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**Public Consultation**

# Enhancing the ASX Investment Products Offering

26 April 2022

## Invitation to comment

ASX is seeking submissions on enhancements that could be made to the ASX investment product offering and to the different rules governing investment products.

Submissions are due by **Friday, 24 June 2022** and should be sent by email to:
kevin.lewis@asx.com.au
or by mail to:
ASX Limited
PO Box H224
Australia Square NSW 1215
Attention: Kevin Lewis

ASX would prefer to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on the ASX website.

If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in your submission.

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# 1. Introduction

## 1.1 Background

ASX Limited (**ASX**) is consulting on enhancements that could be made to the ASX Investment Product offering, particularly with a view to identifying areas where the different rules governing those products (the Listing Rules, the AQUA Rules and the Warrant Rules) could be improved and brought into closer alignment.

ASX's vision is to be the world's most respected financial marketplace. Underpinning this vision is a set of strategic pillars, including delivering innovative solutions, fostering a diverse ecosystem and maintaining trust, integrity and resilience.

In keeping with this vision and strategy, ASX wishes to ensure that the range and quality of Investment Products available on the ASX market are world-class and enable investors and their advisers to construct quality portfolios that achieve:

- diversification across asset classes, sectors, and geographies
- high levels of liquidity and transparency, and
- the option of income, capital growth or both.

Noting that many Investment Products are targeted primarily at retail and other private (non-institutional) investors, ASX also wants to ensure that its Investment Product offering is supported by a clear and consistent rule framework that safeguards the interests of investors, while at the same time providing issuers with the flexibility to innovate and bring new products to market and without imposing undue compliance costs or burdens.

For competitive neutrality, transparency and to promote comparability and reduce investor confusion, ASX can also see an argument that the ASX rule framework for these different products should be broadly comparable and that any differences in their treatment under the ASX rules should be clearly referable to differences in the products.

This consultation is intended to raise a number of issues that ASX considers may need to be addressed to achieve these aims and to invite interested stakeholders to contribute their thoughts on ways to improve the Investment Product offering on ASX and its governing rule framework, for the benefit of investors and issuers alike.

## 1.2 Some key terms

ASX uses the term "Investment Products"[1] to refer to the following products able to be quoted and traded on ASX:[2]

- shares or units in:
  - Listed Investment Companies (**LICs**)
  - Listed Investment Trusts (**LITs**)
  - Real Estate Investment Trusts (**REITs**), and

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1 Shares in listed companies and units in listed trusts are only regarded as Investment Products for the purposes of this consultation paper where they are issued by a LIC, LIT, REIT or IF. Ordinary debt securities (such as bonds and debentures) and hybrid securities that combine the features of debt and equity securities also are not regarded as Investment Products for the purposes of this consultation paper, nor are government bonds issued by "approved government issuers" under Schedule 11 of the ASX Operating Rules.

2 All of these products are traded on the ASX market under the ASX Operating Rules, cleared by ASX Clear under the ASX Clear Operating Rules, and settled by ASX Settlement under the ASX Settlement Operating Rules using the CHESS settlement facility.

- Infrastructure Funds (**IFs**),

that have been admitted to the official list of ASX. These products are governed by the ASX Listing Rules and are referred to collectively in this consultation paper as "**Listed Investment Products**".

- the following financial products:
  - shares or units in exchange traded funds (**ETFs**)[3]
  - shares or units in exchange traded managed funds (**ETMFs**)[4]
  - shares or units in those exchange traded structured products (**ETSPs**) that take the form of collective investment products that invest primarily in derivatives of the underlying instrument rather than the underlying instrument itself (such as some exchange traded commodities),[5] and

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3 These products are referred to in the ASX Operating Rules as "ETF Securities". That term is defined in ASX Operating Rule 7100 to mean a financial product issued by or provided pursuant to an ETF. "ETF" in turn, is defined to mean a collective investment:

(a) that is either a:

(i) registered managed investment scheme;

(ii) scheme which ASIC has exempted from the registration requirements; or

(iii) foreign company which:

(A) has the economic features of a managed investment scheme, namely:

a. investors contribute money or money's worth to acquire rights to benefits produced by the collective investment;

b. contributions of investors are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for investors holding financial products in the collective investment; and

c. investors holding financial products issued in the collective investment do not have day to day control over the operation of the collective investment; and

(B) is a type of body specified in the Procedures.

(b) listed on ASX or admitted under ASX Operating Rule 2121;

(c) with power and approval to continuously issue and have quoted on ASX ETF Securities;

(d) which allows applications for and redemptions of ETF Securities in the primary market, in-specie or in cash (or a combination of both); and

(e) for which the price of the underlying instrument is continuously disclosed or can be immediately ascertained.

For paragraph (a)(iii)(B) above, the Procedures specify an open-end management investment company registered with the US Securities and Exchange Commission under the Investment Company Act 1940 (USA).

For paragraph (b) above, a registered managed investment scheme or a scheme ASIC has exempted from the registration requirements will generally not be able to list on ASX as the requirement in (d) above will infringe Listing Rule 1.1 condition 5(c) for listed trusts that no-one must be under an obligation to buy back units or to allow investors to withdraw from the trust.

4 These products are referred to in the ASX Operating Rules as "Managed Fund Products". That term is defined in ASX Operating Rule 7100 to mean a financial product issued by or provided pursuant to a Managed Fund. "Managed Fund", in turn, is defined to mean a collective investment that is:

(a) a managed investment scheme which is a registered managed investment scheme pursuant to section 601EB of the Corporations Act;

(b) a scheme which ASIC has exempted from these registration requirements; or

(c) a foreign company which:

(i) has the economic features of a managed investment scheme, namely:

(A) investors contribute money or money's worth to acquire rights to benefits produced by the collective investment;

(B) contributions of investors are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for investors holding financial products issued in the collective investment; and

(C) investors holding financial products issued in the collective investment do not have day to day control over the operation of the collective investment; and

(ii) is a type of body specified in the Procedures.

For paragraph (c)(ii) above, the Procedures specify an open-end management investment company registered with the US Securities and Exchange Commission under the Investment Company Act 1940 (USA).

5 ASX presently does not have any ETSPs of this character admitted to trading status on the ASX market.

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  - those ETSPs that take the form of a security (such as an exchange traded note) or derivative that give a contractual exposure to the issuer for an amount related to the performance of the relevant underlying instruments,[6]

  issued by "approved AQUA Product issuers". These products are governed by the **AQUA Rules** in Schedule 10A of the ASX Operating Rules and are referred to collectively in this consultation paper as "**AQUA Products**".

- derivative-style warrants issued by "approved warrant issuers". These products are governed by the **Warrant Rules** in Schedule 10 of the ASX Operating Rules and are referred to in this consultation paper as "**Warrants**".[7]

LICs, LITs, REITs, IFs, ETFs, ETMFs, and those ETSPs that take the form of equity interests (shares or units) in a collective investment vehicle are referred to in this consultation paper as "**Collective Investment Products**". The remaining ETSPs and Warrants are referred to in this consultation paper as "**Derivative Investment Products**".

ASIC collectively refers to AQUA Products and the equivalent products traded on the Cboe Australia market as "Exchange Traded Products", or "ETPs".[8]

ASX operates a clearing and settlement service (**mFund Settlement Service**) for managed funds that are not listed on, and do not have their units quoted on, ASX (**Unlisted Managed Funds**). To participate in that service, an Unlisted Managed Fund must be a registered managed investment scheme in Australia whose responsible entity (**RE**) is an "approved AQUA Product issuer" under the AQUA Rules and whose units have been admitted to settlement in the mFund Settlement Service. Units in Unlisted Managed Funds that participate in that service (**mFunds**) are not quoted or traded on ASX. Instead, issues and redemptions of mFund units are notified to, and settled by, ASX Settlement via the CHESS settlement facility.[9] An mFund is required to comply with a sub-set of the AQUA rules generally applicable to AQUA Product issuers and some additional AQUA Rules targeted specifically at users of the mFund Settlement Service.

There is a glossary in Annexure B (page 95) setting out the meanings of the various abbreviations used by ASX in this consultation paper.

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6 These products are referred to in the ASX Operating Rules as "Structured Products". That term is defined in ASX Operating Rule 7100 as a security or derivative:

(a) which gives the holder financial exposure to the performance of one or more underlying instruments;

(b) the value of which is linked to the performance of those underlying instruments; and

(c) whereby investors do not have day to day control over the operation of the entity which issues or provides the security or derivative.

7 The term "Warrant" is defined in ASX Operating Rule 7100 to mean:

(a) a financial instrument which gives the holder of the instrument the right:

(i) to acquire the underlying instrument;

(ii) to require the issuer to acquire the underlying instrument;

(iii) to be paid by the issuer an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of an index; or

(iv) to be paid by the issuer an amount of money to be determined by reference to the amount by which the price or value of the underlying instrument is greater than or less than a specified price or value,

in accordance with the terms of issue; or

(b) any other financial product that is a "warrant" within the meaning given to that term in Corporations Regulation 1.0.02 (as modified by any class order that ASIC may issue from time to time) and which ASX determines to be a Warrant for the purposes of this definition, as notified to trading participants.

8 See Information Sheet 230 *Exchange traded products: Admission guidelines* (**INFO 230**), available online at https://asic.gov.au/regulatory-resources/markets/market-supervision/exchange-traded-products-admission-guidelines/.

9 Pursuant to section 18 of the ASX Settlement Operating Rules.

## 1.3 Key differences between the various Investment Products available on ASX

Listed Investment Products are often referred to as "closed-ended" investment vehicles. They generally offer a fixed number of shares or units to investors in an initial public offering. Thereafter, investors buy or sell shares or units on-market. The issuer is precluded by the Listing Rules from offering withdrawal or redemption facilities to investors.[10] As a result, the capital contributed by investors effectively becomes permanent capital of the issuer, making these types of Investment Products popular with issuers and managers and particularly well-suited as vehicles for less liquid underlying investments, where a requirement to continuously issue and redeem investor interests might be problematical.

Unlike the issuers of AQUA Products and Warrants, the issuers of Listed Investment Products do not have any liquidity support obligations under the Listing Rules. It is not uncommon for their shares/units to trade on ASX at a discount to their net tangible asset (**NTA**) backing. Sometimes these discounts can be substantial.[11] Occasionally, Listed Investment Products also trade at a premium to their NTA.

ETFs usually take the form of a collective investment vehicle that invests in assets designed to give investors a financial return closely approximating the performance of a particular benchmark or index. They are generally passively managed to achieve that outcome and attract lower fees than ETMFs.

ETMFs likewise usually take the form of a collective investment vehicle that invests in a portfolio of assets that are actively managed to achieve a return for investors. Often this is done with the stated objective of exceeding the performance of a particular benchmark or index.

ETFs and ETMFs are often referred to as "open-ended" investment vehicles. They are obliged to continually offer and redeem shares or units,[12] meaning that the capital invested in these vehicles is not permanent and can expand or shrink as shares or units are issued or redeemed. These types of Investment Products are therefore better suited for vehicles with underlying assets that are relatively liquid and easy to realise if the issuer needs to fund redemptions.

ETSPs are often employed in situations where it is not practical for the issuer to hold the underlying asset, for example, where it is a commodity such as wheat or oil. They may take the form of a collective investment vehicle that invests in derivatives to give investors an economic interest equivalent to holding the underlying asset. Alternatively, they may be offered as securities or derivatives that confer contractual rights against the issuer designed to give the holder the desired exposure to the underlying asset.

Issuers of AQUA Products (ETFs, ETMFs and ETSPs) have liquidity support obligations designed to enable investors to enter and exit these products at close to their net asset value (**NAV**).

Issuers of Warrants also have liquidity support obligations designed to enable investors to exit these products at close to their fair value.

As mentioned previously, units in mFunds are not quoted or traded on ASX. Instead, issues and redemptions of mFund units are notified to, and settled by, ASX Settlement via the CHESS settlement facility.

Notwithstanding these key differences, the issuers of Listed Investment Products, ETFs, ETMFs, and those ETSPs that take the form of a Collective Investment Product actively compete with each other and with Unlisted Managed Funds, selling a range of different collective investment products to investors. Issuers of Warrants and ETSPs that take the form of a Derivative Investment Product also actively compete with each

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[10] As trusts, LITs, REITs and IFs are specifically precluded by the Listing Rules from having any obligation to buy back units or to allow investors to withdraw from the trust/fund (Listing Rule 1.1 condition 5(c)). LICs are not formally subject to a similar requirement but they don't need to be since, by their very nature, companies are not under any obligation to buy back shares or to allow investors to withdraw from the company.

[11] These discounts are discussed in ASIC's response to the Treasury consultation on stamping fee exemptions dated 20 February 2020, available online at https://treasury.gov.au/sites/default/files/2020-06/asic_submission.pdf.

[12] For ETFs, see paragraphs (c) and (d) of the definition of "ETF" in ASX Operating Rule 7100 (quoted in note 3 above). For ETMFs, see AQUA Rule 10A.3.4.

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other selling a range of different derivative investment products to investors. Yet there are significant differences in the way in which the different types of Investment Products are currently regulated under the ASX Listing Rules, AQUA Rules and Warrant Rules. These differences have the potential to lead to inconsistency, confusion and regulatory arbitrage. One of the main purposes of this consultation paper is to identify areas where these rules could be improved and brought into closer alignment.

## 1.4 The size of ASX's Investment Products offering

The Investment Products able to be traded or settled on ASX have grown substantially over the past 5 – 7 years. As at 30 June 2021, ASX's Investment Product offering comprised:

- 157 LICs, LITs, REIT and IFs listed on the ASX market with a combined market capitalisation of in excess of $295 billion
- 252 ETFs, ETMFs and ETSPs quoted on the AQUA market with funds under management (**FUM**) in excess of $113 billion
- 2,418 Warrants, and
- 240 mFunds settled through the mFund Settlement Service with FUM in excess of $1.7 billion.

The strong growth in the size of ASX's Investment Product offering in recent years has been driven by major structural changes in the wealth management industry, including:

- the growth in the Australian superannuation system
- the divestment of wealth management divisions by major domestic banks following the Hayne Royal Commission
- major reforms to the regulation of financial advice, including the imposition of minimum education and training standards, examination requirements, and bans on conflicted remuneration
- the resulting fragmentation of the financial advice sector
- the recent introduction of product design and distribution obligations[13]
- a shift in investment preferences from actively managed pooled investments to index-tracking or 'passive' pooled investments, driven in part by a greater focus on fees, and
- a shift in investment preferences from non-quoted Investment Products to quoted Investment Products, due to their greater transparency, and timeliness and efficiency in settlement.

Globally and in Australia, the demand for Investment Products continues to grow substantially, as investors seek new and better ways to build their wealth, provide for their retirement and achieve diversity in their investment portfolios. This is also leading to substantial innovation in the types of Investment Products being offered to investors.

## 1.5 This consultation process

ASX anticipates that its consultation on Investment Products will be conducted in two phases:

- phase 1 – this consultation paper on a range of policy issues that merit consideration in any enhancement of the ASX Investment Product offering and the governing rule framework, and

[13] See the text accompanying note 197 below.

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- phase 2 – a further consultation paper proposing specific amendments to the rules governing Investment Products to implement the preferred policy outcomes determined in phase 1.

The questions being asked in phase 1 are set out in orange boxes throughout this consultation paper. For your convenience, ASX has also gathered them together in Annexure A of this consultation paper. ASX is also releasing with this consultation paper a Q&A document in MS Word format that stakeholders can use to respond to this consultation.

The commentary in this consultation paper has been divided into sections addressing different topics. The first part of each section is a brief introduction to the topic. Subsequent parts within each section then address different issues relevant to that topic.

In the case of sections 2, 3, 4, 10, 13, 14 and 15, there is no pre-ordained structure to those subsequent parts.

Sections 5, 6, 7, 8, 9, 11 and 12, however, do follow a pre-ordained structure. The first part after the introduction will usually identify which product set (Listed Investment Products, AQUA Products or Warrants) currently has the more extensive or prescriptive coverage in the ASX rules and ask questions about the policy settings in those rules and whether they need changing. The next part or parts will then deal with the ASX rules governing the remaining product sets (where applicable[14]) and question whether those governing rules should be brought into closer alignment with the more extensive/prescriptive rules (and any proposed changes to those rules) discussed earlier. Where applicable, other more specific issues relevant to the particular topic in a section may be raised in subsequent parts of the section.

## 1.6 Stakeholders invited to comment

ASX welcomes feedback to this consultation paper from all interested stakeholders. ASX is particularly keen to receive feedback from:

- Investment Product issuers
- mFunds participating in the mFund Settlement Service (particularly on improvements that could be made to mFund to help them achieve their back-office objectives)
- Unlisted Managed Funds that are not presently participating in the mFund Settlement Service (particularly on improvements that could be made to mFund that might help persuade them to join mFund)
- retail and wholesale investors
- brokers
- financial advisers
- other relevant service providers such as registries, custodians and wrap platforms
- industry bodies representing the groups above, and
- professional advisers advising the groups above.

To assist stakeholders in making a submission, ASX has prepared a separate submission form listing all of the questions in the consultation paper and providing a space for responses to those questions. The submission form can be downloaded here.

[14] Not all of the topics raised in this consultation paper are relevant to Warrants.

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ASX appreciates that this is a substantial consultation paper covering a wide range of issues and with a large number of questions. Stakeholders should feel free to limit their responses to those parts of the consultation paper and the consultation questions that are of particular interest to them.

## 1.7 Due date for responses to this consultation paper

Stakeholders interested in making a submission in this consultation are asked to do so in writing by the **close of business on Friday 24 June 2022** by:

- email to:
  kevin.lewis@asx.com.au
- mail to:
  ASX Limited
  PO Box H224
  Australia Square NSW 1215
  Attention: Kevin Lewis

ASX would prefer to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on the ASX website.

If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in your submission.

## 1.8 Timetable for next phase of consultation

After considering the submissions it receives in response to this consultation paper, ASX will proceed to draft proposed changes to its rules, procedures and guidance for Investment Products reflecting the policy determinations made as a result of phase 1 of this consultation.

Phase 2 of this consultation will then seek feedback on the specific changes proposed to ASX's rules, procedures and guidance for Investment Products. The consultation paper for phase 2 is likely to issue in early 2023.

Subject to the receipt of the necessary regulatory approvals, it is envisaged that the final changes to ASX's rules, procedures and guidance for Investment Products from this two-stage consultation will be released in mid-late 2023, with a view to them coming into effect no earlier than 1 January 2024.

## 1.9 Matters excluded from this consultation

ASX is not raising in this consultation paper:

(1) whether there should be any changes to ASIC's naming conventions for ETPs[15]

(2) whether ETPs should be allowed over crypto-assets (such as bitcoin and ether)

[15] Although ASX is asking in section 5 of this consultation paper whether those naming conventions should also apply to LICs and LITs and whether issuers of Listed Investment Products should be prohibited under the Listing Rules from describing themselves as an "Exchange Traded Fund" or "ETF").

(3) whether corporate collective investment vehicles (**CCIVs**),[16] notified foreign passport funds (**NFPFs**)[17] and/or their respective sub-funds should be added to the category of entities able to become approved AQUA Product issuers or to be listed on the ASX market, or

(4) aside from question 8.3.1, any issues to do with internal market making arrangements by ETP issuers.

On the first item above, ASIC has recently issued a consultation paper entitled *ETP naming conventions: Updates to INFO 230* (**CP 356**)[18] seeking comments on proposals to update its guidance on the naming conventions for ETPs in Information Sheet 230 *Exchange traded products: Admission guidelines* (**INFO 230**). In due course, when ASIC finalises its proposed new guidance, ASX will update its AQUA Rule Procedures to incorporate that guidance.[19] This will be done independently of the rule amendments to be consulted upon in phase 2 of this consultation.

On the second item above, ASIC has also recently conducted a consultation (CP 343)[20] and issued a report (REP 705)[21] and a revised version of INFO 230 setting out its requirements for ETPs to be issued over crypto-assets. ASX is in the process of implementing changes to its rules, procedures and processes to incorporate those requirements and to allow it to admit ETPs over bitcoin and ether as AQUA Products.

On the third item above, ASX is separately consulting[22] on changes to its rules that will allow CCIVs, NFPFs and/or their respective sub-funds to become approved AQUA Product issuers or to be listed on the ASX market.

On the fourth item above, ASIC has indicated to ASX that it is comfortable with the regulatory settings for internal market making included in the current version of INFO 230.

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16 For further information about CCIVs, see the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 and accompanying explanatory memorandum tabled in Parliament on 25 November 2021, available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6817.

17 For further information about NFPFs, see ASIC Regulatory Guide 138 *Foreign passport funds*.

18 Available online at https://download.asic.gov.au/media/umnp10fx/cp356-published-20-january-2022.pdf. Some further details of ASIC's proposed changes to its guidance on naming conventions for ETPs are set out in section 5.2 below.

19 See '5.2 Naming requirements for AQUA Products and Warrants' on page 28.

20 CP 343 *Crypto-assets as underlying assets for ETPs and other investment products* available online at https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-343-crypto-assets-as-underlying-assets-for-etps-and-other-investment-products/.

21 REP 705 *Response to submissions on CP 343 Crypto-assets as underlying assets for ETPs and other investment products* is available online at https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-705-response-to-submissions-on-cp-343-crypto-assets-as-underlying-assets-for-etps-and-other-investment-products/.

22 See ASX's consultation paper *Proposed ASX rule amendments to facilitate the listing of CCIVs and certain other collective investment vehicles on the ASX market and the quotation of their products on the ASX AQUA market* dated 1 February 2022. The paper is available online at: https://www2.asx.com.au/content/dam/asx/about/regulations/public-consultations/2022/cciv-consultation-paper-final.pdf.

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## 2. Some threshold rule issues

### 2.1 Introduction

Before we get to the more detailed issues ASX wishes to address in this consultation, there are some threshold issues that ASX would like to raise about the 3 separate rulebooks that currently govern its Investment Product offering and how the Listings Rules presently categorise and regulate investment entities.

### 2.2 Why three separate rule books?

As outlined in section 1.2 above, the current ASX Investment Product offering involves a range of different products regulated by three different sets of rules – the Listing Rules, AQUA Rules and Warrant Rules. The reasons for this are largely historical, as explained below.

The Warrant Rules were introduced into the ASX Operating Rules in 1990 to facilitate the quotation on ASX of transferable derivative instruments that derive their value from an underlying financial product, currency, commodity or index. The Warrant Rules were substantially shorter and less onerous on issuers than the Listing Rules, particularly in terms of disclosure obligations, recognising that:

- only certain types of well-capitalised and well-regulated issuers would be approved to issue Warrants
- the value of a Warrant would be linked, by its terms of issue, to the value of an underlying product or index, and
- the underlying product or index would have a robust and transparent pricing mechanism, making it relatively easy to determine the value of the Warrant.

Issuers of ETFs and ETMFs were originally admitted to the ASX official list and their products granted quotation under the Listing Rules. This required ASX to grant multiple rule waivers to accommodate these types of products. Eventually, ASX made the decision in 2008 to develop and launch a bespoke set of rules – the so called "AQUA Rules" (AQUA being an acronym of sorts for "**A**SX **Qu**oted **A**ssets") – to govern not only ETFs and ETMFs but also ETSPs. The AQUA Rules were closely modelled on the Warrant Rules, again recognising that:

- only certain types of well-capitalised and well-regulated issuers would be approved to issue AQUA Products
- the value of an AQUA Product would be expected to reflect the value of the underlying assets (in the case of ETFs, ETMFs and ETSPs structured as Collective Investment Products), or the value of the underlying product or index (in the case of ETSPs structured as Derivative Investment Products), and
- again, the underlying assets, product or index would have a robust and transparent pricing mechanism, making it relatively easy to determine the value of the AQUA Product.

As a result, there is considerable duplication between the AQUA Rules and the Warrant Rules. Over time, however, the AQUA Rules and the Warrant Rules have been separately amended to facilitate changes in product offerings and to address various regulatory issues as they have emerged. Consequently, some areas of inconsistency have arisen between the two sets of rules.

Having three different sets of governing rules for Investment Products opens the door to similar Investment Products being treated inconsistently across the different rule books. In turn, this has the potential to create an opportunity for rule arbitrage, as well as confusion for issuers and investors.

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It is to be noted that ASX's main competitor market in Australia, Cboe Australia, is not a listing market and therefore does not have the capacity to offer Listed Investment Products as part of its product set.[23] Cboe Australia does, however, have its own equivalent to ASX's AQUA Products and Warrants.[24] These Cboe Australia products are subject to a single set of unified rules governing investment products generally.[25]

ASX is considering whether it should merge the AQUA and Warrant Rules into a single set of rules and rationalise the existing categories of AQUA Products into two:

- "Exchange Traded Funds" (or "ETFs") – being any form of collective investment vehicle (such as a managed investment scheme, CCIV sub-fund or NFPF) that directly or indirectly invests in acceptable underlying instruments – effectively merging the existing categories of ETFs, ETMFs,[26] and those ETSPs that take the form of a Collective Investment Product into the one category of "ETF", and
- "Structured Products" – being products that involve a contractual claim against the issuer under a security (such as an exchange traded note) or derivative generating a return or exposure equivalent to the return or exposure of an acceptable underlying instrument,

with "Warrants" being treated as a sub-category of Structured Products. If it does, it will consult upon the text of the rule changes as part of phase 2 of this consultation.

**Question 2.2.1:** Would you have any concerns if ASX were to combine the ASX AQUA Rules and Warrant Rules into a single rule book governing non-listed Investment Products? If so, what are they and how might they be addressed?

**Question 2.2.2:** If the ASX AQUA Rules and Warrant Rules are combined into a single rule book governing non-listed Investment Products, would you have any concerns if ASX were to make Warrants a sub-category of ETSPs? If so, what are those concerns?

**Question 2.2.3:** Do you see any benefit or value in maintaining the name "AQUA" as part of the ASX Investment Product rule framework? Does it have any currency with investors?

## 2.3 The treatment of LICs and LITs under the Listing Rules

As mentioned in section 1.3 above, the issuers of Listed Investment Products, ETFs, ETMFs, and those ETSPs that take the form of a Collective Investment Product actively compete with each other and with issuers of Unlisted Managed Funds selling a range of different collective investment products to investors.

Given this, for competitive neutrality, transparency and to promote comparability and reduce investor confusion, ASX can see an argument that the ASX rule framework for these different products should be broadly comparable and that any differences in their treatment under the ASX rules should be clearly referable to differences in the products. This is particularly the case when it comes to naming conventions and disclosure obligations regarding portfolio composition, management fees and expenses, and performance reporting.

