversely, if the market falls by 5%, the investor could expect to lose double that amount, or 10%. A leveraged inverse ETF seeks to achieve a multiple of the opposite performance of the relevant index