



Register of ASX Market Warrant and AQUA Rule Waivers

16 to 31 May 2009

The purpose of this register is to record when ASX has exercised its discretion and granted a waiver from the ASX Market Warrant and AQUA rules. Waivers are published bi-monthly and include information such as:

- Organisation**
- Rule Number**
- Decision Details**
- Basis for Decision**

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Rule Number	2.10 ETF
Date	1/05/2009
Participant	Participants (All)
Waiver Number	WPA090020-001
Decision	<p>The requirement in the definition of "ETF" in ASX Market Rule 2.10 for an ETF to be a "registered managed investment scheme" (i.e. a managed investment scheme that is registered under s 601 EB of the Corporations Act) for the purposes of the definition of an AQUA Product is waived where the entity:</p> <ul style="list-style-type: none"> a) is admitted under Section 10A of the ASX Market Rules; b) has the power and approval to continuously issue and have quoted on ASX Equity Securities in the entity; and c) for which the price of the Underlying Instrument is continuously disclosed or can be immediately ascertained; d) has the economic characteristics of a "managed investment scheme" namely: <ul style="list-style-type: none"> i. investors contribute money or money's worth to acquire rights to benefits produced by the entity; ii. contributions of investors are pooled, or used in a common enterprise, to produce financial benefits or benefits consisting of rights or interests in property for investors holding an Equity Security issued by the entity; and iii. investors in the entity do not have day to day control over the operation of the entity. e) is structured as a body corporate under the laws of the United States of America ("USA") and is regulated under the laws of the USA
Basis For Decision	<p>Underlying Policy ASX grants a waiver (subject to any issues raised by ASIC) to the requirement in the definition of "ETF" in Market Rule 2.10 for an ETF to be a "registered managed investment scheme" where the entity:</p> <ul style="list-style-type: none"> is listed on ASX; has the power and approval to continuously issue and have quoted on ASX Equity Securities in the entity; and has the economic characteristics of a "managed investment scheme" namely: <ul style="list-style-type: none"> investors contribute money or money's worth to acquire rights to benefits produced by the entity; contributions of investors are pooled, or used in a common enterprise, to produce financial benefits or benefits consisting of rights or interests in property for investors holding an Equity Security issued by the entity; and investors in the entity do not have day to day control over the operation of the entity. <p>The definition of ETF is relevant to obligations imposed on Trading Participants through the operation of Section 19 of the Market Rules. It is consistent with the policy underlying the definition of ETF and Section 19 that the same obligations apply to Trading Participants in relation to ETFs constituted in Australia as registered managed investment schemes, "domestic ETFs", and ETFs which</p>

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have similar economic characteristics but which are not "registered managed investment schemes" because they were established in a foreign jurisdiction, "foreign ETFs". When these provisions were inserted in the Market Rules only domestic ETFs had sought listing and quotation on ASX. As indicated above, ASX may designate an Equity Security issued by an ETF as an Approved Short Sale ETF pursuant to Market Rule 19.7.2.

The following provisions in the Market Rules also refer to "ETF":

Market Rule 16.1.2(f);
Market Rule 16.5 and Procedures 16.5.2 and 16.12.3 (under the heading Reporting of ETF Special Trades - Condition Code "ET");
Schedule 6 to the Market Rules.

ASX has considered the impact of the waiver on these provisions and is satisfied that it is also consistent with the policy underlying these provisions to treat foreign ETFs in the same way as domestic ETFs.

ASX is aware that there is growing demand for access to opportunities for Australian exposure to foreign assets. Mechanisms for satisfying this demand are now under consideration by government and its industry advisers. The demand may be satisfied by way of direct investor investment through an overseas exchange or it may be satisfied by the listing and trading on ASX of foreign companies, entities or funds in the style of managed investment schemes or ETFs.

There is also growing demand for the use of ETFs as an investment vehicle which is now being reflected in both market demand and public policy considerations

Present Application

The effects of the waiver apply to all Market Participants. The effect of the relief is that for the purposes of the ASX Market Rules:

- VTS and VEV are ETFs and ETF securities for the purpose of Chapter 10A
- ASX Market Rules 16.5, Procedure 16.5.2 and to ASX Market Rules 16.12.3 will apply to the reporting of Special Trades of VTS and VEV
- ASX Market Rule 19.4, 19.6, 19.7 and 19.8 and Schedule 6 to the ASX Market Rules would be applicable if it were not for the prohibition on naked short selling.

ASX's decision is solely related to its consideration of the application of ASX Market Rule 2.10, specifically the definitions of AQUA Product, ETF and ETF Security.