[23] Instead, Cboe Australia quotes and trades securities issued by entities admitted to the ASX official list, including issuers of ASX Listed Investment Products.

[24] Section 14 of the Cboe Australia Operating Rules (referred to in this consultation paper as the **Cboe Australia Investment Product Rules**).

[25] Cboe Australia also treats so-called TraCRs as investment products. These are effectively depositary receipts for securities issued by companies incorporated and listed overseas and are not Investment Products in the sense that term is used in this consultation paper.

[26] ASX would note that ASIC proposes in CP 356 to phase out the label "Managed Fund" to describe actively managed ETPs and instead will refer to them with the primary label "Exchange Traded Fund" (or "ETF") and a secondary label "Active". The changes proposed to the AQUA Rules in the text to merge the existing categories of ETFs, ETMFs, and those ETSPs that take the form of a Collective Investment Product into the one category of "ETF" are consistent with ASIC's proposal.

To facilitate this, ASX is proposing to add new definitions into the Listing Rules to refer to, and recognise, the different types of issuers of collective investment products covered by the Listing Rules, starting with LICs and LITs.

LICs and LITs currently are referred to collectively in the Listing Rules as "investment entities". This term is defined to mean:

> "*an entity which, in ASX's opinion, is an entity to which both of the following apply.*
>
> - *Its activities or the principal part of its activities consist of investing (directly or through a child entity) in listed or unlisted securities or derivatives.*
> - *Its objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests.*"[27]

"LIC" is a colloquial term referring to a company that meets this definition while "LIT" is a colloquial term referring to a trust that meets this definition.

The definition of "investment entity" is an important one as investment entities are subject to different admission requirements and additional reporting requirements under the Listing Rules compared to other (non-investment) entities.[28]

As will be apparent from the definition quoted above, LICs and LITs exist to invest in non-controlling portfolio holdings in two basic types of financial instruments – securities and derivatives. That makes them "close cousins" of ETFs and ETMFs, which are allowed to make non-controlling[29] portfolio investments in securities, derivatives, debentures, bonds, deposit products, money market instruments, eligible debt portfolios, currencies, commodities and other financial products that meet the criteria to be acceptable underlying instruments for AQUA products. It is anticipated that ETFs and ETMFs will soon also be able to invest in 'eligible crypto-assets'.[30]

To bring the rules regulating LICs, LITs, ETFs and ETMFs into closer alignment, ASX is considering re-labelling LICs and LITs as "financial investment entities" and extending the range of financial products in which they can invest to include debentures,[31] bonds,[32] deposit products, money market instruments, eligible debt portfolios, currencies, commodities, eligible crypto-assets[33] and other financial products, as well as

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27 ASX Listing Rule 19.12.

28 See sections 4.2 and 11.2 below.

29 AQUA Rule 10A.3.3(d)(v) excludes a financial product where the issuer has a significant influence over the price or value of the underlying instrument(s) from being an AQUA Product. This has been interpreted as preventing an AQUA Product issuer from having a controlling interest in the issuer of an underlying instrument (see the text accompanying question 3.3.2 below). Should ASX decide to amend the rules regulating LICs, LITs, ETFs and ETMFs to bring them into closer alignment, ASX will likely modify AQUA Rule 10A.3.3(d)(v) to make this more explicit.

30 See notes 20 and 21 above and the accompanying text.

31 LICs and LITs can currently invest in debentures, as these fall within the definition of "security" in sections 92(1) and 761A of the Corporations Act (although that position is muddied somewhat in the case of government debentures by s764A, which treats a debenture, stock or bond issued by a government as a separate class of financial product to securities). The reference to "debentures" is largely being added for consistency with the list of acceptable underlying products for AQUA Products.

32 LICs and LITs can arguably invest in government bonds, as these fall within the definition of "security" in section 92(1) of the Corporations Act (although that position is muddied somewhat by ss761A and 764A, which treat a debenture, stock or bond issued by a government as a separate class of financial product to securities). The reference to "bonds" is largely being added for consistency with the list of acceptable underlying products for AQUA Products.

33 Note that if the Listing Rules are amended to give LICs and LITs the power to invest in crypto-assets, they should expect to be subject to similar admission standards as the admission standards for AQUA Products investing in crypto-assets under INFO 230. This includes the best practice recommendations that ASIC recently published for custody arrangements involving crypto-assets in Information Sheet 225 *Crypto-assets*.

securities and derivatives. Among other things,[34] this would involve adding a new definition into the Listing Rules along the following lines:

> "***financial investment entity*** *– an entity or stapled group:*
>
> *(a) whose main undertaking consists of investing, directly or indirectly, in a portfolio*[35] *of securities, derivatives, debentures, bonds, eligible debt portfolios, deposit products, money market instruments, currencies, commodities, eligible crypto-assets, or other financial products; and*
>
> *(b) whose objectives do not include (alone or together with others) exercising control over or managing any entity,*[36] *or the business of any entity, in which it invests,*
>
> *and includes an entity or stapled group which has been advised by ASX that it is a financial investment entity for the purposes of the Listing Rules but excludes an entity or stapled group which has been advised by ASX that it is not a financial investment entity for the purposes of the Listing Rules."*

Adding this new definition would allow ASX to apply specific Listing Rules to "financial investment entities" (ie current-day LICs and LITs) that will not apply to other types of listed entities, such as the rules proposed for product names and portfolio disclosure discussed in sections 5 and 8 below.

**Question 2.3.1:** Do you support the proposed new definition of "financial investment entity" set out in the consultation paper. If not, why not and how would you define this term?

## 2.4 The treatment of REITs and IFs under the Listing Rules

REITS and IFs are not formally recognised as a type or category of listed entity under the Listing Rules.[37]

Typically, REITS and IFs will invest in direct property or infrastructure projects rather than, or as well as, in listed or unlisted securities or derivatives. They may also have the objective of controlling the properties or projects in which they are investing. Consequently, REITS and IFs typically fall outside the definition of "investment entity" and are subject to the same admission requirements and ongoing obligations under the Listing Rules as other (non-investment) entities.

ASX can see a case for specifically recognising REITs and IFs as separate categories of listed investment vehicles so that, for example, they can be made subject to different admission requirements or different reporting requirements than non-investment entities.

To this end, ASX is considering amending the Listing Rules to add new definitions of "real estate investment entity" and "infrastructure investment entity" as follows:

> "***real estate investment entity*** *– an entity or stapled group whose main undertaking consists of investing, directly or indirectly, in real estate investments and includes an entity or stapled group which has been advised by ASX that it is a real estate investment entity for the purposes of the Listing Rules but excludes an entity or stapled group which has been advised by ASX that it is not a real estate investment entity for the purposes of the Listing Rules."*

[34] Bringing the rules regulating LICs, LITs, ETFs and ETMFs into closer alignment would not just involve expanding the list of products in which LICs and LITs can invest but also some of the other reforms mentioned in this consultation paper, including the reforms proposed in sections 4.4, 4.5, 5.3, 6.3 and 7.4 below. See also note 33 above.

[35] The reference to a "portfolio" of financial investments is directed to excluding entities that intend to invest in a single financial product. ASX does not consider that these should be characterised as "investment entities" under the Listing Rules.

[36] ASX notes that this will require an amendment to the definition of "entity" in Listing Rule 19.12 to make it clear that the term is being used in this limb of the new definition in its general sense rather than to refer to an entity that has applied for admission to, or is admitted to, the ASX official list.

[37] There is a definition of "property trust" in Listing Rule 19.12 but it does not appear to be used anywhere in the Listing Rules.

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*"**infrastructure investment entity** – an entity or stapled group whose main undertaking consists of investing, directly or indirectly, in public or private infrastructure projects and includes an entity or stapled group which has been advised by ASX that it is an infrastructure investment entity for the purposes of the Listing Rules but excludes an entity or stapled group which has been advised by ASX that it is not an infrastructure investment entity for the purposes of the Listing Rules."*

**Question 2.4.1:** Should REITs and IFs be formally recognised in the Listing Rules as separate categories of listed investment vehicles? If not, why not?

**Question 2.4.2:** Do you support the proposed new definitions of "real estate investment entity" and "infrastructure investment entity" set out in the consultation paper. If not, why not and how would you define these terms?

## 2.5 Towards a more aligned rule framework for Investment Products

As mentioned in sections 2.3 and 2.4 above, ASX is considering amending the Listing Rules to replace the term "investment entity" with the term "financial investment entity" and to add new definitions of "real estate investment entity" and "infrastructure investment entity".

To refer to these different types of investment entities collectively, ASX is also considering adding a new definition of "collective investment entity", as follows:

*"**collective investment entity** – an entity that is:*

*(a) a financial investment entity;*

*(b) a real estate investment entity; or*

*(c) an infrastructure investment entity."*

Adding this new definition will allow ASX to apply specific Listing Rules to "collective investment entities" (ie current-day LICs, LITs, REITs and IFs), such as the proposed management fees and costs and performance reporting requirements addressed in sections 10 and 11 below), that will not apply to other types of listed entities.

**Question 2.5.1:** Do you support the proposed new definition of "collective investment entity" set out in the consultation paper. If not, why not and how would you define this term?

**Question 2.5.2:** Are there other types of entities, apart from LICs, LITs, REITs and IFs, that should be formally recognised in the Listing Rules as separate categories of collective investment entities so that some or all of the specific Listing Rules that are proposed to apply collectively to LICs, LITs, REITS and IFs also apply to them?

## 2.6 Issues with the current definition of "investment entity" in the Listing Rules

As set out in sections 2.3, 2.4 and 2.5 above, ASX is considering some fundamental changes to the way in which the Listing Rules presently regulate collective investment entities, including replacing the term "investment entity" with the term "financial investment entity", with the latter term defined as set out in section 2.3 above. For completeness, however, in case ASX decides not to proceed with these fundamental changes, ASX would like to receive feedback from stakeholders on some issues with the current definition of "investment entity" in the Listing Rules.

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Accordingly, the questions in the balance of this section 2.6 are asked on the basis that the proposals in sections 2.3, 2.4 and 2.5 above do not proceed and ASX retains the same fundamental rule framework currently regulating listed investment entities under the Listing Rules.

As mentioned previously, "investment entity" is defined in the Listing Rules to mean:

> *"an entity which, in ASX's opinion, is an entity to which both of the following apply.*
>
> - *Its activities or the principal part of its activities consist of investing (directly or through a child entity) in listed or unlisted securities or derivatives.*
> - *Its objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests."*[38]

First, ASX is interested in understanding whether the terms "LIC" and "LIT" carry a particular connotation for investors, particularly retail investors, as that potentially has ramifications for how the term "investment entity" should be defined in, and how those entities should be regulated under, the Listing Rules.

**Question 2.6.1:** Do you think the terms "LIC" and "LIT" have a particular connotation for retail investors? If so, what is that connotation and what ramifications does that have for the definition of "investment entity" in the Listing Rules?

As will be apparent from the current definition of "investment entity" quoted above, that term was intended to apply to entities making non-controlling portfolio investments in securities and derivatives with a view to deriving a return on those investments for the entity and its security holders. However, there is presently nothing in the Listing Rules limiting the type of securities or derivatives that an investment entity may invest in. For instance, an investment entity is not confined to only investing in securities and derivatives traded on financial market. It is free to invest in unlisted securities issued by a private company or in over-the-counter (**OTC**) derivatives. This effectively allows an investment entity to invest in any type of asset via the simple expedient of putting the asset into a private company and acquiring securities in the company, or entering into an OTC derivative that replicates an exposure to the asset in question. To illustrate, an investment entity could invest in an artwork by subscribing cash for shares in a private company and then causing the private company to use the proceeds from the share issue to pay for the artwork. In this case, is the investment entity really investing in securities or is it investing in an artwork?

**Question 2.6.2:** If the current rule framework for investment entities in the Listing Rules is retained, should the definition of "investment entity" be narrower and more specific about the types of securities and derivatives in which the entity can invest? If so, what types of securities and derivatives should LICs and LITs be limited to investing in? Alternatively, should the definition of "investment entity" be broader and allow the entity to invest in a wider class of financial assets than just securities or derivatives? If so, what additional classes of financial assets should LICs and LITs be allowed to invest in?

**Question 2.6.3:** If the current rule framework for investment entities in the Listing Rules is retained, should there be any constraints on the ability of a LIC or LIT to invest in securities in an unlisted company or in OTC derivatives, given the capacity that opens for them to invest in any class of underlying asset? If so, what should those constraints be? If not, why not?

The requirement that an investment entity's objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests was based on a premise that an entity looking to control or manage another entity or business wasn't truly an "investment entity" and therefore should be

[38] ASX Listing Rule 19.12.

treated like any other listed entity. The irony of this is that listed investment entities are subject to all of the same requirements under the Listing Rules as other listed entities (other than the special reporting requirements in chapter 5 of the Listing Rules that apply only to mining and oil and gas entities), plus some additional reporting requirements that apply specifically to investment entities.[39] Hence the effect of an entity's objectives extending to controlling or managing another entity or business and therefore no longer meeting the criteria to be considered an investment entity, is that it is subject to fewer, rather than more, obligations under the Listing Rules.

This begs the question whether an investment entity should continue to be precluded from having an objective of exercising control over or managing any entity, or the business of any entity, in which it invests and, if so, how can that be effectively enforced?

**Question 2.6.4:** If the current rule framework for investment entities in the Listing Rules is retained, should the definition of "investment entity" continue to exclude an entity that has an objective of exercising control over or managing any entity, or the business of any entity, in which it invests? If so, why? If not, why not?

**Question 2.6.5:** If your answer to Question 2.6.4 is "yes", what consequence do you think should follow if a LIC or LIT enters into, or seeks to enter into, a transaction that will allow it to exercise control over or manage any entity, or the business of any entity, in which it invests? Should this be prohibited? Or should it be permitted if the entity obtains approval from its shareholders/unitholders?

**Question 2.6.6:** If your answer to Question 2.6.4 is "yes", how do you think ASX should address a situation where an investment entity generally does not have the objective of exercising control over or managing any entity, or the business of any entity, in which it invests but feels that it needs to do so in a particular case, in the interests of its investors, because the entity or business is being poorly managed? Should this be permitted if the entity obtains approval from its shareholders/unitholders or should ASX consider granting a waiver to allow this to occur where it is satisfied that this is a "one-off" and temporary situation?

ASX is aware of instances where LICs and LITs have been used as vehicles to jointly control other entities. This is contrary to the spirit, if not the letter, of the requirement that the objectives of an investment entity must not include exercising control over or managing any entity, or the business of any entity, in which it invests.

One example of this that ASX has come across is where a LIC or LIT is controlled by another entity. The controlling entity causes the LIC or LIT to acquire a material, but not controlling, holding in the target entity. The target entity may, or may not, be listed. The controlling entity and/or other entities it controls or is associated with will hold or acquire additional holdings in the target entity that, when added to the holding of the LIC or LIT, will give them effective control of the target entity.

Currently, the only constraint on this type of conduct is Listing Rule 11.1, which requires a listed entity to notify ASX of any proposed significant change to the nature or scale of its activities and empowers ASX to require:

- under Listing Rule 11.1.2, that the transaction must be approved by the entity's security holders, and/or
- under Listing Rule 11.1.3, that the entity must re-comply with ASX's requirements for admission and quotation as if the entity were applying for admission to the official list for the first time.

[39] Such as the requirement to make monthly disclosures of the NTA backing of its quoted securities under ASX Listing Rule 4.12 and to include information about the composition of its investment portfolio, movements in its NTA backing and certain other information in its annual report under Listing Rule 4.10.20.

ASX has given guidance in Listing Rules Guidance Note 12 *Significant Changes to Activities* that it may apply Listing Rule 11.1.2 and/or 11.1.3 to an investment entity that changes:

- its main business activity to something other than investing, directly or through a child entity, in listed or unlisted securities or derivatives, or
- its objectives to include exercising control over or managing any entity, or the business of any entity, in which it invests.

Listing Rule 11.1 can be difficult to apply in the example above because the LIC or LIT only holds a portfolio holding in the target entity and it is the additional holdings of the controlling entity and the entities it controls or is associated with that enable it, rather than the LIC or LIT, to control the target entity.

**Question 2.6.7:** If your answer to Question 2.6.4 is "yes", to address the concerns in the text, would you support expanding the second limb of the definition of "investment entity" so that it reads: "*Its objectives do not include **(alone or together with others)** exercising control over or managing any entity, or the business of any entity, in which it invests*"?

ASX can see a case that instead of precluding an investment entity from having an objective of exercising control over or managing an entity or its business, it may be better for the Listing Rules to do either or both of the following:

- limit the percentage holding an investment entity and its associates can have in any one entity, or
- limit the percentage of funds that an investment entity can invest in any one entity, thereby ensuring that it has a portfolio of different investments.

**Question 2.6.8:** As an alternative to precluding an investment entity from having an objective of exercising control over or managing an entity or its business, would it be better for the Listing Rules to limit the percentage holding an investment entity and its associates can have in any one entity? If so, what percentage would you suggest? If not, why not?

**Question 2.6.9:** As an alternative to, or in addition to, the suggestion in the previous question, would it be better for the Listing Rules to limit the percentage of funds that an investment entity can invest in any one entity, thereby ensuring that it has a portfolio of different investments? If so, what percentage would you suggest? If not, why not?

Finally on the issues with the current definition of "investment entity", ASX is concerned that the current definition is one that can be easily flouted. For example, an entity that might otherwise fall within the definition of "investment entity" that did not wish to be subject to the higher NTA admission requirements or additional reporting requirements[40] for such entities might try to achieve this by representing that it intended to invest a material part of its assets in something other than listed or unlisted securities or derivatives, or adopting as one of its objectives taking control of or managing one of the entities in which it invests. This would result in it falling outside of the definition of "investment entity" and make it subject to the lower NTA admission thresholds and the lesser reporting requirements that apply to non-investment entities.

[40] See sections 4.2 and 11.2 above.

**Question 2.6.10:** If the current rule framework for investment entities in the Listing Rules is retained, to address the concerns in the text, should the definition of "investment entity" be broadened so that it captures any entity which has been advised by ASX that it is an investment entity for the purposes of the Listing Rules?[41]

**Question 2.6.11:** If the current rule framework for investment entities in the Listing Rules is retained, are there any other improvements that could be made to the existing definition of "investment entity" in the Listing Rules? If so, what are they?

[41] Similar to the way in which paragraph (b) of the definitions of "mining exploration entity", "mining producing entity", "oil and gas exploration entity" and "oil and gas producing entity" in Listing Rule 19.12 confer on ASX the power to advise an entity that it is that type of entity for the purposes of the Listing Rules.

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# 3. Approved issuers

## 3.1 Introduction

Under the Listing Rules, any company or trust is able to be admitted to the official list, provided it meets the admission requirements in Chapter 1 of the Listing Rules.

Under the AQUA Rules, only certain categories of entities qualify to be approved as issuers of AQUA Products or Warrants.

## 3.2 Approved issuers of AQUA Products and Warrants

As mentioned previously, the AQUA Rules and Warrant Rules are predicated on only certain types of well-capitalised and well-regulated issuers being approved to issue AQUA Products or Warrants.

To be approved as an issuer of AQUA Products or Warrants, the issuer must be one of the following (**Approved Issuers**):[42]

(a) an entity which is prudentially regulated by APRA

(b) a government, government body or instrumentality that has a guarantee by the relevant government Treasury authority covering the payments due by the issuer

(c) an entity which:

  (i) holds an Australian financial services licence or a licence in another jurisdiction which makes it subject to adequate supervision of capital standards

  (ii) in ASX's opinion has a low long term credit risk

  (iii) has net tangible assets which in the opinion of ASX are sufficient to support the proposed issue, and

  (iv) is acceptable to ASX

(d) an entity which has a guarantor which meets the criteria above

(e) if the entity proposes to issue AQUA Products that are not "Issuer Market Risk Products":[43]

  (i) an entity which is an RE of a managed investment scheme registered under the Corporations Act

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42 AQUA Rule 10A.2.1(4) and (5) and Warrant Rule 10.2.1(4) and the related Procedures.

43 The phrase "Issuer Market Risk Products" is defined in ASX Operating Rule 7100 and the related Procedure to mean:

(a) any financial product that imparts optionality to the investor (for example, calls, puts or barrier products over equities, currencies, indices or commodities);

(b) any financial product that exposes the issuer to market risk as a result of the issue of the product;

(c) instalments, endowments and other complex structured products; or

(d) any other product that ASX determines is a "Market Risk Product" because it may result in risk to investors, issuers, market participants, ASX or ASX Clear if the issuer is not well capitalised and well regulated;

but does not include:

(e) ETMF products;

(f) ETF securities; or

(g) any other financial product where the issuer employs investor funds to buy the underlying instruments which are held for the benefit of the investors on trust or by a registered managed investment scheme or similar vehicle.

(ii) an entity which operates a managed investment scheme which the Australian Securities and Investments Commission (**ASIC**) has exempted from the registration requirements

(iii) an open-end managed investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act 1940 (USA), or

(iv) an entity which is admitted to the official list of ASX

(f) an entity which proposes to issue an AQUA Product Series of Fully Covered AQUA Products or a Warrant Series of Fully Covered Warrants that is acceptable to ASX, or

(g) any other person or entity accepted by ASX.[44]

ASX has recently issued a separate consultation paper[45] consulting on proposed changes to:

- the AQUA Rules to facilitate the admission of:
  - CCIV sub-fund products
  - NFPF products, and
  - securities issued by NZ registered managed investment schemes pursuant to a "recognised offer of securities"

  to trading status on the AQUA market or for settlement through mFund, and

- the ASX Listing Rules to facilitate the listing of:
  - CCIV sub-funds
  - NFPFs, and
  - NZ registered managed investment schemes making a "recognised offer of securities"

  on the ASX market.

In relation to paragraph (a) of the list of Approved Issuers of AQUA Products above, there doesn't seem to be any policy reason why foreign banks and other entities that are prudentially regulated by an overseas regulator equivalent to APRA should not be Approved Issuers of AQUA Products or Warrants.[46] These entities are clearly the types of well-capitalised and well-regulated issuers that the AQUA Rules and Warrant Rules contemplated would be Approved Issuers of those products.

**Question 3.2.1:** Should the list of Approved Issuers of AQUA Products and Warrants be expanded to include entities that are prudentially regulated by an overseas regulator equivalent to APRA? If not, why not?

**Question 3.2.2:** Are there any other types of issuers who should be added to the list of Approved Issuers for AQUA Products and Warrants? If so, what are they and why should they be added to the list of Approved Issuers for AQUA Products and Warrants?

## 3.3 Financial products excluded from being AQUA Products

As mentioned in section 2.2 above, the AQUA Rules are predicated on the underlying assets, financial product or index for an AQUA Product having a robust and transparent pricing mechanism. Consequently,

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[44] ASX generally does not approve an issuer of AQUA Products or Warrants unless they fall within one of the other categories of Approved Issuers above.

[45] Cited at note 22 above.

[46] Noting that AQUA Rule 10A.3.3(c)(iii)(C) and the related Procedure include in the list of acceptable underlying instruments for an AQUA Product debentures or bonds that are issued by an entity which is prudentially regulated by APRA or, for a foreign entity, by the equivalent regulator in its home jurisdiction (see section 7.2 below).

the AQUA Rules provide that the following types of products are not able to be admitted as a quoted AQUA Product:[47]

(i) a security in a listed investment company[48]

(ii) a unit in a real estate investment trust or similar fund[49]

(iii) a unit in an infrastructure trust or fund[50]

(iv) a unit in a non-portfolio strategic investment vehicle (such as a private equity fund)

(v) a financial product where the issuer has a significant influence over the price or value of the underlying instrument(s)

(vi) a financial product for which, in ASX's opinion, there is insufficient information available to the market on an ongoing basis regarding the price or value of the underlying instrument(s)

(vii) a financial product where the underlying instruments are shares in an unlisted company, artworks or other collectibles, wine or other assets where the price or value of the underlying instruments is not set by a transparent mechanism

(viii) units or shares in a managed fund product for which the net asset value are not disclosed on a daily basis[51]

(ix) a financial product priced by reference to an index where the level of that index is not publicly available or reported on a regular basis, or

(x) any other financial products to which ASX considers the listing mechanism and continuous disclosure regime in the Listing Rules should apply.

The exclusion in paragraphs (i), (ii) and (iii) above of securities in listed investment companies and units in real estate investment trusts and infrastructure funds from being AQUA Products likely stems from an assumption that these products would ordinarily be listed on the ASX market and closed-ended rather than quoted on the AQUA market and open-ended. That being so, ASX questions why securities in a listed investment company are excluded but units in a listed investment trust are not, since a LIT also would ordinarily be listed on the ASX market and closed-ended.

Having said this, ASX cannot see any reason in principle why a LIC, LIT, REIT or IF that, but for the exclusion above, would qualify to be an AQUA product issuer[52] cannot issue two different classes of securities, one of which is a closed-ended Listed Investment Product subject to the Listing Rules and other of which is an open-ended AQUA Product subject to the AQUA Rules (see section 3.4 below). To facilitate this, ASX is proposing to amend the exclusions above so that they instead apply to:

> "a security in a financial investment entity, real estate investment entity or infrastructure investment entity that is quoted on the ASX market under the ASX Listing Rules rather than the AQUA Rules"

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47 AQUA Rule 10A.3.3(d). Note that this rule does not apply to products that are admitted solely for the purposes of settlement through the mFund Settlement Service (AQUA Rule 10A.3.3(h)).

48 The term "listed investment company" is not defined in the AQUA Rules.

49 The term "real estate investment trust" is not defined in the AQUA Rules.

50 The term "infrastructure trust or fund" is not defined in the AQUA Rules.

51 In the case of an AQUA Product admitted to the AQUA Quote Display Board only, the NAV of the product need only be disclosed on a quarterly basis (AQUA Rule 10A.3.3(d)(viii)).

52 Noting that to qualify to be an AQUA Product issuer, the issuer must only invest in acceptable underlying investments and this would preclude a LIC or LIT that invested in securities in unlisted companies, a REIT with direct property investments or an IF with direct infrastructure investments from being admitted as an AQUA Product issuer.

with the terms “financial investment entity”, “real estate investment entity” and “infrastructure investment entity” defined in the AQUA Rules to have the same meaning as in the Listing Rules.

**Question 3.3.1:** Do you agree with ASX’s proposed changes to the exclusions in AQUA Rule 10A.3.3(d) so that they only apply to securities in a financial investment entity, real estate investment entity or infrastructure investment entity that is quoted on the ASX market under the ASX Listing Rules rather than the AQUA Rules. If not, why not?

ASX interprets the exclusion in paragraph (v) above (a financial product where the issuer has a significant influence over the price or value of the underlying instrument(s)) as effectively preventing an AQUA Product issuer from having a controlling interest in the issuer of an underlying instrument in its portfolio.

**Question 3.3.2:** Do you think that an AQUA Product issuer should be precluded from having a controlling interest in the issuer of an underlying instrument in its portfolio? If not, why not? If so, do you think that AQUA Rule 10A.3.3(d) is sufficiently clear in this regard? If not, how would you re-word that rule to cover the point?

## 3.4 Hybrid Listed/AQUA Product structures

Under the Listing Rules, any company or trust is able to be admitted to the official list, provided it meets the admission requirements in Chapter 1 of the Listing Rules. Hence, any of the entities that are Approved Issuers of AQUA Products under the AQUA Rules also qualify for admission as listed entities and as potential issuers of Listed Investment Products.

As mentioned in section 3.3 above, under the current AQUA Rules, shares in LICs are specifically excluded from being admitted as AQUA Products, as are units in REITs and IFs.[53] However, any listed company or trust qualifies for approval as an issuer of AQUA Products, provided the products in question are not within these excluded categories and also are not “Issuer Market Risk Products”.[54]

This paves the way for hybrid structures, such as the one announced by Magellan Asset Management in August 2020,[55] where an issuer that is both admitted to the ASX official list and an approved AQUA Product issuer could issue, say, two (or more) different classes of securities, one of which is a Listed Investment Product subject to the Listing Rules and other of which is an AQUA Product subject to the AQUA Rules.

**Question 3.4.1:** Do you have any views about hybrid structures, where a listed issuer that is also approved as an AQUA Product issuer simultaneously issues one class of securities that is a Listed Investment Product subject to the Listing Rules and another class of securities that is an AQUA Product subject to the AQUA Rules? What do you see as the advantages and disadvantages of these hybrid structures? Do you see any particular risks associated with, or have any other concerns about, these hybrid structures that you would like to see addressed in any re-write of the Listing Rules and/or the AQUA Rules?

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53 AQUA Rule 10A.3.3(d)(i), (ii) and (iii) respectively.

54 AQUA Rule 10A.2.1(5)(c). The definition of “Issuer Market Risk Products” is set out in note 43 above.

55 See Magellan Asset Management Limited, *Proposal to Restructure Global Equities Retail Funds*, 3 August 2020, available online at: https://www.magellangroup.com.au/funds/forms-pds/additional-information/restructure-proposal-announcement-3-august-2020/.

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# 4. Admission requirements and processes

## 4.1 Introduction

Currently, the admission requirements and processes for Listed Investment Products under the Listing Rules are substantially different to the admission requirements and processes for AQUA Products and Warrants under the AQUA Rules and Warrant Rules. To a large extent, this reflects the different histories of the three rule books and the fact that ASX has applied its admission rules and processes for listed entities uniformly to all types of listed entities, without having any specific admission criteria for the issuers of Listed Investment Products apart from a moderately higher NTA admission threshold for LICs and LITs compared to other (non-investment) entities (see section 4.2 below). It also reflects the nature of the different offerings, with AQUA Products and Warrants only being capable of being issued by certain types of well-capitalised and well-regulated issuers.

ASX believes there are some areas where the admission rules and processes for Listed Investment Products, AQUA Products and Warrants could be improved and brought into closer alignment. These are addressed in the balance of this section.

## 4.2 Minimum fund size

A LIC or LIT that wishes to be admitted to the official list as an "investment entity" must have, at the time of admission, NTA of at least $15 million, after deducting the costs of fund raising.[56]

As mentioned previously,[57] REITS and IFs are not formally recognised as a type or category of listed entity under the Listing Rules and are subject to the same admission requirements as apply to other non-investment entities under the Listing Rules. A REIT or IF therefore can be admitted to the official list if, at the time of admission it either has NTA of at least $4 million, after deducting the costs of fund raising, or a market capitalisation of at least $15 million.[58]

As a practical matter, entities applying for admission to the official list will attach a minimum subscription condition to their IPO intended to ensure that sufficient funds are raised for the entity to have the NTA required at admission. This has the advantage of ensuring that investors receive back their IPO subscriptions in full if the entity does not meet its minimum subscription condition and so don't get locked into an unsuccessful IPO that may have limited liquidity and therefore be difficult for them to exit.

ASX is concerned that LICs and LITs which start their existence with funds under management of only $15 million, and even more so REITs and IFs which start their existence with funds under management of only $4 million, may not have sufficient scale to operate profitably and therefore may be more prone to failure or closure than larger funds.

**Question 4.2.1:** Is having an NTA (after deducting the costs of fund raising) of $15 million a suitable threshold for admission as a LIC or LIT? Should it be higher? If so, what should it be?

**Question 4.2.2:** Is having an NTA (after deducting the costs of fund raising) of $4 million a suitable threshold for admission as a REIT or IF? Should it be higher? If so, what should it be?

56 Listing Rule 1.3.4.

57 See section 2.4 above.

58 Listing Rule 1.3.1.

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**Question 4.2.3:** If in your response to Question 2.5.2 you have identified other types of collective investment product issuers, apart from LICs, LITs, REITs and IFs, that should be formally recognised in the Listing Rules as separate categories of listed investment vehicles, is having an NTA (after deducting the costs of fund raising) of $4 million a suitable threshold for admission as such a vehicle? Should it be higher? If so, what should it be?

ASX would note that currently there are no minimum subscription or fund size requirements for AQUA Products or Warrants to be admitted to quotation under the AQUA Rules or Warrant Rules. Consequently, an investor who invests in an initial offer of interests in an AQUA Product or Warrant may find themselves having an interest in a sub-scale product.[59]

In ASX's view, this is of less concern in the case of AQUA Products and Warrants than Listed Investment Products because of the liquidity support arrangements that apply to AQUA Products and Warrants. These serve to guarantee a reasonable level of liquidity in the AQUA Product or Warrant so that investors should be able to exit their investment in most circumstances for a reasonable price, even though the fund may be sub-scale.

**Question 4.2.4:** Do you agree with ASX's conclusion that it is not necessary to impose a minimum subscription or fund size requirement for AQUA Products or Warrants to be admitted to quotation under the AQUA Rules or Warrant Rules, given the liquidity support obligations that apply to those products? If not, why not and what minimum subscription or fund size would you suggest?

The issuers of Listed Investment Products are required under Listing Rule 12.1 to maintain a level of operations which, in ASX's opinion, is sufficient to warrant their continued quotation and listing. They are also required under Listing Rule 12.4 to maintain a spread of security holdings which, in ASX' opinion, is sufficient to ensure that there is an orderly and liquid market in their securities. They may be suspended or removed from the official list if they do not comply with these requirements.[60]

There are no equivalent requirements for AQUA Products or Warrants. Consequently, an investor may find themselves holding an interest in a sub-scale product, either because the product has not attracted the level of issuances originally hoped for by the issuer, or through redemptions over time.

Again, in ASX's view, this is of less concern in the case of AQUA Products and Warrants than Listed Investment Products because of the liquidity support arrangements that apply to AQUA Products and Warrants. These serve to guarantee a reasonable level of liquidity in the AQUA Product or Warrant so that investors should be able to exit their investment in most circumstances for a reasonable price, even though the fund may be sub-scale.

However, to address the possibility that investors may not be able to exit their investment in a sub-scale AQUA Product or Warrant at a reasonable price, ASX can see a case for it to have a fall-back power to order the issuer of the AQUA Product or Warrant to conduct an orderly wind down of the product and also for ASX to suspend quotation of the product while the orderly wind-down is undertaken.

**Question 4.2.5:** Do you think that ASX should have the power to order the issuer of an AQUA Product or Warrant to conduct an orderly wind down of the product and also for ASX to suspend quotation of the product while the orderly wind-down is undertaken if, in ASX's opinion, there is not sufficient investor

[59] Noting the open-ended nature of ETFs and ETMFs, an investor in an ETF or ETMF may also find themselves having an interest in a sub-scale ETF or ETMF as a result of redemptions over time.

[60] Under Listing Rules 17.3 and 17.12 respectively.

interest in the product to warrant its continued quotation? If so, what considerations do you think ASX should take into account in exercising that power? If not, why not?

## 4.3 Commitments

One consequence that flows from the fact that REITs and IFs are not recognised as separate categories of listed entities under the Listing Rules is that, in common with other non-investment entities admitted to the official list under the "assets test",[61] REITs and IFs will generally be subject to the "commitments test" in Listing Rule 1.3.2. This requires the REIT or IF to have commitments,[62] at the time of listing, to spend at least half of its cash and assets in a form readily convertible to cash. Those commitments must be documented in an expenditure program set out in the entity's listing prospectus or product disclosure statement (**PDS**).

The commitments test is designed to stop promoters listing "cash boxes". Its application to REITs and IFs effectively puts a ceiling on the amount of capital they can raise in a listing of two times the amount of their initial commitments to spend that cash at the time of listing.

LICs and LITs are excluded from the application of the commitments test.

**Question 4.3.1:** Should REITs and IFs be excluded from the "commitments test", in the same way that LICs and LITs are?

**Question 4.3.2:** If in your response to Question 2.5.2 you have identified other types of collective investment product issuers, apart from LICs, LITs, REITs and IFs, that should be formally recognised in the Listing Rules as separate categories of listed investment vehicles, should those product issuers also be excluded from the "commitments test", in the same way that LICs and LITs are?

## 4.4 Required licences

To be admitted as an Approved Issuer of AQUA Products or Warrants, the issuer must hold all required licence authorisations under Chapter 7 of the Corporations Act needed to conduct its business as an Investment Product issuer.[63]

Approved Issuers of AQUA Products and Warrants are also obliged to continue to satisfy this requirement while their status as an Approved Issuer remains in force and must immediately notify ASX in writing if they no longer meet this requirement.

Issuers of Listed Investment Products are not subject to any equivalent requirements.

**Question 4.4.1:** Should entities seeking admission to the official list as an issuer of a Listed Investment Product have to satisfy an admission condition that they hold all required licenses under Chapter 7 of the Corporations Act and, once they are admitted, under a continuing obligation to satisfy that condition for as long as they have any Listed Investment Products on issue? If not, why not?

[61] Listing Rule 1.3.1. An entity seeking admission to the official list must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3 (Listing Rule 1.1 condition 9). Entities issuing new Investment Products generally will not able to satisfy the profits test as that requires the entity to be a going concern that has undertaken the same main business activity for the last three full financial years and to have aggregated profit from continuing operations for its last three full financial years of at least $1 million (Listing Rule 1.2.1, 1.2.2 and 1.2.4). By default, therefore, most LICs, LITs, REITs and IFs must seek admission under the assets test.

[62] These commitments must be consistent with the entity's stated objectives, as set out in its listing prospectus or PDS under Listing Rule 1.3.3.

[63] AQUA Rule 10A.2.1(1) and Warrant Rule 10.2.1(1).

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## 4.5 Adequate facilities and resources

To be admitted as an Approved Issuer of AQUA Products, the issuer must satisfy ASX that it has adequate facilities, systems, processes, procedures, personnel, expertise, financial resources and contractual arrangements with third parties to perform its obligations as an AQUA Product issuer.[64] This includes their NAV/iNAV reporting, portfolio disclosure, liquidity support and custody obligations.[65]

To be admitted as an Approved Issuer of Warrants, the issuer must confirm to ASX that it has facilities, expertise, procedures, personnel and financial resources which are adequate for the performance of its obligations as a Warrant issuer.[66]

Approved Issuers of AQUA Products and Warrants are also obliged to continue to satisfy these requirement while their status as an Approved Issuer remains in force and must immediately notify ASX in writing if they no longer meet this requirement.

Issuers of Listed Investment Products are not subject to any equivalent admission requirements. ASX considers that they should be.[67]

**Question 4.5.1:** Should entities seeking admission to the official list as an issuer of a Listed Investment Product have to satisfy an admission condition that they have adequate facilities, systems, processes, procedures, personnel, expertise, financial resources and contractual arrangements with third parties to perform their obligations as such an issuer and, once they are admitted, under a continuing obligation to satisfy that condition for as long as they have any Listed Investment Products on issue? If not, why not?

64 AQUA Rule 10A.2.1(2), as amended in September 2021. This is reinforced in the case of individual AQUA Products by AQUA Rule 10A.3.3(aa).

65 This includes, in the case of AQUA Products over crypto-assets, the best practice recommendations that ASIC recently published for custody arrangements involving crypto-assets in Information Sheet 225 *Crypto-assets*.

66 Warrant Rule 10.2.1(2). It is expected that this rule will be amended as part of phase 2 of this consultation to conform to the revised wording of AQUA Rule 10A.2.1(2) implemented in September 2021 and that the Warrant Rules will also have added to them an equivalent provision to AQUA Rule 10A.3.3(aa) (see note 64 above and the accompanying text).

67 Again, this includes, in the case of Listed Investment Products over crypto-assets, the best practice recommendations that ASIC recently published for custody arrangements involving crypto-assets in Information Sheet 225 *Crypto-assets*.

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# 5. Product names

## 5.1 Introduction

As ASIC has acknowledged in its proposed update to INFO 230 being consulted upon in CP 356:

> "*Retail investors frequently trade ETPs through execution-only brokers and may not receive a PDS. As a result, appropriate labelling helps them better understand the key characteristics of these products. We consider that product names that more clearly reflect the nature of the product can help alert retail investors to the type of product and associated risks.*"

In this context, "product name" obviously means more than the generic name or description of the individual financial product an investor acquires – in the case of Listed Investment Products, ETFs, ETMFs, and those ETSPs that take the form of a Collective Investment Product, this would generally be a "share" (if the issuer is a company) or a "unit" (if the issuer is a trust). Rather, "product name" means how a product is generally referred to, including (but not limited to) in prospectuses, PDSs and marketing materials. This may include, in part, the name of the issuer and/or the ASX ticker code under which it trades.

## 5.2 Naming requirements for AQUA Products and Warrants

Both the AQUA Rules and the Warrant Rules currently include a requirement that the name of an AQUA Product and Warrant must comply with the naming requirements set out in the Procedures.[68] This is intended to operate both as an admission requirement and as an ongoing requirement after admission. However, currently there are no actual naming requirements for either AQUA Products or Warrants set out in the Procedures.

For some time now, ASIC has published naming requirements for ETPs in INFO 230, including an overarching requirement that ETP product names must be 'true to label'. ASX traditionally has enforced ASIC's naming requirements for ETPs in INFO 230 through the exercise of its admission discretion[69] (that is, ASX will only admit AQUA Products that comply with ASIC's naming requirements and will impose a condition upon admission that the AQUA Product issuer complies with those requirements on an ongoing basis).

As mentioned in section 1.9 above, in CP 356 ASIC is seeking comments on proposals to update ASIC's guidance on the naming conventions for ETPs set out in INFO 230. The proposals include guidance that an ETP should have:

- a primary label that designates whether the product is:
  - a "Exchange Traded Fund" (or "ETF") – being a collective investment vehicle such as a managed investment scheme or CCIV, or
  - a "Structured Product" – being a security or derivative that gives financial exposure to the performance of underlying instruments, and
- in the case of an ETF, a secondary label to indicate the presence of additional risks, being:
  - "Active" to indicate that the ETF:
    - does not employ a passive investment strategy, or

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68 AQUA Rule 10A.4A.1 and Warrant Rule 10.4A.1. References in this consultation paper to "Procedures" mean the ASX Operating Rule Procedures.

69 AQUA Rule 10A.3.1(e).

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- discloses its full portfolio holdings on a delayed basis under internal market making or material portfolio information disclosure models, or

- "Complex" to indicate that the ETF has an investment strategy that:
  - uses debt or leverage to make a financial investment
  - includes an inverse exposure
  - uses short selling
  - uses derivatives, other than for exchange rate hedging purposes, to gain material economic exposure to affect the underlying investment strategy, or
  - otherwise meets the hedge fund criteria in ASIC Regulatory Guide 240 *Hedge funds: Improving disclosure*.

Once ASIC finalises its proposals in this regard, ASX will amend the AQUA Rules Procedures[70] so that they conform to ASIC's updated guidance on naming conventions. This will likely include the introduction of requirements that:

- the name of an AQUA Product must not, in ASX's opinion, be capable of misleading retail investors as to the nature, features or risks of the product
- if the issuer of an AQUA Product quoted on ASX proposes to change the name of the product, it must first seek approval from ASX for the new name
- the name of the product must also conform to ASIC's guidance on naming conventions in INFO 230, as updated from time to time, and
- ASX may require an AQUA Product issuer to change the name of its product if ASX forms the view that the name of a product is, for any reason: (i) capable of misleading retail investors as to the nature, features or risks of the product, or (ii) not consistent with ASIC's guidance on naming conventions in INFO 230.

These changes to the AQUA Rules Procedures will be made independently of the rule amendments to be consulted upon in phase 2 of this consultation.

In phase 2 of this consultation, ASX expects to consult upon similar changes to the Warrant Rules and Procedures.

**Question 5.2.1:** Are there any other naming constraints or requirements, apart from those set out in the text, that should apply to AQUA Products or Warrants generally or to specific types of AQUA Products or Warrants? If so, what are they?

## 5.3 Naming requirements for Listed Investment Products

There are presently no requirements in the Listing Rules governing the names that can be used for Listed Investment Products.

ASX cannot see a policy reason why issuers of Listed Investment Products (LICs, LITs, REITs and IFs) should not be subject to general overarching naming requirements similar to those mentioned above that ASX is adopting for AQUA Products and Warrants above – ie that the name of a Listed Investment Product must

[70] AQUA Rule Procedures 10A.4A.1.

not, in ASX's opinion, be capable of misleading retail investors as to its nature, features or risks and, if the issuer proposes to change product name, it must first seek approval from ASX to the new name.

**Question 5.3.1:** Do you support the introduction of a rule for Listed Investment Products that the name of the product must not, in ASX's opinion, be capable of misleading retail investors as to the nature, features or risks of the product? If not, why not?

**Question 5.3.2:** Do you support the introduction of a rule for Listed Investment Products that if the issuer proposes to change the name of the product, it must first seek approval from ASX to the new name? If not, why not?

Given the fundamental difference between open-ended ETFs with liquidity support obligations and closed-ended Listed Investment Products with no liquidity support obligations, ASX can see a case that the issuers of Listed Investment Products should be prohibited under the Listing Rules from describing themselves as an "Exchange Traded Fund" or "ETF", even where they take the form of a trust, managed investment scheme, CCIV sub-fund, NFPF or some other type of collective investment vehicle.[71]

**Question 5.3.3:** Should issuers of Listed Investment Products be prohibited under the Listing Rules from describing themselves as an "Exchange Traded Fund" or "ETF"? If not, why not?

As mentioned in section 1.3 above, the issuers of Listed Investment Products, ETFs, ETMFs, and those ETSPs that take the form of a Collective Investment Product actively compete with each other and with Unlisted Managed Funds, selling a range of different collective investment products to investors. This is especially so between and among issuers of Collective Investment Products investing in financial instruments, such as LICs, LITs, ETFs and ETMFs, where it is not uncommon for groups of them to have similar investment mandates.

If LICs and LITs are not to be prohibited from using the term "ETF", ASX can see an argument that, for competitive neutrality, transparency and to promote comparability and reduce investor confusion, LICs and LITs (or, using ASX's proposed new terminology, financial investment entities) should also be subject to ASIC's naming requirements in INFO 230 mentioned above.

**Question 5.3.4:** If your answer to question 5.3.3 is 'no', should LICs and LITs be subject to a Listing Rule requiring them to comply with similar naming requirements as those set out by ASIC in INFO 230? If not, why not?

**Question 5.3.5:** Are there any other naming constraints or requirements that should apply to Listed Investment Products generally or to specific types of Listed Investment Products? If so, what are they?

[71] ASX notes that ASIC also requested feedback on the same point at B2Q2 of CP 356.

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# 6. Investment mandates

## 6.1 Introduction

Collective Investment Products[72] confer on their investors a proportionate interest in the net assets of the relevant entity or fund, based on the size of their share/unit holdings. How those assets are proposed to be invested is therefore important information for investors.

ASX understands that investors often select a particular Listed Investment Product, ETF, ETMF or ETSP on the basis of its investment mandate and how it fits with their own investment objectives. For example, an investor may invest in a particular Collective Investment Product to get an exposure to a particular asset class or sub-class or to diversify their investment portfolio in particular respects.

With that in mind, ASX is concerned that there may be some gaps and inconsistencies in the rule framework relating to investment mandates.

## 6.2 Investment mandates for AQUA Products

Under the AQUA Rules, ETFs and ETMFs are required to have an investment mandate or similar document setting out the investment approach of the issuer. The investment mandate must be set out in the PDS or offer document for the product provided to ASX prior to its quotation.[73]

As part of the admission process for AQUA Products,[74] ASX assesses the investment mandate for consistency with the acceptable underlying instrument requirement mentioned in section 7.2 below and whether it is an appropriate investment mandate for an AQUA Product, having regard to domestic and global precedents, investor interest, regulatory requirements and guidance, and ASX's strategic objective of developing a diverse ecosystem of products for investors.

"Investment mandate" is not a defined term in the AQUA Rules, but ASX generally expects an investment mandate to have two components:

- investment objective – the investment outcome the issuer seeks to achieve (eg to achieve a return equivalent to a particular index), and
- investment strategy – how the issuer intends to achieve that objective (eg by holding a replica portfolio of products to that represented in the particular index).

**Question 6.2.1:** For greater certainty, should the term "investment mandate" be defined in the AQUA Rules? If so, would you be happy with a definition that simply incorporates the two components mentioned in section 6.2 of the consultation paper (ie investment objective and investment strategy)? If not, how would you define the term "investment mandate"?

The requirement for an ETF or ETMF to have an investment mandate acceptable to ASX formally only applies at the point it is admitted to quotation.[75] There is nothing specific in the AQUA Rules to prevent an ETF or

[72] That is, Listed Investment Products, ETFs, ETMFs and those ETSPs that take the form of Collective Investment Products. Note that some ETSPs are Derivative Investment Products rather than Collective Investment Products. The topic of investment mandates is not relevant to those types of ETSPs. Similarly, Warrants are Derivative Investment Products rather than Collective Investment Products and the topic of investment mandates is not relevant to them either.

[73] AQUA Rule 10A.4.1(c) and the related Procedure. While, on its face, this rule only applies to ETFs and ETMFs, it is a condition of admission for all AQUA Products (including mFunds) that ASX has no objection to the AQUA Product "including the investment mandate or other constituent documents" (AQUA Rule 10A.3.3(b)). ASX will tidy up the drafting of these rules in the next stage of this consultation process.

[74] See note 73 above.

[75] Although, as a practical matter, it is not uncommon for ASX and an issuer to have discussions ahead of a proposed change in investment mandate to ensure that it is acceptable to ASX.

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ETMF from changing its investment mandate after the product has been quoted simply by issuing a supplementary PDS or prospectus setting out a new investment mandate.

Some may argue that it is not necessary to constrain an ETF or ETMF from changing its investment mandate, given the liquidity support arrangements that apply to AQUA Products. These serve to guarantee a reasonable level of liquidity in AQUA Products so that investors should be able to exit their investment in most circumstances for a reasonable price. Hence, an investor who does not like the new mandate can simply cash out of the ETF or ETMF and invest the proceeds into an investment that better suits them.

Nevertheless, ASX is interested in the views of stakeholders on the following question:

**Question 6.2.2:** Should the AQUA Rules impose any constraints on an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product from changing its investment mandate (such as a requirement for a certain period of notice before the change is made)? If so, what should those constraints be? If not, why not?

Further, there is nothing in the AQUA Rules formally requiring an ETF or ETMF to report, either immediately or on a periodic basis, on whether it has complied with its investment mandate or to disclose any material departures from that mandate (although, as the holders of AFSLs, the REs of ETFs and ETMFs that are Australian registered managed investment schemes may have to notify ASIC of a material breach of the scheme's mandate under their breach reporting obligations in section 912D of the Corporations Act).

**Question 6.2.3:** Should the AQUA Rules require an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to advise the market immediately if it materially breaches its investment mandate? If not, why not?

**Question 6.2.4:** Should the AQUA Rules require an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to confirm in its annual report whether it has materially complied with its investment mandate for the financial year and, if it hasn't, to disclose any material departures from that mandate? If not, why not? If so, should that statement be audited or otherwise verified by an independent third party?

## 6.3 Investment mandates for Listed Investment Products

The issuers of Listed Investment Products do not have any formal obligation under the Listing Rules to have an investment mandate, although as a practical matter they will generally set out something on this topic in their listing prospectus or PDS.

As mentioned in section 1.3 above, the issuers of Listed Investment Products, ETFs, ETMFs, and those ETSPs that take the form of a Collective Investment Product actively compete with each other and with Unlisted Managed Funds, selling a range of different collective investment products to investors. This is especially so between and among the issuers of listed and quoted collective investment schemes investing in financial products such as LICs, LITs, ETFs and ETMFs, which often have similarly constructed portfolios and similar investment mandates. ASX can therefore see an argument that, for competitive neutrality, transparency and to promote comparability and reduce investor confusion, an entity applying for admission as a LIC or LIT (or, using ASX's proposed new terminology, a "financial investment entity") should be subject to an admission condition that it have an investment mandate which is acceptable to ASX and which is set out in its listing prospectus or PDS.

**Question 6.3.1:** Should the Listing Rules require an entity applying for admission as a LIC or LIT to satisfy an admission condition that it have an investment mandate which is acceptable to ASX and which is set out in its listing prospectus or PDS. If not, why not? If so, how should the term "investment mandate" be defined in the Listing Rules? Would the two-part definition mentioned in section 6.2 of this consultation paper incorporating investment objective and investment strategy be appropriate?

Even where a LIC or LIT includes an investment mandate in its listing prospectus or PDS, there is nothing in the Listing Rules currently preventing it from changing that mandate after listing apart from Listing Rule 11.1. That rule requires a listed entity to notify ASX of any proposed significant change to the nature or scale of its activities and empowers ASX to require the transaction to be approved by the entity's security holders, and to require the entity to re-comply with ASX's requirements for admission and quotation as if the entity were applying for admission to the official list for the first time.

There may be some uncertainty in a given case whether a change in investment mandate by LIC or LIT would constitute a significant change to the nature or scale of its activities for the purposes of Listing Rule 11.1.

**Question 6.3.2:** Should the Listing Rules impose any constraints on a LIC or LIT from changing its investment mandate (such as a requirement for a certain period of notice before the change is made or that the mandate can only be changed with the approval of its security holders)? If so, what should those constraints be? If not, why not?

Even where a LIC or LIT discloses its investment mandate to the market, there is nothing in the Listing Rules formally requiring it to report on a periodic basis on whether it has complied with its investment mandate and to disclose any material departures from that mandate outside of the general obligation in Listing Rule 3.1 to notify the market immediately of any information that a reasonable person would expect to have a material effect on the price or value of it securities.

There may be some uncertainty in a given case whether a LIC or LIT not materially complying with its investment mandate would constitute information that a reasonable person would expect to have a material effect on the price or value of it securities. This could depend on the nature and extent of the non-compliance.

**Question 6.3.3:** Should the Listing Rules require a LIC or LIT to advise the market immediately if it materially breaches its investment mandate? If not, why not?

**Question 6.3.4:** Should the Listing Rules require a LIC or LIT to confirm in its annual report whether it has materially complied with its investment mandate for the financial year and, if it hasn't, to disclose any material departures from that mandate? If not, why not? If so, should that statement be audited or otherwise verified by an independent third party?

**Question 6.3.5:** Should REITs and IFs also be subject to similar requirements regarding investment mandates as those suggested above for LICs and LITs? If not, why not? If so, why and do those requirements need any customisation to deal with the different attributes of REITs and IFs compared to LICs and LITs?

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# 7. Permitted investments

## 7.1 Introduction

A key concept in both the AQUA Rules and the Warrant Rules is the notion of an "underlying instrument".

In the case of the AQUA Rules, "underlying instrument" is defined to mean the financial product, index, foreign or Australian currency, commodity or other point of reference for determining the value of the AQUA Product.[76]

In the case of the Warrant Rules, "underlying instrument" is defined to mean the financial product, index, foreign or Australian currency or commodity which underlies the Warrant.[77]

Currently, there is no directly equivalent concept in the Listing Rules for the issuers of Listed Investment Products.

## 7.2 Acceptable underlying instruments for AQUA Products

A fundamental feature of the rule framework for AQUA Products is that the underlying instruments of an AQUA Product are restricted to instruments that have robust and transparent pricing mechanisms, making it relatively easy to determine the value of the AQUA Product.

Hence, to be admitted to quotation on ASX, the capital value or distributions of an AQUA Product must be linked to underlying instruments which are:[78]

(i) securities, derivatives, debentures, bonds or other financial products:

- (A) admitted to trading on the ASX market
- (B) traded on a non-ASX market that is specified in the Procedures, or
- (C) traded on any other non-ASX market where:
  - (I) the non-ASX market is subject to regulation that is at least equivalent to the regulation of a market operator licenced under section 795B(1) of the Corporations Act, and
  - (II) the underlying instrument is subject to substantially equivalent disclosure requirements to those which would apply if the underlying instrument were admitted to trading on the ASX market and which are acceptable to ASX

(ii) debentures, bonds, deposit products or money market instruments[79] which are included in one of the 15 indices currently specified in the Procedures

(iii) debentures, bonds, deposit products or money market instruments which are issued or guaranteed by a government or by an entity of a type specified in the Procedures and in respect of which ASX is satisfied that relevant authorised participants and AQUA market makers have sufficient information available in a timely manner to enable them to reliably determine prices at which the debentures or bonds are bought or sold

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76 ASX Operating Rule 7100. This definition will shortly be amended to include a reference to a "Eligible Crypto-asset" (as defined in that rule) as a potential underlying instrument for an AQUA Product (see notes 20 and 21 above and the accompanying text).

77 ASX Operating Rule 7100.

78 AQUA Rule 10A.3.3(c) and the related Procedure. Note that this rule does not apply to products that are admitted solely for the purposes of settlement through the mFund Settlement Service (AQUA Rule 10A.3.3(h)).

79 As defined in ASX Operating Rule 7100.

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(iv) an “eligible debt portfolio”[80]

(v) commodities or currencies where ASX is satisfied that the prices at which such commodities or currencies are bought or sold are available to market users in a timely manner or for which there is a regulated derivatives market which controls price discovery for the commodity or currency in question, and

(vi) indices over any of the underlying instruments listed above where ASX is satisfied that the index in question is widely regarded as having robust and transparent eligibility criteria, governance arrangements and methodologies for constructing and maintaining the index.

ASX expects that this list will be amended shortly to also include “eligible crypto-assets”.[81]

To cater for new financial products that may emerge from time to time and that may be acceptable underlying instruments for AQUA Products, ASX can see a case for having a general “sweeper” category of acceptable underlying instruments for AQUA Products for financial products that, in ASX’s opinion, are subject to a reliable and transparent pricing framework.

**Question 7.2.1:** Do you support including in the list of acceptable underlying instruments for AQUA Products any financial product that, in ASX’s opinion, is subject to a reliable and transparent pricing framework? If not, why not?

**Question 7.2.2:** Are there any other financial products or indices that you consider should be added to the list of acceptable underlying instruments for AQUA Products? If so, please provide details and explain the reasons why.

**Question 7.2.3:** Are there any products currently included in the list of acceptable underlying instruments for AQUA Products that you consider should be excluded? If so, please provide details and explain the reasons why.

## 7.3 Acceptable underlying instruments for Warrants

As mentioned in section 2.2 above, the Warrant Rules were drafted to be substantially shorter and less onerous on issuers than the Listing Rules, recognising that:

- only certain types of well-capitalised and well-regulated issuers would be approved to issue Warrants
- the value of a Warrant would be linked, by its terms of issue, to the value of the underlying product or index, and
- the underlying product or index would have a robust and transparent pricing mechanism, making it relatively easy to determine the value of the Warrant.

Despite this, the Warrant Rules currently do not include any express constraint on the types of products that can be acceptable underlying instruments for Warrants. The only such constraint for Warrants is one that is to be implied from the definition of “underlying instrument”, as it applies to Warrants.[82] In light of that definition, by necessary implication, the underlying instrument for a Warrant must be a financial

[80] As defined in ASX Operating Rule 7100.

[81] See notes 20 and 21 above and the accompanying text.

[82] See the text accompanying note 77 above.

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product, index, currency or commodity. However, there are no rule requirements confining this to financial products, indices, currencies or commodities that have a robust and transparent pricing mechanism.[83]

**Question 7.3.1:** Should the Warrant Rules be amended to limit the acceptable underlying instruments for Warrants to the same types of underlying instruments as are acceptable for AQUA Products? If not, why not?

**Question 7.3.2:** Are there any other types of products that should be added to the list of acceptable underlying instruments for Warrants?

## 7.4 Acceptable underlying instruments for Listed Investment Products

Currently, there are no prescriptions in the Listing Rules as to the type of underlying instruments in which LICs and LITs can invest beyond what is inherent in the definition of "investment entity" – namely, that the, or the principal part of the, issuer's activities must consist of "*investing (directly or through a child entity) in listed or unlisted securities or derivatives*".

ASX has already outlined in section 2.3 above how it proposes to replace the term "investment entity" with "financial investment entity" and to expand the range of products in which those entities can invest to include debentures, bonds, deposit products, money market instruments, eligible debt portfolios, currencies, commodities, eligible crypto-assets or other financial products.

ASX has also outlined in section 2.4 the new definitions of "real estate investment entity" and "infrastructure investment entity' it is proposing to add to the Listing Rules.

ASX does not see a need to introduce any further prescription around the types of underlying instruments in which those entities can invest beyond what is inherent in the proposed definitions of "financial investment entity", "real estate investment entity" and "infrastructure investment entity".

**Question 7.4.1:** Do you agree that it is not necessary to proscribe the types of underlying assets in which LICs, LITs, REITs and IFs can invest under the Listing Rules beyond what is inherent in the proposed definitions of "financial investment entity", "real estate investment entity" and "infrastructure investment entity" in sections 2.3 and 2.4 of this paper? If not, why not?

## 7.5 Feeder-fund structures

The last few years have seen significant growth in "feeder fund" structures, where issuers of Listed Investment Products or AQUA Products invest their funds into an unlisted collective investment vehicle, often alongside other funds and/or wholesale investors, and the unlisted collective investment vehicle in turn invests the aggregated funds into particular investments.

ASX has applied the Listing Rules and AQUA Rules to these feeder fund structures on a look-through basis so that if the collective investment vehicle into which the investment is made has acceptable underlying instruments that satisfy the Listing Rules or AQUA Rules (as applicable), ASX will treat the feeder fund as being compliant with those rules.

To accommodate these types of feeder fund structures, ASX has had to use its powers to impose conditions on admission to ensure that the feeder fund stays compliant with the letter and intent of the Listing Rules or AQUA Rules (as applicable).

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[83] Although ASX can control the types of underlying instruments used for Warrants through its general discretion not to approve a Warrant issuer (Warrant Rule 10.2.3) and not to quote a particular Warrant (Warrant Rule 10.3.1).

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ASX is considering addressing the position of feeder funds more directly in the Listing Rules and AQUA Rules by:

- providing that the underlying instruments held by or on behalf of the underlying fund will be taken for the purposes of the rules to be underlying instruments of the feeder fund
- providing that acts done or omitted to be done by the underlying fund in relation to its underlying instruments will be taken to have been done or omitted to be done by the feeder fund
- requiring the feeder fund to have contractual arrangements with the underlying fund acceptable to ASX that ensure the feeder fund is provided with the information it needs or requests to comply with its disclosure obligations under the applicable rules
- requiring the feeder fund to notify ASX immediately if:
    - the underlying fund changes its investment mandate
    - the underlying fund does anything to cause the feeder fund to breach any of the restrictions in the applicable rules regarding the composition of its assets, or
    - the feeder fund and the underlying fund come to be under different control, and
- entitling ASX to suspend or terminate the quotation of the feeder fund if:
    - the underlying fund does not comply with the contractual arrangements for the provision of information the feeder fund needs or requests to comply with its disclosure obligations under the applicable rules
    - the feeder fund and the underlying fund come to be under different control, or
    - the underlying fund does, or omits to do, anything that if done or omitted to be done by the feeder fund would be a breach of the applicable rules.

**Question 7.5.1:** Do you support the rule changes being considered by ASX to deal with feeder funds? If not why not? Are there any other issues with feeder funds that you would like to see addressed in any re-write of the Listing Rules or AQUA Rules?

## 7.6 The use of derivatives

In INFO 230, ASIC has outlined the following expectations regarding the use of derivatives by ETPs

> "*Where an issuer seeks to admit a product with a strategy that would rely on the use of derivatives (both exchange traded and OTC) on an ongoing basis for more than an immaterial extent (i.e. total notional value of more than 5% of the ETP's NAV but excluding derivatives used solely to hedge foreign exchange risk, other than in exceptional circumstances), the licensed exchange should impose regular disclosure obligations (at least monthly) to the market in relation to the total percentage of notional derivative exposure to the ETP's NAV.*
>
> *Where an issuer intends to rely on using derivatives with total notional value of less than 5% of the ETP's NAV, the licensed exchange should have rules in place requiring the issuer to notify the market as soon as practicable when exceptional circumstances occur resulting in the use of derivatives with total notional value exceeding 5% of the ETP's NAV.*
>
> *Where an issuer seeks to admit a product with a strategy that would rely on the use of OTC derivatives on an ongoing basis for more than an immaterial extent (other than in exceptional circumstances), the licensed exchange should impose additional requirements on the issuer in relation to:*

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- *acceptable counterparties*
- *acceptable collateral*
- *direct access to collateral in the event of a counterparty default, and*
- *regular disclosure obligations (at least monthly) to the market in relation to:*
  - *the maximum percentage of OTC derivative exposure relative to the ETP's NAV on a mark-to-market basis*
  - *breakdown of collateral by security type, country, sector, currency and credit rating, and*
  - *swap costs.*

*This disclosure should include any reduction in the NAV of the ETP attributable to discounting the OTC derivative, reflecting any concerns the issuer has around the ability to recover the value of the OTC derivative."*[84]

These requirements are mostly (although not entirely) addressed in the provisions governing "OTC Derivatives Based ETFs"[85] and "OTC Derivatives Based Managed Funds"[86] in AQUA Rule 10A.4.6 and the related Procedure. Currently they require the counterparty for an OTC derivative entered into by an AQUA Product issuer to be an entity that is, or is guaranteed by, an authorised deposit-taking institution in Australia or an equivalent institution in France, Germany, the Netherlands, Switzerland, the UK or the US.[87] They also limit the acceptable collateral that can be received by an AQUA Product issuer under an OTC derivative to securities which are constituents of the S&P/ASX 200 index, cash, Australian government debentures or bonds, or the underlying instrument for the AQUA Product.[88]

ASX is considering amending AQUA Rule 10A.4.6 and the related Procedure to more fully reflect the expectations in INFO 230. With that in mind, ASX is interested in feedback from stakeholders on the following questions.

**Question 7.6.1:** Should the list of acceptable counterparties to an OTC derivative entered into by an AQUA Product issuer be extended to include other types of institutions apart from ADIs, or entities guaranteed by ADIs, in Australia, France, Germany, the Netherlands, Switzerland, the UK or the US? If so, what other types of institutions should be included? If not, why not?

**Question 7.6.2:** Should the list of acceptable assets that can be received by an AQUA Product issuer by way of collateral under an OTC derivative be extended to include other types of assets apart from securities that are constituents of the S&P/ASX 200 index, cash, Australian government debentures or bonds, or the underlying instrument for the AQUA Product? If so, what other types of assets should be included? If not, why not?

**Question 7.6.3:** Should there be similar constraints on the types of assets that can be received by an AQUA Product issuer by way of collateral under a securities lending arrangement or prime brokerage agreement? If so, why? If not, why not?

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84 INFO 230 under the heading "Derivatives".

85 "OTC Derivatives Based ETF" means an ETF which aims to replicate the performance of the underlying Instrument through the use of one or more OTC derivatives (except to an immaterial extent): see the definition of that term in ASX Operating Rule 7100.

86 "OTC Derivatives Based Managed Fund" means a managed fund which aims to replicate the performance of the underlying Instrument through the use of one or more OTC derivatives (except to an immaterial extent): see the definition of that term in ASX Operating Rule 7100.

87 AQUA Rule 10A.4.6(b) and the related Procedure.

88 AQUA Rule 10A.4.6(c) and the related Procedure.

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**Question 7.6.4:** Are there any other issues with the provisions in the AQUA Rules regulating the use of OTC derivatives that you would like to see addressed in any re-write of the AQUA Rules? If so, please provide details and explain the reasons why.

## 7.7 Ancillary liquid assets and incidental investments

An AQUA Product issuer may need to hold cash or cash equivalent assets (**ancillary liquid assets**) from time to time that are ancillary to its main purpose, eg to fund outgoings or redemptions or for risk management purposes.[89]

An AQUA product issuer may also end up holding investments (**incidental non-complying investments**) that were acceptable underlying instruments and/or consistent with its investment mandate when they were acquired but have since ceased to be so. An example of the former would be where an issuer with a mandate to invest in listed securities acquires securities in a listed company and the company is subsequently de-listed. An example of the latter would be where the issuer with a mandate to replicate an equities index acquires securities in a listed company that is a component of the index it is tracking but those securities subsequently drop out of that index.

ASX is considering introducing provisions into the AQUA Rules to recognise that from time to time an AQUA Product issuer may hold ancillary liquid assets or incidental investments that are not directly related to achieving its investment objective.

**Question 7.7.1:** Do you support the introduction of provisions into the AQUA Rules to recognise that from time to time an AQUA Product issuer may hold ancillary liquid assets or incidental investments that are not directly related to achieving its investment objective? If so, how would you frame those rules? If not, why not?

**Question 7.7.2:** Do you think there should be a limit on the amount (eg a maximum percentage of the underlying fund) that an AQUA Product issuer can hold in the form of ancillary liquid assets? If so, what should that limit be? If not, why not?

**Question 7.7.3:** Do you think there should be a limit on the time that an AQUA Product issuer can hold incidental non-complying investments before they are replaced by investments consistent with its investment mandate? If so, what should that limit be? If not, why not?

[89] An AQUA Product issuer may also have temporary holdings of cash or cash equivalents (eg arising from a capital raising or asset sale) that are yet to be deployed towards mandated investments. ASX does not see a need to place any constraint on these temporary holdings, given the commercial pressures that will exist for them to be deployed out of cash and into mandated investments.

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# 8. Portfolio disclosure

## 8.1 Introduction

Collective Investment Products[90] confer on their investors a proportionate interest in the net assets of the relevant entity or fund, based on the size of their share/unit holdings. The composition and value of those assets is therefore important information for investors.

In common with all listed entities, LICs, LITs, REITs and IFs are required to produce half year and annual financial statements that satisfy Australian accounting and auditing standards (or other overseas accounting and auditing standards acceptable to ASX) and lodge them with ASX.[91] ETFs, ETMFs and ETSPs are also required to produce half year and annual financial statements and lodge them with ASX.[92] Those financial statements will typically disclose the value of their investments as a single line item in their balance sheet, with further details provided in the notes to the financial statements about the composition of that figure.

Presently, there are no additional requirements in the Listing Rules for a REIT or IF to publish information about the composition of its investment portfolio over and above what is required under applicable accounting standards. ASX is not proposing to change that position.

There are specific portfolio disclosure requirements that currently apply to LICs and LITs under the Listing Rules and to ETFs, ETMFs and ETSPs under INFO 230 – but they are very different to each other.

ASX can see an argument that, for competitive neutrality, transparency and to promote comparability and reduce investor confusion, LICs and LITs (or, using ASX's proposed new terminology, "financial investment entities") should be subject to similar portfolio disclosure obligations under the Listing Rules as issuers of Collective Investment Products are under the AQUA Rules.

## 8.2 Listed Investment Product portfolio disclosure requirements

LICs and LITs are specifically required under the Listing Rules to include in their annual report:

(a) a list of all investments held by them and their child entities at the balance date, and

(b) the level 1, level 2 and level 3 inputs used to value their investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement*.[93]

Most LICs and LITs publish their annual reports between two and four months after their balance date. The list of investments in their annual report at the balance date is therefore likely to be significantly out of date – either because, over the period since the balance date, the entity will have altered its investment portfolio or the values of its investments will have changed, or both. Given that, ASX does not see great value in these annual disclosures.

In contrast to the obligation of LICs and LITs under the Listing Rules to publish their portfolio composition annually and with a delay of up to four months, most ETFs and ETMFs are expected by ASIC to disclose their portfolio composition on a daily basis (see section 8.3 below).

[90] That is, Listed Investment Products, ETFs, ETMFs and those ETSPs that take the form of Collective Investment Products. Note that some ETSPs are Derivative Investment Products rather than Collective Investment Products. The topic of portfolio disclosure is not relevant to those types of ETSPs. Similarly, Warrants are Derivative Investment Products rather than Collective Investment Products and the topic of portfolio disclosure is not relevant to them either.

[91] Listing Rules 4.2A, 4.5 and 19.11A.

[92] AQUA Rules 10A.4.2(f) and (g), 10.4.4(e) and (f) and 10A.5.8(f).

[93] Listing Rule 4.10.20(a) and (b). A note to listing Rule 4.10.20 makes it clear that the level 1, level 2 and level 3 inputs used to value an investment entity's investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement* can be disclosed in a note to the financial statements in the entity's annual report.

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ASX can see an argument that LICs and LITs should have to disclose their portfolio composition on a periodic basis for transparency and so that the market can periodically assess the quality of their portfolio. ASX can also see an argument that this disclosure should be made more frequently than annually, although not as frequently as the daily portfolio disclosure required for most ETFs and ETMFs.

ASX is interested in stakeholder views on whether the existing requirement for LICs and LITs (or, using ASX's proposed new terminology, "financial investment entities") to disclose in their annual report a list of all of their investments, should be replaced with a requirement that they instead disclose this information on a quarterly basis by no later than the end of the month after quarter end.[94] This would give the market more timely information about the composition of a LIC/LIT's investment portfolio, in a time frame that is consistent with the usual quarterly reporting cycle that applies to many listed entities under the Listing Rules.

**Question 8.2.1:** Do you support replacing the requirement for LICs and LITs to disclose in their annual report a list of all of their investments, with a requirement that they instead disclose this information on a quarterly basis by no later than the end of the month after quarter end? If so, why? If not, why not?

ASX has observed that the quality and quantity of information currently disclosed by LICs and LITs in their annual report about their portfolio composition varies significantly from one entity to another. The bulk of the investments held by a LIC or LIT ought to be securities and/or derivatives.[95] In the case of securities, some LICs and LITs include in their annual report a detailed list of individual securities they hold with the number and value of each holding. Some aggregate similar investments into a single line item and give an aggregated value for each line item. Others simply include a list of the entities in which the entity holds securities without disclosing the number or value of the holding. The quality and quantity of disclosures of derivative exposures by LICs and LITs is also very mixed.

To address this issue, ASX is considering publishing guidance to the market on the level of detail it expects to be disclosed in the periodic disclosures by LICs and LIT's of their investment portfolio. This should help reduce the wide variances in the quality and quantity of reporting currently provided by LICs and LITs on this score.

In relation to securities, ASX's preliminary view is that such disclosures should include a detailed list of the names of the entities in which they hold securities, the type and number of securities they hold, and their fair value at the close of trading at the end of the relevant period.

In relation to derivatives, ASX preliminary view is that such disclosures should include a detailed list of each derivative position held by the entity, other than derivatives entered solely for the purpose of hedging currency exposures, and include the key terms of each derivative (eg type, underlying financial product, number of contracts, date of expiry and strike price) and its fair value at the close of trading at the end of the relevant period.

ASX acknowledges the sensitivity that long-short funds and hedge funds may have around disclosing material short positions and potentially exposing themselves to a short squeeze. In that case, ASX would be prepared to accept anonymised disclosure of the short position as long as its general nature and its fair value at the close of trading at the end of the relevant period is disclosed.

The disclosures should also reference the methodology and inputs for valuation (this could be done, for example, by referring to the valuation methodology and level 1, level 2 and level 3 inputs disclosed in the

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[94] For the avoidance of doubt, ASX is proposing to retain the existing requirement for LICs and LITs to publish in their annual report the level 1, level 2 and level 3 inputs used to value their investments (AASB 13 requires this information to be included in the notes to the entity's financial statements in any event).

[95] See note 27 above and the accompanying text.

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entity's annual financial statements under Australian Accounting Standard AASB 13 *Fair Value Measurement* or, for foreign listed entities, its overseas equivalent).

**Question 8.2.2:** Do you have any thoughts on the guidance that ASX should give to the market on the level of detail that should be included in the periodic disclosures by LICs and LITs of their investment portfolio? If so, please tell us.

For completeness, ASX does not propose to introduce any additional portfolio disclosure requirements for REITs and IFs under the Listing Rules, leaving REITs and IFs on the same footing as other (non-investment) listed entities when it comes to portfolio disclosure requirements. This recognises the fundamental difference in their investments compared to the typical investments of LICs and LITs.

**Question 8.2.3:** Do you agree with ASX's position that REITs and IFs should not be subject to any additional portfolio disclosure requirements and should be treated on the same footing as other (non-investment) listed entities in this regard? If not, why not?

## 8.3 AQUA Product portfolio disclosure requirements

There are presently no requirements in the AQUA Rules for ETFs, ETMFs, or those ETSPs that take the form of a collective investment entity to publish the composition of their portfolio.

However, ASIC has set out its expectations for portfolio disclosure by ETFs, ETMFs and ETSPs (collectively referred to by ASIC as "ETPs") in INFO 230, as follows:

> "*We expect that licensed exchanges will generally require ETFs and managed funds to publish, on a daily basis, the full portfolio of the ETP's holdings (or a creation/redemption basket which should generally closely reflect the portfolio of the ETP's holdings) along with the NAV per unit at the end of the trading day.*
>
> *This portfolio transparency provides market makers and authorised participants with the ability to create and redeem units in the ETP to maintain liquidity. When there is increased demand relative to supply, the authorised participants apply to the issuer for units (called creation units) which can be settled by delivering a basket of securities or cash. Redemptions occur through a similar process. This process provides an arbitrage mechanism to help bring the value of the units back in line with the NAV under normal market conditions.*
>
> *This portfolio holdings disclosure also allows retail investors*[96] *and other market participants to assess the price of the units relative to the NAV.*
>
> *If an issuer is relying on the equal treatment relief in Class Order [CO 13/721] when providing information to authorised participants, it must publicly disclose its portfolio holdings or creation/redemption baskets before the start of the trading day after the day on which the disclosure was made to authorised participants and provide an indicative NAV (iNAV) regularly (at least every 15 minutes) throughout the trading day.*
>
> *Where an iNAV is provided, it is important that licensed exchanges are satisfied that it is calculated through systems that can be independently verified or by an independent third party with reasonably reliable and robust systems. The iNAV should be updated to reflect live market prices for underlying*

[96] ASX would question whether retail investors in fact reference the daily portfolio disclosures by ETPs to assess the price of their units relative to NAV or iNAV. It would take a reasonably sophisticated and dogged retail investor, for example, to locate this information and then use it to construct a model portfolio equivalent to the ETP's and to compare the current market price of that model portfolio against the NAV and iNAV figures being published by the ETP.

*assets that are traded during Australian trading hours. Where the assets underlying the ETP are not traded during Australian trading hours, the iNAV could be based on the closing price adjusted for foreign exchange movements, with an additional adjustment for after-hours trading conditions where appropriate (e.g. by looking at moves in derivative markets, if they provide a reasonable proxy). In some circumstances, licensed exchanges may form the view that investors' interests are better served by not requiring the publication of an iNAV where it is unable to consistently and accurately reflect the ETP's fair value. The issuer should be expected to monitor the iNAV during local trading hours.*

***Delayed disclosure of portfolio holdings***

*In very limited circumstances, issuers may disclose full portfolio holdings on a delayed basis, rather than on a daily basis.*

***Internal market making***

*One such circumstance is when an issuer is relying on an internal market-making arrangement to protect the intellectual property of the fund. Licensed exchanges should work with issuers to achieve a situation where full portfolio holdings disclosure is delayed only to the extent necessary to protect the issuer's intellectual property, and full portfolio holdings disclosure must be provided at least quarterly with a delay of no more than two months. The issuer must also disclose an iNAV which should be disseminated as frequently as practicable, given the nature of the fund. The iNAV should be the issuer's best estimate of the ETP's value per unit throughout the trading day…*

***Material portfolio information disclosure model***

*Another circumstance where delayed portfolio holdings disclosure is permitted is when an issuer is relying on material portfolio information (MPI) disclosure. Under this model, the issuer agrees with the market maker on the characteristics of the MPI that will be published to the market daily. For example, the MPI could be a basket of proxy assets, rather than the actual holdings of the fund. The issuer must disclose:*

- *the MPI at the start of each trading day*
- *an iNAV at least every 15 seconds throughout the trading day*
- *the tracking performance between the disclosed MPI and the full portfolio on a quarterly basis, and*
- *full portfolio holdings at least quarterly with a delay of no more than two months.*"

ASIC's expectations above are not currently reflected in the AQUA Rules but instead are enforced through ASX's admission discretion[97] (that is, ASX will only admit AQUA Products that intend to comply with ASIC's portfolio disclosure requirements in Class Order [CO 13/721] and/or INFO 230 (as applicable) and will impose a condition upon admission that the AQUA Product issuer complies with those requirements on an ongoing basis).

ASX would note that ASIC has set out in INFO 230 as a key regulatory expectation for all ETPs that retail investors should have "*confidence that they can transact in ETP units at a price at, or **closely resembling**, the … NAV of the underlying investment portfolio*"[emphasis added].[98] Further, ASIC has imposed a requirement that most ETPs publish a frequently updated iNAV during market hours.[99]

[97] AQUA Rule 10A.3.1(e).

[98] INFO 230, first paragraph under the heading "Underlying assets".

[99] See ASIC Class Order 13/721 (vis-à-vis ETPs with external market making arrangements that rely on the "equal treatment" relief in that Class Order) and INFO 230 under the heading "Internal market making" (vis-à-vis ETPs with internal market making arrangements).

It seems to ASX that if an ETP publishes a per share or per unit iNAV that is independently calculated and reasonably up-to-date and its market making arrangements deliver tight spreads around that iNAV, it can reasonably be argued that retail investors have all that they need to understand the value of their investment and to have confidence that they will be able to trade at a price "closely resembling"[100] the NAV of the underlying portfolio. This applies whether the ETP has external or internal market making arrangements. It also applies even if the retail investor has not seen or considered the daily disclosures the ETP has made about its portfolio composition.[101]

That said, ASX does acknowledge that daily portfolio disclosure by ETPs allows their market makers and authorised participants with access to the primary market to calculate for themselves the portfolio NAV and may encourage them to engage in arbitrage activities whenever the ETP's market price moves materially away from NAV. Those arbitrage activities should act as a natural brake on the ETP's market price departing too far from NAV, helping to deliver the pricing outcome sought by ASIC.

Daily portfolio disclosure may also encourage proprietary traders to provide competitive bids and offers, leading to additional liquidity and tighter spreads.

Further, for ETPs with external market making arrangements, the daily publication of their portfolio composition may help reduce the risk of its market makers engaging in insider trading, assuming the market makers have no more up-to-date information about the portfolio composition than has been disclosed to the market.

Given these positive outcomes from daily portfolio disclosure, it suggests to ASX that any period of delayed disclosure by an ETP with internal market making arrangements should be kept to an absolute minimum and that allowing delays of up to 2 months after quarter end may be overly generous when it comes to protecting the ETP's intellectual property in the composition of its portfolio.

As mentioned in section 8.2 above, ASX is seeking stakeholder views on whether it should replace the requirement for LICs and LITs to disclose in their annual report a list of all of their investments, with a requirement that they instead disclose this information on a quarterly basis by no later than the end of the month after quarter end. This ties in with the usual quarterly reporting timetable that applies to many listed entities under the Listing Rules.

If ASX were to do this, for consistency, it may make some sense to shorten the period that an ETP with internal market making arrangements can delay disclosing its portfolio from up to 2 months after quarter end to one month after quarter end.

**Question 8.3.1:** Would you support shortening the period that an ETP with internal market making arrangements can delay disclosing its portfolio from up to 2 months after quarter end to one month after quarter end? If so, why? If not, why not?

ASX favours extending to ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products under the AQUA Rules the requirement that applies to LICs and LITs under the Listing Rules that they disclose the level 1, level 2 and level 3 inputs they use to value their investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement* (or its equivalent overseas) in their annual financial statements (as that Standard requires in any event).

[100] Acknowledging that in some situations iNAVs are not always highly accurate, such as where the underlying assets are not traded during Australian market hours (eg international equities) or not traded on a market with continuous trading and pre-trade transparency (eg OTC bonds). It is for this reason that many international equities and fixed income ETPs with external market making arrangements do not publish an iNAV.

[101] See note 96 above.

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**Question 8.3.2:** Do you support the introduction of an AQUA Rule requiring an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to disclose the level 1, level 2 and level 3 inputs it uses to value its investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement* (or its equivalent overseas) in its annual financial statements. If not, why not?

ASX

# 9. Management agreements

## 9.1 Introduction

Again, Collective Investment Products[102] confer on their investors a proportionate interest in the net assets of the relevant entity or fund, based on the size of their share/unit holdings. The identity and expertise of the person managing those assets is therefore an important consideration for investors.

The Listing Rules require LICs and LITs to make certain disclosures about, and to include certain terms in, any management agreement they enter into. These requirements, however, do not apply to any other types of listed entities, including REITs or IFs.

The AQUA Rules currently do not require disclosure of, nor impose any specific requirements on the terms an AQUA Product issuer must include in, any management agreement it may enter into.

## 9.2 Listed Investment Product management agreements

The term "management agreement" is not defined in the Listing Rules but ASX has given guidance in ASX Listing Rules Guidance Note 26 *Management Agreements* (**GN 26**) that it is intended to capture any agreement that an entity may enter into, directly or indirectly, with an external party (including a related party) to manage all or a substantial part of its assets or business.[103] ASX has also given guidance that the term is not intended to capture the arrangements between a listed trust and its RE for managing of the affairs of the trust, or agreements that a life insurance, superannuation, funds management or similar entity may enter into in the ordinary course with an asset manager to manage a portfolio of assets the entity holds in a fiduciary capacity rather than in its own right.

ASX has general powers to prevent a listed entity entering into a management agreement that ASX considers is not appropriate for a listed entity.[104] Examples ASX has given of reasons why a management agreement might not be appropriate for a listed entity include:

- if the manager plainly does not have any experience or expertise in managing assets or businesses of the relevant kind
- if the agreement has an excessively long fixed term
- if the agreement does not permit the entity to terminate the agreement in circumstances where the entity plainly should have that right (for example, where the manager is insolvent or is grossly derelict in its duties), and
- if the agreement requires the entity to make excessive payments to, or confers inappropriate rights or benefits on, the manager if the agreement is terminated.[105]

These general powers apply to all listed entities that enter into management agreements, including LICs, LITs, REITs and IFs. ASX has given further guidance on the scope and application of these general powers in GN 26.

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[102] That is, Listed Investment Products, ETFs, ETMFs and those ETSPs that take the form of Collective Investment Products. Note that some ETSPs are Derivative Investment Products rather than Collective Investment Products. The topic of management agreements is not relevant to those types of ETSPs. Similarly, Warrants are Derivative Investment Products rather than Collective Investment Products and the topic of management agreements is not relevant to them either.

[103] See section 2 of GN 26.

[104] Listing Rules 1.1 condition 1 and 12.5. See also sections 4 and 5 of GN 26.

[105] See section 6 of GN 26.

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ASX considers that the exercise of these general powers would be facilitated and enhanced by the introduction of a Listing Rule requiring a listed entity to immediately disclose to ASX the material terms of any new management agreement it enters into and also any material variation to an existing management agreement. This would neatly complement the existing Listing Rule requirement that a listed entity immediately disclose the material terms of any employment, service or consultancy agreement a listed entity enters into with its CEO, a director, or a related party of its CEO or a director.[106]

**Question 9.2.1:** Should the Listing Rules require a listed entity (including, but not limited to, a LIC, LIT, REIT or IF) to immediately disclose to ASX the material terms of any new management agreement it enters into and also any material variation to an existing management agreement? If not, why not?

LICs and LITs are specifically required to include in their annual report a summary of any management agreement that they have entered into.[107] ASX cannot see any policy reason why this requirement should not apply to all listed entities, including REITs and IFs.

**Question 9.2.2:** Should the requirement for LICs and LITs to include in their annual report a summary of any management agreement that they have entered into be extended to all listed entities, including REITs and IFs? If not, why not?

Under Listing Rule 15.16, a management agreement for a LIC or LIT must provide that:

- the manager may only end the management agreement if it has given at least 3 months' notice
- if the term of the agreement is fixed, it must not be for more than 5 years (although ASX frequently grants waivers to this requirement to allow a fixed term of 10 years if the extended term has been approved by the entity's security holders[108]), and
- if the agreement is extended past 5 years (or, if ASX has granted a waiver of the type referred to in the previous bullet point, 10 years), it will be ended on three months' notice after an ordinary resolution is passed to end it.[109]

There are sound policy reasons underpinning these requirements. The 3 month notice requirements in the first and third bullet points above are intended to allow a sufficient period for an orderly transition from an outgoing manager to an incoming manager (if the manager is being replaced) or from external management to internal management (if the manager is not being replaced). The limit on the fixed term a management agreement can have in the second bullet point above and the capacity that security holders have under the third bullet point above to end the agreement on 3 months' notice after the expiry of the fixed term together recognise that fixed term management agreements impede the operation of the market for corporate control, one of the main market mechanisms for addressing under-performance by managers of listed entities.

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[106] Listing Rule 3.16.4.

[107] Listing Rule 4.10.20(e). ASX has given guidance in section 10.2 of GN 26 that an investment entity can meet the requirement to disclose a summary of any management agreement that the entity has entered into in its annual report by including in its annual report a hyperlink to a page on its website where an up-to-date copy of the management agreement, or an up-to-date summary of the material terms of the management agreement, is available. It has also given guidance on the terms of a management agreement that it considers are likely to be material for investors in section 8.1 of GN 26.

[108] For these purposes, security holder approval can be demonstrated in one of two ways: (a) if the entity is not yet listed and is undertaking an initial public offering (**IPO**), by setting out all material information about the management agreement in the prospectus or product disclosure statement for the IPO and then attracting sufficient investor subscriptions to satisfy ASX's minimum spread requirement and any minimum subscription condition that the entity has attached to its IPO; or (b) if the entity is already listed, by an ordinary resolution of security holders approving the management agreement, where all material information about the management agreement has been included in the notice convening the meeting of security holders and the manager and its associates have been the subject of a voting exclusion statement (see section 10.3 of GN 26).

[109] Listing Rule 15.16. These requirements do not apply to pooled development funds. They also do not apply to an entity admitted to the official list before 1 September 1999 if ASX did not apply any restrictions on the term of its management agreement on admission (Listing Rule 15.16.1).

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The requirements above only apply to management agreements entered into by LICs and LITs. They do not apply to other types of listed entities, including REITs or IFs. ASX can see an argument that the policy settings in Listing Rule 15.16 should apply equally to all listed entities and not just to LICs and LITs.

**Question 9.2.3:** Should the constraints imposed by Listing Rule 15.6 on the terms LICs and LITs must include in any management agreement they enter into be extended to all listed entities, including REITs and IFs? If not, why not?

## 9.3 AQUA Product management agreements

Whenever an AQUA Product issuer seeks to have an AQUA Product admitted to trading on ASX and it indicates that it has, or proposes to have, a management agreement in place, as part of the admission process, ASX will obtain a copy of the management agreement and assess its appropriateness. If it is not considered appropriate, ASX may reject the admission application or require the agreement to be amended before the product will be admitted to trading.[110]

Beyond that administrative process at admission, there is nothing in the AQUA Rules restricting or regulating the terms of any management agreement an AQUA Product issuer may enter into. ASX is comfortable with that position, given the clear differences between the listing market and the AQUA market. In particular, the liquidity support arrangements that apply in the AQUA market arguably place AQUA Products outside of the reach of the market for corporate control.

That said, ASX can see a case for better disclosure of management agreements entered into by AQUA Product issuers and that the improvements to the disclosure rules for Listed Investment Product management agreements proposed above should also apply to AQUA Products.

**Question 9.3.1:** Do you agree that the AQUA Rules should require an AQUA Product issuer to immediately disclose to ASX the material terms of any new management agreement it enters into and also any material variation to an existing management agreement? If not, why not?

**Question 9.3.2:** Do you agree that the AQUA Rules should require an AQUA Product issuer to include in its annual report a summary of any management agreement that it has entered into? If not, why not?

[110] AQUA Rule 10A.3.1(e).

# 10. Management fees and costs

## 10.1 Introduction

Again, Collective Investment Products[111] confer on their investors a proportionate interest in the net assets of the relevant entity or fund, based on the size of their share/unit holdings. The management fees and costs incurred by the issuer in managing those assets can materially affect the return to investors on their investment and the level of those fees and costs is therefore important information for investors.

LICs and LITs are required to include in their annual report:

- the total number of transactions in listed and unlisted securities and derivatives[112] during the reporting period, together with the total brokerage paid or accrued during that period, and
- the total management fees paid or accrued during the reporting period.[113]

For these purposes, "management fees" include all forms of fees paid to the manager, including establishment fees and performance fees (ie it is not just annual management fees).[114]

There are no equivalent reporting requirements for REITs or IFs in the Listing Rules.

However, most LITs, REITs and IFs will be registered managed investment schemes under the Corporations Act and required to comply with the enhanced fees and costs disclosure requirements (**enhanced fees and costs disclosure requirements**) in Part 7.9 Division 4C and Schedule 10 of the Corporations Regulations.[115] These requirements are explained further in ASIC Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* (**RG 97**).[116]

Similarly, while there are no requirements in the AQUA Rules requiring AQUA Product issuers to report any information about management fees and expenses, most ETFs and ETMFs, and most ETSPs that take the form of Collective Investment Products, will be registered managed investment schemes under the Corporations Act and therefor required to comply with the enhanced fees and costs disclosure requirements.

Further, many Unlisted Managed Funds will be registered managed investment schemes under the Corporations Act and therefor required to comply with the enhanced fees and costs disclosure requirements.

LICs, however, are companies rather than managed investment schemes and therefore are not subject to the enhanced fees and costs disclosure requirements.

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[111] That is, Listed Investment Products, ETFs, ETMFs and those ETSPs that take the form of Collective Investment Products. Note that some ETSPs are Derivative Investment Products rather than Collective Investment Products. The topic of management fees and expenses is not relevant to those types of ETSPs. Similarly, Warrants are Derivative Investment Products rather than Collective Investment Products and the topic of management fees and expenses is not relevant to them either.

[112] If ASX proceeds with its proposal in section 2.3 above to replace the definition of "investment entity" with "financial investment entity", ASX will change the reference to "listed and unlisted securities and derivatives" in Listing Rule 4.10.20(d) to refer instead to "securities, derivatives, debentures, bonds, deposit products, money market instruments, eligible debt portfolios, currencies, commodities, eligible crypto-assets or other financial products".

[113] Listing Rule 4.10.20(d) and (e).

[114] See the note to Listing Rule 4.10.20. ASX is considering updating this note to capture all of the different management fees referred to in RG 97.

[115] As amended by ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070 and ASIC Class Order [CO 13/1200].

[116] The enhanced fees and costs disclosure requirements relate to PDSs and annual investment statements given under section 1017D of the Corporations Act. The deadlines for those periodic statements are linked to the date an investor originally acquired their interest in the managed investment product rather than the financial year of the product issuer, although ASX understands that many product issuers will issue an interim statement to investors at their financial year end so that they can align their periodic statement reporting requirements after that interim statement with their financial year end reporting requirements.

ASX

## 10.2 LIC management fees and costs

ASX can see scope for enhancing the disclosure requirements in the Listing Rules concerning the management fees and costs incurred by LICs to achieve some level of uniformity and comparability across Listed Investment Products, AQUA Products and Unlisted Managed Funds.

**Question 10.2.1:** Since most LITs, REITs and IFs are already required to comply with the enhanced fees and costs disclosure requirements set out in Part 7.9 Division 4C and Schedule 10 of the Corporations Regulations, would there be benefits in requiring LICs to present the same information about management fees and costs (at a company level rather than an individual investor level) in their annual report? If not, why not?

**Question 10.2.2:** Are there any difficulties that you can foresee in applying the enhanced fees and costs disclosure requirements to LICs? If so, what are they and how could they be addressed?

**Question 10.2.3:** If you do not support the application of the enhanced fees and costs disclosure requirements to LICs, what information would you have them report about management fees and costs in their annual report?

# 11. Performance reporting

## 11.1 Introduction

Again, Collective Investment Products[117] confer on their investors a proportionate interest in the net assets of the relevant entity or fund, based on the size of their share/unit holdings. How those assets perform is therefore important information for investors.

In common with all listed entities, the issuers of Listed Investment Products are required to produce half year and annual financial statements that satisfy Australian accounting and auditing standards or other overseas accounting and auditing standards acceptable to ASX and lodge them with ASX.[118] ETFs, ETMFs and ETSPs are also required to produce half year and annual financial statements and lodge them with ASX.[119] Those financial statements will typically include information about the income derived from the entity's investment portfolio and movements in the net assets attributable to shareholders/unitholders of the entity over the financial period.

Presently, there are no specific performance reporting requirements that apply to REITs or IFs under the Listing Rules over and above what is required under applicable accounting standards.

There are some additional performance reporting requirements that currently apply to LICs and LITs under the Listing Rules around their NTA backing while ETFs and ETMFs also have some additional performance reporting requirements under the AQUA Rules around their NAV.

## 11.2 Listed Investment Product performance reporting requirements

LICs and LITs are currently required to disclose to the market the NTA backing[120] of their quoted securities as at the end of each month. They must do this immediately it is available for release to the market and in any event not later than 14 days after the end of that month.[121] As with all listed entity disclosures, these disclosures are made on the ASX Market Announcements Platform (**MAP**).

A number of LICs and LITs publish information about their NTA backing more frequently on their website. In some cases these disclosures are made daily.

LICs and LITs are also required to include in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period.[122]

ASX believes it is appropriate to retain for LICs and LITs the existing requirement that they include in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period.

ASX also believes that it is appropriate that LICs and LITs disclose their actual NTA backing on a periodic basis throughout their financial year. However, ASX can see merit in changing the mechanism for, and the cadence of, these disclosures.

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[117] That is, Listed Investment Products, ETFs, ETMFs and those ETSPs that take the form of Collective Investment Products. Note that some ETSPs are Derivative Investment Products rather than Collective Investment Products. The topic of performance reporting is not relevant to those types of ETSPs. Similarly, Warrants are Derivative Investment Products rather than Collective Investment Products and the topic of performance reporting is not relevant to them either.

[118] Listing Rules 4.2A, 4.5 and 19.11A.

[119] AQUA Rules 10A.4.2(f) and (g), 10.4.4(e) and (f) and 10A.5.8(f).

[120] See the text accompanying note 124 below.

[121] Listing Rule 4.12.

[122] Listing Rule 4.10.20(c).

As mentioned in section 14 below, ASX is contemplating developing a new information page on the ASX website for the various Listed Investment Products and AQUA Products traded on ASX. This will provide similar information about Listed Investment Products as is currently provided for mFunds on the ASX mFund website (see section 13.1 below).[123]

ASX is also contemplating developing a straight-through processing (**STP**) service for issuers of Listed Investment Products that will allow them to upload their NTA backing and the date it was determined directly onto this new information page on the ASX website.

If it proceeds with this development, ASX would propose amending the Listing Rules to remove the requirement for LICs and LITs to publish their NTA backing on MAP on a monthly basis and replace it with an obligation that, regardless of when they do it, whenever they formally calculate an NTA backing, to give the NTA backing and the "as at" date it was calculated to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website and also to publish it on the issuer's own website.

In addition, ASX would also propose introducing a Listing Rule requiring a LIC or LIT to publish on MAP its NTA backing on a quarterly basis, by no later than one month after quarter end. This would align their obligation to report their NTA backing with their quarterly obligation to publish their portfolio composition on MAP proposed in section 8.2 above.

To be clear, a LIC or LIT would be free, as a number do today, to publish their NTA backing on a more frequent basis than quarterly. Whenever they did, however, they would be required to provide it to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website and also to publish it on the issuer's own website.

**Question 11.2.1:** Do you support changing the requirement that LICs and LITs presently have under the Listing Rules to report their NTA backing on a monthly basis with requirements that:

(a) regardless of when they do it, whenever they formally calculate an NTA backing, they must give the NTA backing and the "as at" date it was calculated to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website and also publish it on the issuer's own website, and

(b) they publish on MAP their NTA backing on a quarterly basis, by no later than one month after quarter end?

If not, why not?

"NTA backing" is defined in the Listing Rules[124] as:

$$\frac{(A - I - L)}{N}$$

where:

A = total assets

I = intangible assets

L = total liabilities ranking ahead of, or equally with, claims of that class of securities.[125] In calculating this, total liabilities must include each of the following:

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[123] The information about mFunds on the ASX mFund website is summarised in section 13.1 below.

[124] ASX Listing Rule 19.12.

[125] A note to the rule in question gives as examples of liabilities ranking ahead of, or equally with, fully paid ordinary securities in a parent entity: "all liabilities, preference share entitlements, and outside equity interests".

- provisions for tax on realised income and gains
- provisions for tax on estimated unrealised income and gain (alternatively, the entity may disclose the NTA backing per security before and after providing for the estimated tax on unrealised income and gains)
- provisions for declared, but unpaid, dividends or distributions if the securities are still quoted on a basis that includes the dividend or distribution on the date on which the net tangible asset backing is reported, and
- provisions for accrued but unpaid management fees.[126]

N = total number of securities on issue in that class. In calculating this, partly paid securities which are in that class when paid up are taken into account by assuming that the unpaid amount is paid.

The value of A, I and L at the end of the month must be determined in accordance with Australian accounting standards (including in particular Australian Accounting Standard AASB 13 *Fair Value Measurement*) or other standards agreed by ASX.

**Question 11.2.2:** Do you agree with the definition of "NTA backing" in the Listing Rules? If not, how would you amend it? In particular:

(a) Do you see merit in including examples of the intangible assets captured by the variable "I" in the definition and, if so, what would you include in those examples (commenting specifically on whether you would, or would not, include deferred tax assets and prepayments as "intangible assets" for these purposes)?

(b) In the case of lease right of use assets, do you agree with the policy position taken by ASX in other contexts that for the purposes of determining a Listed Investment Product's NTA backing under the Listing Rules, the lease right of use asset should be treated as tangible if the underlying asset being leased is tangible and intangible if the underlying asset being leased is intangible?

(c) Do you think the variable "L" in the definition adequately addresses taxation issues (including the different tax treatment of companies and trusts and how deferred tax liabilities should be accounted for)?

(d) Do you think the variable "N" in the definition adequately deals with partly paid securities?

(e) Do you also have a view on whether options should be counted in "N" if they are in the money at the relevant calculation date?

REITs and IFs are not currently required under the Listing Rules to make any disclosures about their NTA backing. Given the longer term nature of their assets and the more substantive task involved in valuing them, ASX considers that it would be unduly burdensome to require REITs or IFs to publish their NTA backing on a monthly or even quarterly basis. However, ASX can see a case for requiring REITs and IFs to include in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period, in the same way that LICs and LITs are required to.

[126] A note to the rule in question states that the reference to accrued but unpaid management fees includes all forms of fees paid to the manager, including establishment fees and performance fees.

**Question 11.2.3:** Do you support REITs and IFs being required to include in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period, similar to what is currently required of LICs and LITs? If not, why not?

It has been put to ASX that, in addition to including in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period, LICs should be required to report their total shareholder/unitholder return (**TSR**) for different nominated periods (eg 6 months, 1 year, 2 years, 3 years, 5 years and 7 years).[127] This is intended give investors more complete information about the performance of their investment and promote transparency and comparability between the performance of LICs and Unlisted Managed Funds.

ASX sees some merit in this suggestion but considers that for full transparency and comparability this requirement, if adopted, should apply across the board to all issuers of Listed Investment Products (LICs, LITs, REITs and IFs), and not just to LICs. It should also apply to ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products.

**Question 11.2.4:** Do you support LICs, LITs, REITs and IFs being required to include in their annual report their TSR for different nominated periods? If so, how would you define "TSR" and for what periods do you think they should report their TSR? If not, why not?

Presently there is no formal requirement in the Listing Rules for an investment entity that has as its investment objective replicating or exceeding the return on a particular index or other benchmark, to publish its performance against that index or benchmark (although nearly all of them voluntarily do so[128]).

**Question 11.2.5:** Should a LIC, LIT, REIT or IF that has as its investment objective replicating or exceeding the return on a particular index or benchmark be required to include in its annual report a comparison of its performance against that index or benchmark over the reporting period? If so, how should it go about making that comparison? If not, why not?

**Question 11.2.6:** Are there any other performance metrics that you think LICs, LITs, REITs and IFs should be required to report to their investors? If yes, what are those metrics and where and with what frequency should those metrics be published?

### 11.3 AQUA Product performance reporting requirements

ETFs and ETMFs are required to disclose on MAP or on the issuer's website the NAV of the fund on a daily basis.[129] Most ETFs and ETMFs publish this information on the issuer's website rather than on MAP and generally do so on a "per share" or "per unit" basis rather than a total NAV figure for the fund.

ETSPs that take the form of a Collective Investment Product are not currently required to publish any information about their NAV. ASX considers that they should be subject to the same requirement as ETFs and ETMFs to disclose their NAV on a daily basis.

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127 Submission by Chris Cuffe to ASX dated 3 March 2019, available online at: https://www2.asx.com.au/content/dam/asx/about/regulations/chris-cuffe.pdf.

128 Under ASIC Class Order [CO 13/1200], LITs, REITs and IFs that are registered managed investment schemes under the Corporations Act may also have to disclose in their periodic statements to investors under section 1017D of that Act information on the extent to which they have achieved their investment objectives: (a) over their last financial year, and (b) for the last 5 financial years (if they have been in existence that long) or since inception (if they have not).

129 AQUA Rules 10A.4.2(f) and (g) and 10.4.4(e) and (f).

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**Question 11.3.1:** Do you agree that ETSPs that take the form of a Collective Investment Product should be required to disclose their NAV on a daily basis? If not, why not?

Again, as mentioned in section 14 below, ASX is contemplating developing a new information page on the ASX website for the various Listed Investment Products and AQUA Products traded on ASX. This will provide similar information about ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products as is currently provided for mFunds on the ASX mFund website.[130]

ASX is also contemplating developing an STP service for issuers of ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products that will allow them to upload their NAV and the date it was determined directly onto this new information page on the ASX website.

If it proceeds with this development, ASX would propose amending the AQUA Rules to remove the optional requirement for ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products to publish their NAV on MAP on a daily basis and replace it with a mandatory requirement that they give their NAV and the "as at" date it was calculated to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website, as well as publish it on the issuer's own website, on a daily basis.

**Question 11.3.2:** Do you support the proposed amendment to the AQUA Rules requiring ETFs and ETMFs (and, if you have answered Question 11.3.1 in the affirmative, those ETSPs that take the form of Collective Investment Products) to give their NAV and the "as at" date it was calculated to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website, as well as publish it on the issuer's own website? If not, why not?

There is presently no definition of "NAV" in the AQUA Rules. This is to be contrasted with the reasonably detailed definition of "NTA backing" in the Listing Rules for LICs and LITs.

For clarity, ASX proposes adding a definition of "NAV" into the AQUA Rules,[131] which will include a note recommending that, when calculating NAV, an issuer apply the joint guidance of ASIC and APRA in ASIC Regulatory Guide 94 *Unit pricing: Guide to good practice* (**RG 94**).

**Question 11.3.3:** Do you think the term "NAV" should be defined in the AQUA Rules? If so, how would you define it? Are there any elements of the definition of "NTA backing" in the Listing Rules that you think ought to be incorporated in the definition of "NAV" in the AQUA Rules? If so, please explain.

For transparency and comparability, ASX considers that the requirement in the Listing Rules that investment entities include in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period, should also apply to ETFs and ETMFs, and ETSPs that take the form of Collective Investment Products, in their case framed as a requirement to include in their annual report the NAV per share/unit of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period.

[130] Again, the information about mFunds on the ASX mFund website is summarised in section 13.1 below.

[131] Again, the information about mFunds on the ASX mFund website is summarised in section 13.1 below.

**Question 11.3.4:** Do you support ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products being required to include in their annual report the NAV per share/unit of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period? If not, why not?

As mentioned in section 11.2, it has been put to ASX that for transparency and comparability, in addition to including in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period, LICs should be required to report their TSR for different nominated periods (eg 6 months, 1 year, 2 years, 3 years, 5 years and 7 years). Again, ASX sees merit in that suggestion but considers that for full transparency and comparability this requirement, if adopted, should also apply to all Listed Investment Products, ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products, and not just to LICs.

**Question 11.3.5:** Do you support ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products being required to include in their annual report their TSR for different nominated periods? If so, how would you define "TSR" and for what periods do you think they should report their TSR? If not, why not?

Presently there is no formal requirement in the AQUA Rules for an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product that has as its investment objective replicating or exceeding the return on a particular index or benchmark, to publish its performance against that index or benchmark (although many voluntarily do so[132]).

**Question 11.3.6:** Should an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product which has as its investment objective replicating or exceeding the return on a particular index or other benchmark be required to include in its annual report a comparison of its performance against that index or benchmark over the reporting period? If so, how should it go about making that comparison? If not, why not?

**Question 11.3.7:** Are there any other performance metrics that you think ETFs, ETMFs, or ETSPs that take the form of a Collective Investment Product should be required to report to their investors? If yes, what are those metrics and where and with what frequency should those metrics be published?

## 11.4 A possible uniform reporting standard

Many Australian issuers of Investment Products will be members of the Financial Services Council (**FSC**), the peak industry body representing Australia's retail and wholesale funds management industry, superannuation funds, life insurers and licensed trustee companies. As FSC members, they will be expected to comply with FSC Standard No. 6: *Investment Option Performance - Calculation of Returns* July 2018 (**FSC Standard 6**) when it comes to reporting their investment performance, including their TSR.[133] That Standard seeks to ensure that across the managed fund, superannuation and life industries, returns to investors are calculated using a methodology that is transparent, comparable, meaningful, consistent and uses standard industry terminology.[134]

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[132] Again, under ASIC Class Order [CO 13/1200], ETFs, ETMFs and ETSPs that are registered managed investment schemes under the Corporations Act may also have to disclose in their periodic statements to investors under section 1017D of that Act information on the extent to which they have achieved their investment objectives: (a) over their last financial year, and (b) for the last 5 financial years (if they have been in existence that long) or since inception (if they have not).

[133] Available online at: https://fsc.org.au/resources/347-6s-product-performance-calculation-of-returns-pdf/file.

[134] FSC Standard 6 paragraph 5.1.

FSC Standard 6 is consistent with the Global Investment Performance Standards (**GIPS**) published by the CFA Institute, a global standard used to calculate composite returns on an overall investment strategy.[135]

**Question 11.4.1:** Do you support ASX introducing a new Listing Rule and AQUA Rule mandating the use of FSC Standard 6 for all ASX listed or quoted Collective Investment Products to calculate their TSR? If not, why not?

On its face, FSC Standard 6 only applies to unitised investments and therefore does not apply to LICs.[136] It also specifically excludes its application to ETFs.[137] Nonetheless, ASX believes that it could also be used by LICs and ETFs to calculate their TSR in a way that is transparent, comparable, meaningful, consistent and uses standard industry terminology.

**Question 11.4.2:** Are there any difficulties that you can foresee in applying FSC Standard 6 to LICs or ETFs? If so, what are they and how could they be addressed?

**Question 11.4.3:** If you don't support mandating the use of FSC Standard 6 for all ASX listed or quoted Collective Investment Products to calculate their TSR, what standard would you recommend?

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135 FSC Guidance Note 1 *Global Investment Performance Standards* recommends that all FSC members who calculate and present historical investment performance, as a matter of best practice, should comply with GIPS.

136 FSC Standard 6 paragraph 3.2.

137 FSC Standard 6 paragraph 3.5(b). ETFs presumably are excluded on that basis that they are usually seeking to replicate the performance of an index or benchmark rather than to achieve an absolute return for investors.

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# 12. Liquidity support

## 12.1 Introduction

Issuers of AQUA Products and Warrants have obligations under the AQUA Rules and the Warrant Rules to support the liquidity of their products. The purpose of these liquidity support requirements is to ensure that there is an ongoing public 'lit' market for AQUA Products and Warrants and that the holders of those products have a reasonable opportunity to exit their investment on-market at a reasonable price.

Issuers of Listed Investment Products have no corresponding obligations under the Listing Rules.

## 12.2 AQUA Product liquidity support requirements

The AQUA Rules require an issuer of AQUA Products to support their liquidity by either:

(a) ensuring on an ongoing basis that a reasonable bid and volume is maintained in the market for the product for at least 90% of the time between 10:15 am and the commencement of the pre-CSPA session state[138] on each trading day (**reasonable bid alternative**), or

(b) having in place other arrangements which meet the requirements set out in the Procedures and, in the opinion of ASX, provide a mechanism for sufficient liquidity in the product (**sufficient liquidity alternative**).[139]

In practice, issuers of AQUA Products that have an expiry or whose capital value or distributions are linked to a single underlying instrument generally apply for admission under the reasonable bid alternative, while the issuers of other AQUA Products generally apply for admission under the sufficient liquidity alternative.

The reasonable bid alternative in (a) above is essentially the same liquidity support obligation as applies to the issuers of Warrants (see section 12.3 below).

Under the sufficient liquidity alternative in (b) above, the AQUA Product issuer must have entered into an agreement with a market maker (for products with external market making arrangements) or a market making agent (for products with internal market making arrangements) satisfactory to ASX to ensure reasonable bids and offers are maintained in the market for the AQUA Product for a nominated percentage of the trading day, with agreed parameters as to the minimum quantity of each bid and offer and the maximum spread between the bid price and the offer price. These parameters must be agreed with ASX prior to the AQUA Product being admitted to trading status on ASX and can only be varied thereafter with the agreement of ASX.[140]

In practice, ASX generally requires the market making commitment under the sufficient liquidity alternative to apply for at least 80% of the time between 10:15 am and the commencement of the pre-CSPA session state[141] on each trading day.[142]

In determining the parameters for the minimum bid/offer quantity and maximum spread, ASX will have regard to:

- the asset class and liquidity of the underlying instruments for the product

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[138] This refers to the phase of the market immediately ahead of the closing single price auction. During this phase, trading stops and brokers enter, change and cancel orders in preparation for the market closing. On most trading days, this occurs between 4.00 pm and 4.10 pm (Sydney time).

[139] AQUA Rule 10A.3.6 and the related Procedure. The reasonable bid obligation does not apply if there are "permitted circumstances", as defined in that rule.

[140] AQUA Rule Procedure 10A.3.6 (second paragraph).

[141] See note 138 above.

[142] This obligation generally does not apply if there are "permitted circumstances", as defined in AQUA Rule 10A.3.6, or other closely analogous circumstances acceptable to ASX.

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- the concentration of holdings in the product, and
- the minimum quantity and maximum bid/offer spread applied to other products which have similar underlying instruments,

with the aim of enabling both incoming and exiting investors to transact at fair and orderly prices.

**Question 12.2.1:** Are there any issues with the existing liquidity support arrangements for AQUA Products that you would like to see addressed in any re-write of the AQUA Rules?

## 12.3 Warrant liquidity support requirements

The Warrant Rules require an issuer of Warrants to support their liquidity by ensuring on an ongoing basis that a reasonable bid and volume is maintained for the product for at least 90% of the time between 10:15 am and the commencement of the pre-CSPA session state[143] on each trading day.[144]

There is no requirement in the Warrant Rules for an issuer of Warrants to ensure that there is a reasonable offer and volume for the product.[145] This reflects the fact that most Warrants are expiring products and ASX does not consider it necessary or appropriate to require an issuer to make 'two-way' markets at all times throughout the Warrant's entire lifespan. The reasonable bid requirement ensures that holders have a reasonable opportunity to exit their investment on-market at a reasonable price.

ASX is not aware of any particular concerns with the liquidity support arrangements for Warrants but is interested in feedback from stakeholders on that issue.

**Question 12.3.1:** Are there any issues with the existing liquidity support arrangements for Warrants that you would like to see addressed in any re-write of the Warrant Rules?

## 12.4 Listed Investment Product liquidity support requirements

As mentioned previously, the issuers of Listed Investment Products do not have any liquidity support obligations under the Listing Rules. It is not uncommon for their shares and units to trade on ASX at a discount to their NTA backing. Sometimes these discounts can be substantial.[146]

For some Listed Investment Products, ASX would question whether an investor should have any expectation to be able to transact at their NTA backing. This is particularly the case where the Listed Investment Product is invested in illiquid assets, such as unlisted shares, real estate or infrastructure projects. For Listed Investment Products with these types of assets, earnings multiples and dividend yields are likely to be bigger drivers of their market price than the capital value attributed to their assets in any NTA calculation, which will inevitably be a matter of judgement or opinion.

However, investors in LICs and LITs that have transparent portfolio investments in listed securities and other highly liquid and readily valued financial products probably do have a legitimate basis to expect the market price of the shares/units in the LIC/LIT to not stray too far from their NTA backing.

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[143] See note 138 above.

[144] Warrant Rule 10.3.11 and the related Procedure. This obligation does not apply if there are "permitted circumstances" , as defined in that rule.

[145] Although Warrant issuers typically will maintain 'two-way' markets (ie both bids and offers), at least until the theoretical value of the Warrant drops below a certain point

[146] These discounts are discussed in ASIC's response to the Treasury consultation on stamping fee exemptions dated 20 February 2020, available online at https://treasury.gov.au/sites/default/files/2020-06/asic_submission.pdf.

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One measure that may assist this outcome would for those LICs and LITs that are able to do so to publish more timely information about their NTA backing. Currently that information is only required to be published on a monthly basis 14 days after the end of the month.[147] If those LICs and LITs that are able to do so were to publish an indicative NTA backing to the market during market hours that is independently calculated and frequently updated, similar to the iNAV that many AQUA Product issuers are expected to publish,[148] this might help to promote more informed investor trading and assist in creating demand for their securities whenever the market price drops materially below their indicative NTA backing. ASX does not have a firm view on this issue one way or the other but is interested in the views of stakeholders, particularly LICs and LITs and their investors.

**Question 12.4.1:** Do you think that it might assist the share/unit price of a LIC/LIT to track its NTA backing more closely if the LIC/LIT were to publish an indicative NTA backing to the market during market hours that is independently calculated and frequently updated? If so, why? If not, why not?

**Question 12.4.2:** As a fall-back, do you think that it might assist the share/unit price of a LIC/LIT to track its NTA backing more closely if the LIC/LIT were to publish an independently calculated end-of-day indicative NTA backing to the market prior to the commencement of trading on the next trading day? If so, why? If not, why not?

**Question 12.4.3:** Noting that there will be some LICs/LITs with asset portfolios that are not readily valued on a frequent basis or for which an iNAV may not necessarily be all that accurate,[149] if your answer to question 12.4.1 or 12.4.2 is "yes", how would you go about identifying those LICs/LITs that would benefit from publishing more frequent information about their iNAV and encouraging them to do so?

As closed-ended investment vehicles, Listed Investment Products do not have the same mechanisms available to them to manage liquidity that open-ended investment vehicles have. Typically, the only mechanism they have to address a situation where their shares/units are trading at a substantial discount to NTA backing is to undertake a buy-back.[150] If they do this, however, they are obliged to cancel any securities they buy back[151] and cannot dispose of them or hold them as treasury stock. This inevitably means a reduction in FUM.

It has been suggested that if the laws regulating buy-backs in Australia were to allow bought back securities to remain on issue as treasury stock, this may provide a better mechanism to help LICs and LITs to keep their price closer to their NTA backing.[152] ASX considers it unlikely at this point in time, however, that there would be legislative or regulator support to amend the law in Australia to permit treasury stock. Further, LICs and LITs that sought to use treasury stock to engage in trading activities to support their share/unit price and keep it close to their NTA backing would face considerable legal challenges in avoiding an allegation of market manipulation.[153]

In light of the above, ASX is interested in stakeholder feedback on the following question.

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147 See section 11.2 above.

148 See note 99 above and the accompanying text.

149 See note 100 above.

150 Such buy-backs are usually conducted as on-market buy-backs, but they could also be structured as equal access scheme buy-backs or selective buy-backs.

151 Corporations Act section 257H (in the case of listed companies) and section 601KH (in the case of listed trusts), in the latter case, as modified by ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instrument 2016/1159.

152 See Chris Meyer, LICs – adapt or die 3 July 2020, available online at: https://www.livewiremarkets.com/wires/lics-adapt-or-die.

153 See section 1041A of the Corporations Act.

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**Question 12.4.4:** Short of allowing LICs and LITs to have treasury stock, are there any changes that could be made to the laws in Australia regulating buy-backs that might assist LICs and LITs to better address the propensity for their securities to trade at a discount to the NTA backing? If so, what are they and how would they help?

**Question 12.4.5:** Are there any other measures that could be implemented to address the propensity for the securities of a LIC or LIT to trade at a discount to the NTA backing? What are they and how would they help?

## 12.5 AQUA Products with dual on-market/off-market entry and exit mechanisms

In 2020, ASX admitted its first AQUA Product (the Airlie Australian Share Fund [ASX:AASF]) with dual on-market and off-market entry/exit mechanisms, effectively combining some of the features of quoted ETMFs and Unlisted Managed Funds within the one vehicle. A number of others have since been admitted.

Investors can invest in these funds either by lodging an application for units directly with the RE or by buying units on-market. Investors can exit these funds either by lodging a withdrawal request with the RE or by selling units on-market. If investors choose to transact on-market, their entry/exit price is the price at which they trade on the relevant exchange and the transaction is settled on the normal T+2 timetable. If they choose to transact off-market, provided they lodge their application or redemption paperwork (including, in the case of an application, cleared funds for the application price) by the required cut-off time on a business day, their entry/exit price is the fund's NAV at the close of trading on that business day, plus a premium in the case of an application or less a discount in the case of redemption, to cover the costs incurred by the fund on the transaction.

**Question 12.5.1:** Do you have any views about hybrid structures where an AQUA Product has dual on-market/off-market entry and exit mechanisms? What do you see as the advantages and disadvantages of these hybrid structures? Do you see any particular risks associated with, or have any other concerns about, these hybrid structures that you would like to see addressed in any re-write of the AQUA Rules?

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# 13. The mFund Settlement Service

## 13.1 Introduction

In Australia, there are more than 2,000 Unlisted Managed Funds with total FUM exceeding $1 trillion. The vast majority of these still operate using paper application and redemption forms and accommodate the use of cheques to transfer funds.

The mFund Settlement Service was introduced in 2014. It allows participating Unlisted Managed Funds to receive and process unit applications and redemptions[154] and the associated fund flows electronically through the CHESS settlement system, delivering the major settlement efficiencies that CHESS has delivered to issuers of, and investors in, listed and quoted financial products for many years.

From an investor's standpoint, the mFund Settlement Service:

- eliminates the need for investors to fill out complicated paper application and redemption forms
- allows investors to initiate applications and redemptions in mFunds via the same stockbroker or adviser they use to transact securities on the ASX market, and
- records their holdings in participating mFunds electronically in ASX's CHESS system on the same holder identification number (**HIN**) the investor uses to hold other investments on ASX.

From an investor's standpoint, this makes the application and redemption process simpler, faster, more reliable and more secure and provides them with a convenient central repository, their HIN, to view and manage all of their ASX investments.

From an issuer's standpoint, the mFund Settlement Service:

- eliminates the inefficiencies associated with paper application and redemption forms, cheques and the related reconciliations, and
- allows the 'know your client' (**KYC**) checks required to be undertaken by managed investment schemes under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTFA**) when they issue units to an investor to be undertaken once at the HIN level by the trading participant representing the client, rather than by each individual mFund they invest in.

These features mean that the ASX mFund Settlement Service has the potential to deliver significant efficiencies and cost savings to the Unlisted Managed Fund industry.

To participate in the mFund Settlement Service, an mFund must appoint an ASX-accredited "Product Issuer Settlement Participant" (**PISP**) who is authorised to participate in the CHESS settlement system. Typically this will be the mFund's unit registry. The PISP interfaces directly with CHESS to transmit and settle applications and redemptions on behalf of the mFund.

A client wishing to apply for or redeem mFund units must have a relationship with an ASX trading participant to place an order for that transaction and the trading participant must be, or have a relationship with, an ASX settlement participant who can process that order in CHESS.

As at 30 June 2021, there were 8 ASX trading participants, 8 ASX settlement participants and 12 PISPs participating in mFund.

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[154] The mFund Settlement service also currently supports the electronic processing of switches but, after industry consultation and having regard to its low usage, ASX has decided to remove this functionality when it replaces the CHESS settlement system with a distributed ledger technology solution.

As mentioned previously, units in mFunds are not quoted or traded on ASX. Instead, issues and redemptions of their units are notified to, and settled by, ASX Settlement via the CHESS settlement facility.[155]

The ASX mFund website (www.mfund.com.au) provides a wide range of information about mFunds for the benefit of investors and their advisers, including a short standardised profile statement summarising the key features of the mFund, a copy of its current PDS, fund size, and application and redemption prices. It also has a link to the investor announcements the mFund has made on MAP.

## 13.2 The funds that qualify for admission to the mFund Settlement Service

Currently, for an Unlisted Managed Fund[156] to participate in the mFund Settlement Service, it must be either:[157]

(i) a "simple managed investment scheme"[158] that uses a "shorter PDS",[159] or

(ii) a registered managed investment scheme[160] that meets the following requirements:

- (A) the price of units in the scheme is determined and published on a daily basis
- (B) the redemption of units in the scheme generally occurs within ten business days of the issuer receiving a redemption request from an investor
- (C) in the two years prior to the date that ASX receives the fund's application for admission to the mFund Settlement Service, the issuer has not suspended or cancelled investors' rights to withdraw from the scheme on the basis that the fund is not "liquid",[161] and
- (D) the scheme invests at least 80% percent of its assets:
  - (I) in money in an account or on deposit with a bank on the basis that the money is available for withdrawal immediately during the bank's normal business hours or at the end of a fixed period that does not exceed three months, or
  - (II) under one or more arrangements by which the issuer can reasonably expect to realise the investment, at the market value, within ten days (**80% Liquidity Requirement**).

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155 Pursuant to section 18 of the ASX Settlement Operating Rules.

156 The definition of "Managed Fund Product" is set out in note 4 above.

157 AQUA Rule 10A.3.3(h).

158 *"Simple managed investment scheme"* is defined in Corporations Regulation 1.0.02(1) to mean a registered scheme (other than a passport fund) which is or was offered because it meets one of the following requirements:

(a) the scheme invests at least 80% of its assets in money in an account with a bank on the basis that the money is available for withdrawal:

(i) immediately during the bank's normal business hours; or

(ii) at the end of a fixed-term period that does not exceed 3 months;

(b) the scheme invests at least 80% of its assets in money on deposit with a bank on the basis that the money is available for withdrawal:

(i) immediately during the bank's normal business hours; or

(ii) at the end of a fixed-term period that does not exceed 3 months;

(c) the scheme invests at least 80% of its assets under 1 or more arrangements by which the RE of the scheme can reasonably expect to realise the investment, at the market value of the assets, within 10 days.

159 In accordance with Part 7.9 Division 4, Subdivision 4.2C and Schedule 10E of the Corporations Regulations.

160 Pursuant to section 601EB of the Corporations Act.

161 As defined in section 601KA of the Corporations Act. ASX would note that mFunds are obliged to disclose to ASX any instance where the issuer has restricted redemptions from the mFund on the basis that it is not "liquid". These reports must be made before the restriction takes effect, or if that is not practicable, as soon as possible thereafter (AQUA Rule 10A.4.2(b) and the related Procedure). They are also precluded from issuing any mFund unit to a client in respect of a request made through the mFund Settlement Service where the mFund is not "liquid" and the issuer does not allow a member to withdraw from the mFund while it is not liquid pursuant to the mFund's constitution and/or the Corporations Act (AQUA Rule 10A.4.5(e)).

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As at 30 June 2021, there were 240 mFunds participating in the mFund Settlement Service, 217 of which are simple managed investment schemes which have been admitted under limb (i) above and 23 of which meet the 80% Liquidity Requirement and have been admitted under limb (ii) above.

The 80% Liquidity Requirement is very similar to the requirement in the Corporations Regulations for a scheme to be considered a "simple managed investment scheme".[162] The consequence is that the mFund Settlement Service is only available to Unlisted Managed Funds with particularly liquid asset portfolios, where 80% of their assets can reasonably expect to be realised at market value within ten days. This excludes a significant proportion of Unlisted Managed Funds from being able to access the efficiencies and cost savings delivered by that service.

The limitations above on the types of Unlisted Managed Funds that can participate in the mFund Settlement Service have been in place since the mFund Settlement Service was first introduced in 2014. Given the novelty of the mFund Settlement Service at that time, ASIC was concerned that retail investors might not understand that mFund units are not able to be traded on the ASX market in the same way as, say, ordinary shares and might mistakenly think that they could exit their investment at any time by selling on-market. They were also concerned that retail investors were used to the normal (then "T+3" but now "T+2") settlement cycle for most products traded on ASX and might be confused by the different timeframes for settlements of issues and redemptions of mFund units. For that reason, the ability to participate in the mFund Settlement Service was limited to highly liquid funds where redemption requests could reasonably be expected to be met within 10 business days.

Experience since the mFund Settlement Service was first introduced in 2014 would suggest that retail investors have not been troubled by these issues.

As the mFund Settlement Service is essentially just a settlement service for Unlisted Managed Funds that replaces paper processes with electronic processes, ASX would argue that it should be available to any and all Unlisted Managed Funds that are registered as a managed investment scheme in Australia. Denying an Unlisted Managed Fund access to the mFund Settlement Service just means that issuers and investors have to resort to paper settlement processes rather than electronic settlement processes. It is hard to see how this advances the interests of investors, issuers or the financial services industry.

**Question 13.2.1:** Do you support amending the AQUA Rules to allow any Unlisted Managed Fund that is registered as a managed investment scheme in Australia to be admitted to settlement via the mFund Settlement Service? If not, why not?

The Australian regulatory system accommodates a range of different investment vehicles providing Collective Investment Products to retail investors over and above registered managed investment schemes. These include:

- NZ-based managed investment schemes that qualify for the mutual recognition scheme between Australia and New Zealand that operates under the Closer Economic Relations trade agreement[163]
- "notified foreign passport funds" that qualify for mutual recognition under the Asia Region Funds Passport scheme,[164] and

[162] See note 158 above.

[163] See ASIC Regulatory Guide 190 *Offering financial products in New Zealand and Australia under mutual recognition*.

[164] See note 16 above.

- other product issuers that have the benefit of an exemption from ASIC from the requirement to register as a managed investment scheme in Australia.

They will shortly also include CCIVs.[165]

ASX would argue that the efficiencies and cost-savings of the mFund Settlement service should be available to any of these entities that qualify to be an Approved Issuer of AQUA Products and can lawfully offer their shares or units to retail investors in Australia.

**Question 13.2.2:** Do you support amending the AQUA Rules to allow any entity that qualifies to be an Approved Issuer of AQUA Products and can lawfully offer its shares or units to retail investors in Australia to be admitted to settlement via the mFund Settlement Service? If not, why not?

ASX is also interested in feedback from stakeholders on the following issues.

**Question 13.2.3:** Are there additional things ASX could or should require of mFunds or brokers transacting in mFunds for their clients, over and above the protective measures mentioned in sections 13.3 and 13.4 of this consultation paper, to reduce the risk of retails clients not understanding that mFund units are not traded on ASX or the different settlement cycles that apply to mFunds compared to products that are traded on ASX?

**Question 13.2.4:** Are there additional things ASX could or should do itself (for example, with the disclosures and disclaimers on the ASX mFund website) to reduce the risk of retails clients not understanding that mFund units are not traded on ASX or the different settlement cycles that apply to mFunds compared to products that are traded on ASX?

## 13.3 The obligations of mFunds

An mFund that issues units through the mFund Settlement Service must not issue the units to a client without receiving confirmation via a CHESS message from the settlement participant representing the client that the client has been given a copy an up-to-date PDS.[166] The message must include the date of the PDS.[167]

The mFund must also:

- contact the client, within 5 business days of issuing the units, to:
  - confirm in writing the issuance of units, and
  - inform the clients that they should have received a copy of an up-to-date PDS, specifying the date of that PDS, and if they have not, they should contact the mFund to obtain a copy of the PDS free of charge[168]
- notify ASX within 10 business days of all situations where an investor in an mFund has indicated to the mFund that they were not given a copy of an up-to-date PDS[169]
- retain for 7 years:
  - an electronic copy of all applications it receives through the mFund Settlement Service

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165 See note 17 above.

166 References to a PDS include a combined PDS incorporating an original PDS and a supplementary PDS or PDSs.

167 AQUA Rule 10A.4.5(a).

168 AQUA Rule 10A.4.5(b).

169 AQUA Rule 10A.4.5(c). The notification given to ASX must include the information set out in Procedure 10A.4.5.

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- records to demonstrate that it has complied with the client confirmation/information requirements above, and
- any request for a disclosure document received from a client in response to the information provided to clients under those requirements,[170] and

- not issue any unit to a client in respect of a request made through the mFund Settlement Service where the mFund is not "liquid" and does not allow a member to withdraw from the mFund while it is not liquid pursuant to the mFund's constitution and/or the Corporations Act.[171]

The mFund's PISP is expected to cross-check the date of the PDS given to the client against the date of the current PDS for the mFund to verify that the copy given to the client was up-to-date.

To facilitate the giving of an up-to-date PDS to clients, an mFund is obliged to provide to ASX an up-to-date PDS at the time of its admission to the mFund Settlement Service[172] and any subsequent supplementary or replacement PDSs at the same time as they are sent or made available to investors or prospective investors.[173]

ASX publishes a daily data file to the market (Reference Point E15[174]) which includes a link to the latest PDS lodged on its Market Announcements Platform by the mFund and its issue date.

**Question 13.3.1:** Are there any particular mFund obligations mentioned in section 13.3 of this consultation paper that you view as unnecessary or unduly onerous on mFunds? Please explain your view and put forward any suggestions you may have to reduce the burden of these requirements without compromising investor protections?

## 13.4 The obligations of brokers transacting in mFunds for their clients

ASX trading participants that wish to enter into transactions for their clients in mFund units using the mFund Settlement Service must first have in place procedures to ensure that:

- the AML/CTFA KYC requirements have been satisfied in relation to the client (either by the trading participant or an authorised agent)
- the client has been given an up-to-date PDS for the product
- the client has acknowledged in written or electronic form[175] that they have been given an up-to-date PDS for the product and a copy of the mFund Settlement Service Investor Fact Sheet explaining that mFund units are not traded on ASX and that the normal T+2 settlement cycle that applies to products that are traded on ASX does not apply to mFunds
- if an application for the issue of units is received through an intermediary (that is, not directly from the client), the trading participant has received from the intermediary a representation[176] that the

[170] AQUA Rule 10A.4.5(d).

[171] AQUA Rule 10A.4.5(e).

[172] AQUA Rule 10A.3.3(f)(iii).

[173] AQUA Rules 10A.4.2(f) and 10A.6.5.

[174] Other mFund data points included in the E15 Reference Point file include: ASX Code, ISIN, APIR Code, Fund Name, Fund Setup Date, Fund Commencement Date, Fund Profile Link, Fund Status, Pricing Frequency, Minimum Application Amount, Application Settlement Cycle and Redemption Settlement Cycle.

[175] The trading participant must keep copies of these client acknowledgements for 7 years and provide them to ASX on request (ASX Operating Rules Procedure 4655(c)).

[176] The trading participant must keep copies of these representations for 7 years and provide them to ASX on request (ASX Operating Rules Procedure 4655(c)).

client has been given an up-to-date PDS and a copy of the mFund Settlement Service Investor Fact Sheet, which includes the date of the PDS, and

- the participant has asked the client for information about them, their tax residency, account type and advisor details[177] and this information has been provided to the settlement participant responsible for settling the transaction.[178]

The trading participant must certify that it has these procedures in place:

- prior to commencement of acceptance of client applications for mFund units
- within 10 business days after 30 June each year, and
- for online brokers, within 10 business days of any material modification to the online broking interface that affects the way in which information about mFund units or the mFund Settlement Service is presented to clients via that interface.[179]

Prior to submitting through the mFund Settlement Service any application for mFund units, a trading participant must:

- give the client a copy of the mFund's most recent PDS[180] and a copy of the mFund Settlement Service Investor Fact Sheet[181]
- if the application is received through an intermediary (that is, not directly from the client), receive from the intermediary a representation that an up-to-date PDS has been given to the client which specifies the date of the PDS,[182] and
- give a representation to the settlement participant responsible for settling the transaction that the client has been given an up-to-date PDS for the product, including the date of the PDS,[183] and that the necessary KYC requirements have been satisfied.[184]

To comply with the obligation to give the client an up-to-date PDS and the mFund Settlement Service Investor Fact Sheet, online brokers will typically arrange for these documents to be available in the form of a link, and prevent progression to the order submission screen until each have been downloaded.

A trading participant that seeks to transact mFund units based on client instructions received through an online broker interface must also prominently display statements to the following effect to clients who use the interface to apply for the issue of mFund units:

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177 The trading participant must keep records of the information supplied by the client about them, their tax residency, account type and advisor details for 7 years and provide it to ASX on request (ASX Operating Rules Procedure 4655(c)).

178 ASX Operating Rules Procedure 4655(a).

179 ASX Operating Rules Procedure 4655(b). The certification must be by the Head of Compliance or equivalent employee of the trading participant in the form prescribed by ASX from time to time, retained for 7 years and provided to ASX annually.

180 ASX Operating Rule 4652. A trading participant that seeks to transact mFund units based on client instructions received through an online broking interface may give these documents to the client by making the documents available to the person in a way that complies with Corporations Regulations 7.9.02A and 7.9.02B.

181 ASX Operating Rules Procedure 4655(e). The mFund Settlement Service Investor Fact Sheet is available online at: https://www.asx.com.au/documents/about/mfund_fact_sheet_lf_20170125.pdf.

182 ASX Operating Rule 4653. A trading participant that seeks to transact mFund units based on client instructions received through an online broking interface may give these documents to the client by making the documents available to the person in a way that complies with Corporations Regulations 7.9.02A and 7.9.02B.

183 The application message which is submitted to CHESS via the client's settlement participant (MT726) includes confirmation that the PDS has been provided to the investor (Bit Position 231) and the PDS issue date (Bit Position 236).

184 ASX Operating Rule 4654. This requirement does not apply if the trading participant is the same entity as the settlement participant. Again, the trading participant must keep records of these representations for 7 years and provide it to ASX on request (ASX Operating Rules Procedure 4655(c)).

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*Units in mFunds that are settled through the mFund Settlement Service are not traded on an open market or exchange*

*You cannot sell or buy these units to or from other investors on the market*

*You may not be able to convert your investment to cash as quickly as you can for shares*

and provide links to the ASX mFund website where the client can find an Investor Fact Sheet about the mFund Settlement Service,[185] information about the fund provided by the issuer[186] and information about the fund disclosed by the issuer using ASX's Market Announcements Platform.[187] The trading participant must also:

- not present the interface in a way which could lead a client to believe that mFund units are able to be traded on ASX or that unit prices displayed on ASX or the interface will apply to any transaction initiated by the client, and
- not use the words 'bid' or 'offer' on the interface.[188]

**Question 13.4.1:** Are there any particular obligations imposed on ASX trading participants entering into transactions for their clients in mFunds mentioned in section 13.4 of this consultation paper that you view as unnecessary or unduly onerous on those participants? Please explain your view and put forward any suggestions you may have to reduce the burden of these requirements without compromising investor protections.

## 13.5 mFund profiles

As part of the mFund admission process, ASX obtains from mFunds and publishes on the ASX mFund website a one page Fund Profile with information for investors about the key features of the mFund[189] using a standardised template. Informal feedback from investors, brokers and financial advisers suggests that they find these profiles quite helpful.

The information captured in the Fund Profile incudes: ISIN or APIR code, ASX code, issuer name, product name, unit registry, asset class, manager style, investment objective, issuer product code, NAV frequency, application settlement cycle, redemption settlement cycle, distribution frequency, minimum unit holdings, maximum unit holdings, whether a DRP is available, minimum application amount, maximum application amount, RPP[190] indicator, RPP minimum amount, RPP maximum amount, RWP[191] indicator, RWP minimum amount, RWP maximum amount, current fund status,[192] distribution cycles and fund specific restrictions.

Currently, there is no formal requirement in the AQUA Rules for an mFund to provide a Fund Profile to ASX or to keep it up to date. ASX is considering introducing requirements to this effect into the AQUA Rules. It is also proposing to review the current Fund Profile to determine whether there is any other information that could be usefully captured for the benefit of retail clients and their advisers, for example a field to indicate if the fund is a simple managed investment scheme.

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185 Available at: www.mfund.com.au/investor-factsheet.pdf.

186 Available at: www.mfund.com.au/toolkit.

187 Available at: www.mfund.com.au/announcements.

188 ASX Operating Rules Procedure 4655(d).

189 Available at: https://www.asx.com.au/mfund/fund-information.htm.

190 RPP stands for "regular payment plans".

191 RWP stands for "regular withdrawal plans".

192 That is whether the fund is currently open for applications generally, open for applications from existing investors only or is not open for applications.

**Question 13.5.1:** Do you support the AQUA Rules being amended to require an mFund to provide a Fund Profile to ASX and to keep it up to date? If not, why not?

**Question 13.5.2:** What additional information do you think could be usefully captured in an mFund's Fund Profile?

## 13.6 Information about an mFund's NAV

An mFund is obliged to publish its NAV either on MAP or on its own website on a quarterly basis.[193] Most mFunds comply with this obligation by publishing their NAV on their own websites. This information is not typically announced on MAP, nor is it published on the ASX mFund website.

In practice, many mFunds will update their NAV on their website more frequently than quarterly.

Currently, there is no obligation under the AQUA Rules for an mFund to supply information about its NAV to ASX for publication on the ASX mFund website. This creates a gap in the information available to investors about mFunds on the ASX mFund website.

ASX is contemplating developing an STP service for mFunds that will allow them to upload their NAV and the date it was determined directly onto the mFund information page on the ASX mFund website. This will improve the completeness and timeliness of the information recorded about mFunds on the ASX mFund website.

If it proceeds with this development, ASX would propose amending the AQUA Rules to remove the requirement for mFunds to calculate and publish their NAV at least quarterly and replace it with an obligation that, regardless of when they do it, whenever they formally calculate an NAV, to give the NAV and the "as at" date it was calculated to ASX for publication on the mFund information page on the ASX mFund website and also to publish it on the issuer's own website.

Given the availability of this information on the ASX mFund website, ASX would propose removing the optional alternative in the AQUA Rules for an mFund to publish its NAV on MAP.

**Question 13.6.1:** Do you see benefit in an STP service for mFunds that would allow them to upload their NAV and the "as at" date at which it was calculated directly onto the mFund information page on the ASX mFund website and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

## 13.7 Information about an mFund's issues and redemptions

An mFund is obliged to publish on MAP and on the mFund issuer's website on a monthly basis the amount and value of units in the mFund that have been redeemed.[194]

The publication of information about the amount and value of redemptions without information about the amount and value of issues seems to ASX to be telling "only half the story". ASX is considering addressing this issue by amending the AQUA Rules so that an mFund must also publish on MAP and on the mFund issuer's website the amount and value of units it has issued as well as the amount and value of units it has redeemed. It is also proposing to change the reporting deadline for this information to require it to be published quarterly, by the end of the month after quarter end, rather than on a monthly basis. This accords with the normal quarterly reporting cycle that applies to many listed entities under the Listing Rules.

[193] AQUA Rule 10A.4.2(a) and the related Procedure.

[194] AQUA Rule 10A.4.2(b) and the related Procedure. The information has to be published the week after the month end. This requirement also applies to ETMFs.

**Question 13.7.1:** Do you support the proposed amendments to the AQUA Rules to require an mFund to publish on MAP and on the mFund issuer's website on a quarterly basis the amount and value of units it has issued or redeemed that quarter? If not, why not?

ASX publishes on the ASX mFund website information about the issue and redemption prices for individual mFunds. The prices represented are historical prices as at the last date that the mFund in question determined an issue or redemption price for its units.

Currently, there is no obligation under the AQUA Rules for an mFund to supply information about its issue or redemption prices to ASX. ASX in fact obtains this information for publication on the ASX mFund website from an external data provider rather than from participating mFunds directly.

ASX is contemplating developing an STP service for mFunds that will allow them to upload their issue and redemption prices and the respective "as at" dates for which they were determined directly onto the mFund information page on the ASX mFund website. This will improve the accuracy and timeliness of the information recorded about mFunds on the ASX mFund website.

If it proceeds with this development, ASX would propose amending the AQUA Rules to require mFunds, whenever they formally calculate an issue or redemption price for units in the mFund, to give the price and the "as at" date for which it was determined to ASX for publication on the mFund information page on the ASX mFund website and also to publish it on the issuer's own website.

ASX would also propose to strengthen and make more prominent the disclaimers on the mFund information page on the ASX mFund website that the issue and redemption prices published there are historical and the prices at which investors can currently apply for or redeem units may be different.

**Question 13.7.2:** Do you see benefit in an STP service for mFunds that would allow them to upload their issue and redemption prices and the respective "as at" dates for which they were determined directly onto the mFund information page on the ASX mFund website and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

## 13.8 Information about an mFund's total units on issue

An mFund is <u>not</u> currently obliged to publish any information about the total number of units it has on issue.[195] That seems to ASX to be a gap in the information published about mFunds on the ASX mFund website.

ASX is also currently exploring the development of an STP service for mFunds that would allow them to periodically notify ASX of the total number of units they have on issue.

If it proceeds with this development, ASX would propose amending the AQUA Rules to require mFunds to periodically notify ASX of the total number of units they have on issue. Rather than publish this information on MAP, ASX would propose that it be published on the mFund information page on the ASX mFund website (where it would seem to more neatly fit) and also on the issuer's own website.

It is an open question in ASX's mind as to whether an mFund should be obliged to update this information on a quarterly, monthly, weekly or daily basis. If it is not required to be done daily, then ASX would look to either: (a) also require the mFund to specify the effective date on which that number of units was on issue,

195 This is to be contrasted with the reporting obligations of ETMFs, who are obliged under AQUA Rule 10A.4.2(cd) and the related Procedure to publish on MAP monthly information about the total number of shares/units they have on issue. This rule does not apply to mFunds.

or (b) to add a prominent disclosure on the ASX mFund website that the number of units is only updated on a periodic (quarterly, monthly or weekly) basis and may be out of date.

**Question 13.8.1:** Do you see benefit in an STP service for mFunds that would allow them to upload the total number of units they have on issue directly onto the mFund information page on the ASX mFund website and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

**Question 13.8.2:** How often do you think an mFund should be obliged to update information about the total number of units it has on issue: quarterly, monthly, weekly or daily?

## 13.9 Information about an mFund's distributions

An mFund is obliged to publish on MAP information about its dividends or distributions as soon as possible after they are declared or paid.[196]

ASX is contemplating developing an STP service for mFunds that will allow them to use a smart online form to provide and publish on MAP more comprehensive information about their dividends and distributions, similar to the information given by listed entities in an Appendix 3A.1 under the Listing Rules but expanded to capture additional tax data of particular application to mFunds. This information can then be consumed electronically by custodians, platforms and others to facilitate their back office procedures regarding dividends and distributions.

If it proceeds with this development, ASX would propose amending the AQUA Rules to require mFunds to provide information about their dividends and distributions using the online form.

**Question 13.9.1:** Do you see benefit in an STP service for mFunds that would allow them to use a smart online form to provide and publish on MAP more comprehensive information about their dividends and distributions and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

## 13.10 DDO information

New product design and distribution obligations (**DDO**) came into effect in Australia in 2021. These DDO require product issuers and distributors to prepare and make public a "Target Market Determination" for their financial products and to take reasonable steps that will ,or are reasonably likely to, result in a product's distribution being consistent with its Target Market Determination.[197]

ASX would welcome feedback on the following issue:

**Question 13.10.1:** Are there any additional documents or information that could be published on the ASX mFund website that may assist mFunds in complying with their DDO? For example, would it be helpful to mFunds if their Target Market Determination could be published on that website? Should there be a rule making this mandatory?

## 13.11 Collection of additional investor information

One of the key advantages of the mFund Settlement Service is that the AML/CTFA KYC checks required to be undertaken by managed investment schemes when they issue units are undertaken once at the HIN level by the trading participant representing the client, rather than by each individual mFund.

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[196] AQUA Rule 10A.4.2(c) and the related Procedure.

[197] See Part 7.8A of the Corporations Act and ASIC Regulatory Guide 274 *Product design and distribution obligations*.

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The data captured by the trading participant representing the investor is entered into CHESS by their settlement participant and then passed across by CHESS to the PISP representing the mFund so that it can then be recorded in the mFund's business records.

In recent years, the data required to be collected by managed investment schemes when they issue units to an investor has grown substantially beyond AML/CTFA KYC checks through regulatory changes such as CRS,[198] FATCA[199] and DDO.

In response to this, ASX has introduced functionality in the mFund Settlement Service to capture information about the investor to assist fund managers with their reporting obligations under CRS and FATCA. This information is contained in the following messages as follows:

MT737: Investor Details:

- HIN
- Date of Birth
- Tax File Number / ABN

MT735: Foreign Tax Status:

- Account Type
  - Super Fund (S)
  - Individual (I)
  - Joint (J)
  - Company (C)
  - Trust (T)
- Superannuation Fund ABN (if applicable)
- Address Type
  - Residential (*required for account type I and J*)
  - Registered (*required for account type C*)
  - Trust (*required for account type T*)
- Address Details (*required for account type I, J, C, T*)
- Entity Type (*required for account type C, T*)
  - Active NFE (A)
  - Passive NFE (P)
  - Financial Institution (F)
- Foreign Residency Indicator
  - Yes
  - No
- Foreign Person Details *(available for up to three foreign tax resident persons where account type is 'Individual' or 'Joint' and Foreign Residency Indicator = Yes)*
  - Foreign Person Date of Birth
  - Foreign Country Code
  - Foreign TIN
  - TIN Absent reason (if applicable)
- Additional Foreign Parties

[198] CRS stands for "Common Reporting Standard", a single global standard for the collection, reporting and exchange of financial account information on foreign tax residents. Under that standard, banks and other financial institutions are required to collect and report to taxation authorities financial account information on non-residents.

[199] FATCA stands for the "Foreign Account Tax Compliance Act", which is US legislation that requires foreign financial Institutions and certain other non-financial foreign entities to report on the foreign assets held by their US account holders or be subject to withholding tax on certain payments.

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ASX is aware that there are shortcomings in the current data collected for some mFund applications, for example, underlying investor information for account types ‘C’ and ‘T’ must be collected manually outside of CHESS after an application has been made. While these types of accounts are less than 10% of mFund applications, ASX understands that the manual nature of collecting data is an imposition on fund managers and their unit registries. The ASX CHESS Replacement Project has provided an opportunity to extend and improve the data collected on mFund applications. ASX believes that the information delivered about investors once the CHESS replacement project goes live will provide fund managers with CRS and FATCA related data covering most scenarios.[200]

ASX understands that if use of the mFund Settlement Service requires trading participants to have systems and processes to capture extensive additional client data over and above the normal AML/CTFA KYC data they would capture as part of their own account opening processes, this will act as a disincentive for trading participants to support the service.

Nevertheless, ASX is interested in obtaining feedback on the following question:

**Question 13.11.1:** Are there any additional data points about investors that could usefully be captured through the mFund Settlement Service that would help mFunds to better perform their back office processes? If so, what are those data points and how do they assist mFunds in performing their back office processes?

## 13.12 Transfers of units in mFunds

Currently, unlike most other products settled through the CHESS settlement system, transfers of units in mFunds[201] are not able to be processed electronically through CHESS. Transfers have to be processed manually through the mFund’s unit registry. ASX has received feedback from some users that they would prefer to have an electronic process to register transfers of units for mFunds.

ASX’s new distributed ledger technology (**DLT**) proposed to replace the CHESS settlement system will not incorporate the functionality to process transfers of mFund units as a day 1 requirement. However, if there is interest in this functionality, ASX may consider introducing this functionality in a future upgrade to the replacement CHESS settlement system.

**Question 13.12.1:** Do you see benefit in the replacement CHESS settlement system having the functionality to process transfers of mFund units? How much use do you think this functionality would receive in practice?

## 13.13 A wholesale mFund service?

The current mFund Settlement Service is primarily targeted at, and designed for, retail investors and their advisers. It delivers four core capabilities:

- a standard messaging system[202] to electronically process orders applying for or redeeming units in Unlisted Managed Funds quickly and securely
- settlement of applications and redemptions through the ASX batch settlement process, giving increased settlement certainty and security

[200] See ASX CHESS Replacement – Investor Data and Foreign Tax Status Submission Process (available online at https://asxchessreplacement.atlassian.net/wiki/spaces/CSP/pages/245239134/Investor+Data+and+Foreign+Tax+Status+Submission+Process).

[201] For example, from an outgoing superannuation fund trustee to a replacement superannuation fund trustee.

[202] When the CHESS settlement system is replaced in 2023, this messaging system will be ISO 20022-compatible.

- an electronic sub-register system recording an investor's ownership of units in mFunds, digitally and securely, on the same HIN as their other ASX investments, giving them a convenient central repository to view and manage their investments, and
- streamlined KYC data collection and verification.

ASX believes that these core capabilities could be of benefit to a broader universe of investors and their service providers than just retail investors and their advisers.

ASX is interested in understanding whether there might be appetite for ASX to develop a parallel settlement service designed specifically for wholesale investors (for example, APRA-regulated superannuation funds, IDPS operators, wealth platform providers and custodians). ASX would note that a number of these wholesale investors are participants of ASX Settlement that already have access to the CHESS settlement system. Consequently, there may be opportunities to remove or relax the requirement that currently applies to the retail version of mFund that participating investors must have a trading participant to process their application or redemption orders.

**Question 13.13.1:** Do you see benefit in ASX developing a parallel settlement service to the mFund Settlement service designed specifically for wholesale investors? If so, what features do you think that parallel service should have to attract Unlisted Managed Funds and wholesale investors to the service?

## 13.14 Extending mFund to a broader class of financial products?

ASX believes that the four core capabilities that the mFund Settlement Service delivers for units in Unlisted Managed Funds mentioned in section 13.13 above could be adapted and applied to other financial products that are traditionally provided on an OTC basis.[203] Examples include:

- managed accounts – where an investor holds a portfolio of securities in their own name on CHESS rather than through a unitised vehicle such as an ETF, ETMF or Unlisted Managed Fund but it is managed on their behalf by an investment adviser
- term deposits
- annuities
- savings and investment bonds
- bank accepted or endorsed bills of exchange
- insurance, and
- other retirement products.

This would enable investors to place orders to enter and exit these investments through their broker in the same way that they currently do for shares. Title to these investments would be held in the investor's name on their CHESS HIN, giving them a central repository to view and manage their entire investment portfolio.

**Question 13.14.1:** Do you see benefit in ASX developing an mFund-style settlement service for other financial products that are traditionally provided on an OTC basis? What products do you think might usefully benefit from such a service? What features do you think that service should have to attract both product issuers and investors to the service?

[203] Noting that this would require ASX to obtain a variation to its Australian CS facility licence to authorise it to provide a clearing and settlement facility for financial products beyond just securities and derivatives.

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# 14. Better information for investors about Investment Products

## 14.1 Introduction

As can be seen from section 13 above, ASX currently captures a reasonable amount of information about mFunds and presents it in a user friendly and readily comparable format on the ASX mFund website for the benefit of retail investors and their advisers. Further, ASX is planning to expand the information it currently captures for mFunds so that it is more complete and up-to-date. It is also proposing to develop STP data feeds to allow mFunds to more easily provide this information to ASX.

ASX is contemplating developing a new information page on the ASX website for the various Listed Investment Products and AQUA Products traded on ASX. In the case of Collective Investment Products (LICs, LITs, REITs, IFs, ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products), this will provide is similar information about these products as is currently provided for mFunds on the ASX mFund website. In the case of Derivative Investment Products (ETSPs that take the form of Derivative Investment Products and Warrants), the information will be tailored to reflect the different attributes of Derivative Investment Products to Collective Investment Products.

The new web page will be separate and distinct to the ASX mFund website so that there is no confusion between the Listed Investment Products and AQUA Products traded on ASX and mFunds units settled through the mFund Settlement Service.

## 14.2 Information to be captured on Collective Investment Products

For Listed Investment Products and AQUA Products that take the form of Collective Investment Products, the proposed new information page on the ASX website for Listed Investment Products and AQUA Products will include profile information about the entity/fund, any current prospectus or PDS it has in the market,[204] fund/entity size, the number of shares/units it has on issue, their last determined NTA/NAV backing and (where relevant[205]) its latest issue and redemption prices. It will also include near-live market bid and offer prices for its shares/units (subject to the usual 20 minute delay that applies to the publication of live market prices on the ASX website).

To capture this data, ASX is considering amending the Listing Rules and AQUA Rules to require issuers of LICs, LITs, REITs, IFs, ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products to provide to ASX:

- a short Fund Profile with information for investors about the key features of the product using a standardised template, similar to the proposal for mFunds referred to in section 13.5 above
- whenever they formally calculate an NTA/NAV backing, the NTA/NAV backing and the “as at” date it was calculated, as per the proposals in sections 11.2 and 11.3 above and similar to the proposal for mFunds in section 13.6 above[206]

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204 A LIC, LIT, REIT or IF may not have a current prospectus or PDS in the market, if it is not pursuing a capital raising.

205 LICs, LITs, REITs and IFs do not have continuous issue and redemption obligations and therefore this information is not of relevance to them.

206 ETFs and ETMFs are obliged to publish their NAV either on MAP or on their own website on a daily basis: AQUA Rules 10A.4.2(a) and 10A.4.4(a) and the related Procedures. LICs and LITs presently are required to publish their NTA backing on a monthly basis, no later than 14 days after the end of the month: Listing Rule 4.12.

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- in the case of ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products,[207] whenever they formally determine issue and redemption prices, those prices and the "as at" dates for which they were determined, similar to the proposal for mFunds in section 13.7 above,[208] and
- the total number of shares/units it has on issue, similar to the proposal for mFunds in section 13.8 above.

**Question 14.2.1:** Do you support there being an information page on the ASX website for the Collective Investment Products traded on ASX and the Listing Rules and AQUA Rules being amended to facilitate the capture of the information needed to populate that page?

On the last bullet point above, ASX would note that ETFs and ETMFs are presently obliged under the AQUA Rules to publish on MAP monthly information about the total number of shares/units they have on issue.[209] ETSPs that take the form of Collective Investment Products have no corresponding obligation.

If it proceeds with the proposed new information page on the ASX website for Listed Investment Products and AQUA Products, ASX would propose amending the AQUA Rules to require ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products, to publish information about the total number of shares/units they have on issue on that web page (where it would seem to more neatly fit) and also on the issuer's own website, rather than on MAP.

It is an open question in ASX's mind as to whether LICs, LITs, REITs, IFs, ETFs, ETMFs, and those ETSPs that take the form of Collective Investment Products should be obliged to update the information about the total number of shares/units they have on issue on a quarterly, monthly, weekly or daily basis. If it is not required to be done daily, then ASX would look to either: (a) also require a LIC, LIT, REIT, IF, ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to specify the effective date on which that number of shares/units was on issue, or (b) add a prominent disclosure on the ASX web page that the number of shares/units is only updated on a periodic (quarterly, monthly or weekly) basis and may be out of date.

**Question 14.2.2:** How often do you think an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product should be obliged to update information about the total number of shares/units it has on issue: quarterly, monthly, weekly or daily?

ASX would also welcome feedback on the following issue:

**Question 14.2.3:** Are there any additional documents or information that could be published on the proposed information page on the ASX website for the Collective Investment Products traded on ASX that may assist issuers in complying with their DDO.[210] For example, would it be helpful to issuers if their Target Market Determination could be published on that website? Should there be a rule making this mandatory?

### 14.3 Information to be captured on Derivative Investment Products

For ETSPs that take the form of Derivative Investment Products and Warrants, the proposed new information page on the ASX website for Listed Investment Products and AQUA Products will include profile

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[207] Again, LICs, LITs, REITs and IFs do not have continuous issue and redemption obligations and therefore this information is not of relevance to them.

[208] ETFs and ETMFs are not presently required to publish any information about their issue and redemption prices under the AQUA Rules beyond the requirement for ETMFs to disclose on MAP and on the issuer's website on a monthly basis the amount and value of units in the ETMF that have been redeemed (see note 194 above).

[209] ETFs and ETMFs are obliged under AQUA Rules 10A.4.4(bd) and 10A.4.2(cd) respectively to publish on MAP monthly information about the total number of shares/units they have on issue.

[210] See the text accompanying note 197 above.

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information about the entity/product, any current prospectus or PDS it has in the market, the number of products has on issue, and other data specific to products with optionality. It will also include near-live market bid and offer prices for those products (subject to the usual 20 minute delay that applies to the publication of live market prices on the ASX website).

To capture this data, ASX is considering amending the AQUA Rules and the Warrant Rules to require issuers of ETSPs that take the form of Derivative Investment Products and Warrants to provide to ASX:

- for ETSPs:
    - a short product profile with information for investors about the key features of the product using a standardised template, and
    - the total number of ETSPs on issue (ie open interest) for each ETSP series.
- for Warrants:
    - a short product profile with information for investors about the key features of the product using a standardised template (including standard Warrant features such as option type, strike, exercise type, expiry date, barrier/stop loss/bonus level, multiplier, final instalment), and
    - the total number of Warrants on issue (ie open interest) for each Warrant series.

**Question 14.3.1:** Do you support there being an information page on the ASX website for the Derivative Investment Products traded on ASX and the AQUA Rules and the Warrant Rules being amended to facilitate the capture of the information needed to populate that page?

## 14.4 Information about AQUA Product issues and redemptions

Under the AQUA Rules, an ETMF is obliged to publish on MAP and on the issuer's website on a monthly basis the amount and value of units in the ETMF that have been redeemed.[211] There is no equivalent obligation imposed on ETFs or on ETSPs that take the form of Collective Investment Products.

ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products have no obligation to publish, whether on a monthly basis or otherwise, any information about the amount and value of shares/units they have issued.[212]

The publication of information about the amount and value of redemptions without information about the amount and value of issues seems to ASX to be telling "only half the story".

ASX is considering addressing these issues by amending the AQUA Rules so that:

- ETFs and ETSPs that take the form of Collective Investment Products are obliged to publish on MAP and on the issuer's website on a periodic basis the amount and value of units they have redeemed, and
- ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products are obliged to publish on MAP and on the issuer's website on a periodic basis the amount and value of units they have issued.

ASX believes it is sufficient for the market, and would be less of a compliance burden on issuers, if this information was published quarterly, by the end of the month after quarter end, rather than on a monthly

[211] AQUA Rule 10A.4.2(b) and the related Procedure. The information has to be published the week after month end.

[212] This is to be contrasted with the reporting obligations of ETMFs, who are obliged under AQUA Rule 10A.4.2(cd) and the related Procedure to publish on MAP monthly information about the total number of shares/units they have on issue.

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basis. This accords with the normal quarterly reporting cycle that applies to many listed entities under the Listing Rules.

**Question 14.4.1:** Do you support the AQUA Rules being amended to require ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products to publish on MAP and on the issuer's website on a quarterly basis the amount and value of units they have issued and redeemed that quarter? If not, why not?

## 14.5 Information about AQUA Product dividends and distributions

Similar to the proposal for mFunds in section 13.9 above, ASX is contemplating developing an STP service for AQUA Product issuers that will allow them to use a smart online form to provide and publish on MAP more comprehensive information about their dividends and distributions, similar to the information given by listed entities in an Appendix 3A.1 under the Listing Rules but expanded to capture additional tax data of particular application to issuers of Collective Investment Products. This information can then be consumed electronically by custodians, platforms and others to facilitate their back office procedures regarding dividends and distributions.

If it proceeds with this development, ASX would propose amending the AQUA Rules to require AQUA Product issuers to provide information about their dividends and distributions using the online form.

**Question 14.5.1:** Do you see benefit in an STP service for AQUA Product issuers that would allow them to use a smart online form to provide and publish on MAP more comprehensive information about their dividends and distributions and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

## 14.6 Collection of additional investor information

As mentioned previously, one of the key advantages of the mFund Settlement Service is that the AML/CTFA KYC checks required to be undertaken by managed investment schemes when they issue units are undertaken once at the HIN level by the trading participant representing the client, rather than by each individual mFund. In addition, the provision of CRS and FATCA related information on mFund applications assists fund managers in meeting their obligations under those reporting frameworks.

This data is captured by the trading participant representing the investor, entered into CHESS by their settlement participant and then passed across by CHESS to the PISP representing the mFund so that it can then be recorded in the mFund's business records.

ASX is interested in understanding whether there any additional data points about investors that could usefully be captured by ASX trading participants through the CHESS settlement system that would help issuers of Listed Investment Products or AQUA Products to better perform their back office processes.

**Question 14.6.1:** Are there any additional data points about investors that could usefully be captured through the CHESS settlement system that would help issuers of Listed Investment Products or AQUA Products to better perform their back office processes? If so, what are those data points and how do they assist issuers in performing their back office processes?

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# 15. Miscellaneous issues

## 15.1 Introduction

This section addresses miscellaneous issues relevant to Investment Products.

## 15.2 The AQUA Quote Display Board

The AQUA Quote Display Board (**QDB**) is an ASX service that issuers of AQUA Products not admitted to trading can use to display indicative prices for the issue or redemption of their AQUA Products. These prices are not executable. Instead, a market participant interested in trading the product on its own account or for a client must contact the market participant representing the issuer to negotiate a transaction. If a transaction is agreed, it is executed off-market by the market participants, and then notified to CHESS so that it can be settled in the usual way.

To use the QDB in relation to a particular AQUA Product, the issuer must be approved as an AQUA Product issuer under the AQUA Rules and the product must be admitted to quotation on the QDB (as opposed to being admitted to trading on the ASX market).

The QDB was originally designed for AQUA Products that are either not suited to on-market trading or for which the issuer did not want or need on-market trading. An example might be a forward-priced AQUA Product.

All AQUA Products to date have been admitted to trading on ASX rather than to quotation on the QDB and so the QDB has had no usage.

This consultation has given ASX pause to consider the question: if the QDB could be extended to other products apart from AQUA Products and the capacity to quote prices could be made available to all participants and not just participants representing AQUA Product issuers, would it be of interest to the market?

**Question 15.2.1:** Were you aware of the existence of the QDB?

**Question 15.2.2:** Do you consider that the QDB serves any useful purpose in relation to AQUA Products? Should ASX retain the current QDB service for AQUA Products or scrap it?

**Question 15.2.3:** Are there any improvements that ASX could make to the QDB that might make it more likely to be used by AQUA Product issuers?

**Question 15.2.4:** If the QDB could be extended to other financial products apart from AQUA Products and the capacity to quote prices could be made available to all participants and not just participants representing AQUA Product issuers, would the QDB be a service of interest to you? How might you see yourself using that service?

## 15.3 Admission application forms and processes

ASX substantially upgraded its application forms and processes for admitting AQUA Products to quotation in 2019. It intends to make similar changes to its application forms and processes for Warrants as part of phase 2 of this consultation. Depending on the outcome of this consultation, some of these changes may also need to be extended to ASX's application forms and processes for the issuers of Listed Investment Products.

In that context, ASX is keen to receive feedback from stakeholders who have been involved recently in the admission process for Listed Investment Products, AQUA Products or Warrants on their recent experiences in that regard.

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**Question 15.3.1:** Have you had any recent experience of applying to be admitted to the ASX official list as a LIC, LIT, REIT or IF? If so, do you have any suggestions on how the application forms and processes for the admission of LICs, LITs, REITS and IFs to the official list could be improved?

**Question 15.3.2:** Have you had any recent experience for applying for the quotation of AQUA Products using the upgraded application forms and processes that ASX introduced in 2019? If so, do you have any suggestions on how the upgraded application forms and processes for AQUA Products could be improved?

**Question 15.3.3:** Have you had any recent experience of applying for the quotation of Warrants? If so, do you have any suggestions on how the application forms and processes for the admission of Warrants to quotation could be improved?

**Question 15.3.4:** Do you have any other suggestions on systems or process enhancements that ASX could make to assist Warrant issuers with the ongoing maintenance and refreshing of data related to Warrants?

## 15.4 Any other issues with ASX's Investment Product rules

ASX will be undertaking a comprehensive re-write of the Listing Rules applicable to LICs, LITs, REITs and IFs, as well as the AQUA Rules and Warrant Rules, to reflect the policy positions that emerge as a result of this consultation.

With that in mind, ASX would welcome any other feedback from stakeholders on issues (even minor points of detail or drafting issues) that they would like to see addressed in the re-write of the rules.

**Question 15.4.1:** Are there any other issues that you would like to see addressed in any re-write of the Listing Rules applicable to LICs, LITs, REITs and IFs, or the AQUA Rules or Warrant Rules?

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# Annexure A – Consultation Questions

## 2. Some threshold rule issues

### 2.2 Why three separate rule books?

**Question 2.2.1:** Would you have any concerns if ASX were to combine the ASX AQUA Rules and Warrant Rules into a single rule book governing non-listed Investment Products? If so, what are they and how might they be addressed?

**Question 2.2.2:** If the ASX AQUA Rules and Warrant Rules are combined into a single rule book governing non-listed Investment Products, would you have any concerns if ASX were to make Warrants a sub-category of ETSPs? If so, what are those concerns?

**Question 2.2.3:** Do you see any benefit or value in maintaining the name "AQUA" as part of the ASX Investment Product rule framework? Does it have any currency with investors?

### 2.3 The treatment of LICs and LITs under the Listing Rules

**Question 2.3.1:** Do you support the proposed new definition of "financial investment entity" set out in the consultation paper. If not, why not and how would you define this term?

### 2.4 The treatment of REITs and IFs under the Listing Rules

**Question 2.4.1:** Should REITs and IFs be formally recognised in the Listing Rules as separate categories of listed investment vehicles? If not, why not?

**Question 2.4.2:** Do you support the proposed new definitions of "real estate investment entity" and "infrastructure investment entity" set out in the consultation paper. If not, why not and how would you define these terms?

### 2.5 Towards a more aligned rule framework for Investment Products

**Question 2.5.1:** Do you support the proposed new definition of "collective investment entity" set out in the consultation paper. If not, why not and how would you define this term?

**Question 2.5.2:** Are there other types of entities, apart from LICs, LITs, REITs and IFs, that should be formally recognised in the Listing Rules as separate categories of collective investment entities so that some or all of the specific Listing Rules that are proposed to apply collectively to LICs, LITs, REITS and IFs also apply to them?

### 2.6 Issues with the current definition of "investment entity" in the Listing Rules

**Question 2.6.1:** Do you think that the terms "LIC" and "LIT" have a particular connotation for retail investors? If so, what is that connotation and what ramifications does that have for the definition of "investment entity" in the Listing Rules?

**Question 2.6.2:** If the current rule framework for investment entities in the Listing Rules is retained, should the definition of "investment entity" be narrower and more specific about the types of securities and derivatives in which the entity can invest? If so, what types of securities and derivatives should LICs and LITs be limited to investing in? Alternatively, should the definition of "investment entity" be broader and allow the entity to invest in a wider class of financial assets than just securities or derivatives? If so, what additional classes of financial assets should LICs and LITs be allowed to invest in?

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**Question 2.6.3:** If the current rule framework for investment entities in the Listing Rules is retained, should there be any constraints on the ability of a LIC or LIT to invest in securities in an unlisted company or in OTC derivatives, given the capacity that opens for them to invest in any class of underlying asset? If so, what should those constraints be? If not, why not?

**Question 2.6.4:** If the current rule framework for investment entities in the Listing Rules is retained, should the definition of "investment entity" continue to exclude an entity that has an objective of exercising control over or managing any entity, or the business of any entity, in which it invests? If so, why? If not, why not?

**Question 2.6.5:** If your answer to Question 2.6.4 is "yes", what consequence do you think should follow if a LIC or LIT enters into, or seeks to enter into, a transaction that will allow it to exercise control over or manage any entity, or the business of any entity, in which it invests? Should this be prohibited? Or should it be permitted if the entity obtains approval from its shareholders/unitholders?

**Question 2.6.6:** If your answer to Question 2.6.4 is "yes", how do you think ASX should address a situation where an investment entity generally does not have the objective of exercising control over or managing any entity, or the business of any entity, in which it invests but feels that it needs to do so in a particular case, in the interests of its investors, because the entity or business is being poorly managed? Should this be permitted if the entity obtains approval from its shareholders/unitholders or should ASX consider granting a waiver to allow this to occur where it is satisfied that this is a "one-off" and temporary situation?

**Question 2.6.7:** If your answer to Question 2.6.4 is "yes", to address the concerns in the text, would you support expanding the second limb of the definition of "investment entity" so that it reads: "*Its objectives do not include **(alone or together with others)** exercising control over or managing any entity, or the business of any entity, in which it invests*"?

**Question 2.6.8:** As an alternative to precluding an investment entity from having an objective of exercising control over or managing an entity or its business, would it be better for the Listing Rules to limit the percentage holding an investment entity and its associates can have in any one entity. If so, what percentage would you suggest? If not, why not?

**Question 2.6.9:** As an alternative to, or in addition to, the suggestion in the previous question, would it be better for the Listing Rules to limit the percentage of funds that an investment entity can invest in any one entity, thereby ensuring that it has a portfolio of different investments? If so, what percentage would you suggest? If not, why not?

**Question 2.6.10:** If the current rule framework for investment entities in the Listing Rules is retained, to address the concerns in the text, should the definition of "investment entity" be broadened so that it captures any entity which has been advised by ASX that it is an investment entity for the purposes of the Listing Rules?

**Question 2.6.11:** If the current rule framework for investment entities in the Listing Rules is retained, are there any other improvements that could be made to the existing definition of "investment entity" in the Listing Rules? If so, what are they?

# 3. Approved issuers

## 3.2 Approved issuers of AQUA Products and Warrants

**Question 3.2.1:** Should the list of Approved Issuers of AQUA Products and Warrants be expanded to include entities that are prudentially regulated by an overseas regulator equivalent to APRA? If not, why not?

**Question 3.2.2:** Are there any other types of issuers who should be added to the list of Approved Issuers for AQUA Products and Warrants? If so, what are they and why should they be added to the list of Approved Issuers for AQUA Products and Warrants?

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## 3.3 Financial products excluded from being AQUA Products

**Question 3.3.1:** Do you agree with ASX's proposed changes to the exclusions in AQUA Rule 10A.3.3(d) so that they only apply to securities in a financial investment entity, real estate investment entity or infrastructure investment entity that is quoted on the ASX market under the ASX Listing Rules rather than the AQUA Rules. If not, why not?

**Question 3.3.2:** Do you think that an AQUA Product issuer should be precluded from having a controlling interest in the issuer of an underlying instrument in its portfolio? If not, why not? If so, do you think that AQUA Rule 10A.3.3(d) is sufficiently clear in this regard? If not, how would you re-word that rule to cover the point?

## 3.4 Hybrid Listed/AQUA Product structures

**Question 3.4.1:** Do you have any views about hybrid structures, where a listed issuer that is also approved as an AQUA Product issuer simultaneously issues one class of securities that is a Listed Investment Product subject to the Listing Rules and another class of securities that is an AQUA Product subject to the AQUA Rules? What do you see as the advantages and disadvantages of these hybrid structures? Do you see any particular risks associated with, or have any other concerns about, these hybrid structures that you would like to see addressed in any re-write of the Listing Rules and the AQUA Rules?

# 4. Admission requirements and processes

## 4.2 Minimum fund size

**Question 4.2.1:** Is having an NTA (after deducting the costs of fund raising) of $15 million a suitable threshold for admission as a LIC or LIT? Should it be higher? If so, what should it be?

**Question 4.2.2:** Is having an NTA (after deducting the costs of fund raising) of $4 million a suitable threshold for admission as a REIT or IF? Should it be higher? If so, what should it be?

**Question 4.2.3:** If in your response to Question 2.5.2 you have identified other types of collective investment product issuers, apart from LICs, LITs, REITs and IFs, that should be formally recognised in the Listing Rules as separate categories of listed investment vehicles, is having an NTA (after deducting the costs of fund raising) of $4 million a suitable threshold for admission as such a vehicle? Should it be higher? If so, what should it be?

**Question 4.2.4:** Do you agree with ASX's conclusion that it is not necessary to impose a minimum subscription or fund size requirement for AQUA Products or Warrants to be admitted to quotation under the AQUA Rules or Warrant Rules, given the liquidity support obligations that apply to those products? If not, why not and what minimum subscription or fund size would you suggest?

**Question 4.2.5:** Do you think that ASX should have the power to order the issuer of an AQUA Product or Warrant to conduct an orderly wind down of the product and also for ASX to suspend quotation of the product while the orderly wind-down is undertaken if, in ASX's opinion, there is not sufficient investor interest in the product to warrant its continued quotation? If so, what considerations do you think ASX should take into account in exercising that power? If not, why not?

## 4.3 Commitments

**Question 4.3.1:** Should REITs and IFs be excluded from the "commitments test", in the same way that LICs and LITs are?

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**Question 4.3.2:** If in your response to Question 2.5.2 you have identified other types of collective investment product issuers, apart from LICs, LITs, REITs and IFs, that should be formally recognised in the Listing Rules as separate categories of listed investment vehicles, should those product issuers also be excluded from the "commitments test", in the same way that LICs and LITs are?

### 4.4 Required licences

**Question 4.4.1:** Should entities seeking admission to the official list as an issuer of a Listed Investment Product have to satisfy an admission condition that they hold all required licenses under Chapter 7 of the Corporations Act and, once they are admitted, under a continuing obligation to satisfy that condition for as long as they have any Listed Investment Products on issue? If not, why not?

### 4.5 Adequate facilities and resources

**Question 4.5.1:** Should entities seeking admission to the official list as an issuer of a Listed Investment Product have to satisfy an admission condition that they have adequate facilities, systems, processes, procedures, personnel, expertise, financial resources and contractual arrangements with third parties to perform their obligations as such an issuer and, once they are admitted, under a continuing obligation to satisfy that condition for as long as they have any Listed Investment Products on issue? If not, why not?

## 5. Product names

### 5.2 Naming requirements for AQUA Products and Warrants

**Question 5.2.1:** Are there any other naming constraints or requirements, apart from those set out in the text, that should apply to AQUA Products or Warrants generally or to specific types of AQUA Products or Warrants? If so, what are they?

### 5.3 Naming requirements for Listed Investment Products

**Question 5.3.1:** Do you support the introduction of a rule for Listed Investment Products that the name of the product must not, in ASX's opinion, be capable of misleading retail investors as to the nature, features or risks of the product? If not, why not?

**Question 5.3.2:** Do you support the introduction of a rule for Listed Investment Products that if the issuer proposes to change the name of the product, it must first seek approval from ASX to the new name? If not, why not?

**Question 5.3.3:** Should issuers of Listed Investment Products be prohibited under the Listing Rules from describing themselves as an "Exchange Traded Fund" or "ETF"? If not, why not??

**Question 5.3.4:** If your answer to question 5.3.3 is 'no', should LICs and LITs be subject to a Listing Rule requiring them to comply with similar naming requirements as those set out by ASIC in INFO 230? If not, why not?

**Question 5.3.5:** Are there any other naming constraints or requirements that should apply to Listed Investment Products generally or to specific types of Listed Investment Products? If so, what are they?

## 6. Investment mandates

### 6.2 Investment mandates for AQUA Products

**Question 6.2.1:** For greater certainty, should the term "investment mandate" be defined in the AQUA Rules? If so, would you be happy with a definition that simply incorporates the two components mentioned in section 6.2 of the consultation paper (ie investment objective and investment strategy)? If not, how would you define the term "investment mandate"?

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**Question 6.2.2:** Should the AQUA Rules impose any constraints on an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product from changing its investment mandate (such as a requirement for a certain period of notice before the change is made)? If so, what should those constraints be? If not, why not?

**Question 6.2.3:** Should the AQUA Rules require an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to advise the market immediately if it materially breaches its investment mandate? If not, why not?

**Question 6.2.4:** Should the AQUA Rules require an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to confirm in its annual report whether it has materially complied with its investment mandate for the financial year and, if it hasn't, to disclose any material departures from that mandate? If not, why not? If so, should that statement be audited or otherwise verified by an independent third party?

### 6.3 Investment mandates for Listed Investment Products

**Question 6.3.1:** Should the Listing Rules require an entity applying for admission as a LIC or LIT to satisfy an admission condition that it have an investment mandate which is acceptable to ASX and which is set out in its listing prospectus or PDS. If not, why not? If so, how should the term "investment mandate" be defined in the Listing Rules? Would the two-part definition mentioned in section 6.2 of this consultation paper incorporating investment objective and investment strategy be appropriate?

**Question 6.3.2:** Should the Listing Rules impose any constraints on a LIC or LIT from changing its investment mandate (such as a requirement for a certain period of notice before the change is made or that the mandate can only be changed with the approval of its security holders)? If so, what should those constraints be? If not, why not?

**Question 6.3.3:** Should the Listing Rules require a LIC or LIT to advise the market immediately if it materially breaches its investment mandate? If not, why not?

**Question 6.3.4:** Should the Listing Rules require a LIC or LIT to confirm in its annual report whether it has materially complied with its investment mandate for the financial year and, if it hasn't, to disclose any material departures from that mandate? If not, why not? If so, should that statement be audited or otherwise verified by an independent third party?

**Question 6.3.5:** Should REITs and IFs also be subject to similar requirements regarding investment mandates as those suggested above for LICs and LITs? If not, why not? If so, why and do those requirements need any customisation to deal with the different attributes of REITs and IFs compared to LICs and LITs?

## 7 Permitted investments

### 7.2 Acceptable underlying instruments for AQUA Products

**Question 7.2.1:** Do you support including in the list of acceptable underlying instruments for AQUA Products any financial product that, in ASX's opinion, is subject to a reliable and transparent pricing framework? If not, why not?

**Question 7.2.2:** Are there any other financial products or indices that you consider should be added to the list of acceptable underlying instruments for AQUA Products? If so, please provide details and explain the reasons why.

**Question 7.2.3:** Are there any products currently included in the list of acceptable underlying instruments for AQUA Products that you consider should be excluded? If so, please provide details and explain the reasons why.

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## 7.3 Acceptable underlying instruments for Warrants

**Question 7.3.1:** Should the Warrant Rules be amended to limit the acceptable underlying instruments for Warrants to the same types of underlying instruments as are acceptable for AQUA Products? If not, why not?

**Question 7.3.2:** Are there any other types of products that should be added to the list of acceptable underlying instruments for Warrants?

## 7.4 Acceptable underlying instruments for Listed Investment Products

**Question 7.4.1:** Do you agree that it is not necessary to proscribe the types of underlying assets in which LICs, LITs, REITs and IFs can invest under the Listing Rules beyond what is inherent in the proposed definitions of "financial investment entity", "real estate investment entity" and "infrastructure investment entity" in sections 2.3 and 2.4 of this paper? If not, why not?

## 7.5 Feeder-fund structures

**Question 7.5.1:** Do you support the rule changes being considered by ASX to deal with feeder funds? If not why not? Are there any other issues with feeder funds that you would like to see addressed in any re-write of the Listing Rules or AQUA Rules?

## 7.6 The use of derivatives

**Question 7.6.1:** Should the list of acceptable counterparties to an OTC derivative entered into by an AQUA Product issuer be extended to include other types of institutions apart from ADIs, or entities guaranteed by ADIs, in Australia, France, Germany, the Netherlands, Switzerland, the UK or the US? If so, what other types of institutions should be included? If not, why not?

**Question 7.6.2:** Should the list of acceptable assets that can be received by an AQUA Product issuer by way of collateral under an OTC derivative be extended to include other types of assets apart from securities that are constituents of the S&P/ASX 200 index, cash, Australian government debentures or bonds, or the underlying instrument for the AQUA Product? If so, what other types of assets should be included? If not, why not?

**Question 7.6.3:** Should there be similar constraints on the types of assets that can be received by an AQUA Product issuer by way of collateral under a securities lending arrangement or prime brokerage agreement? If so, why? If not, why not?

**Question 7.6.4:** Are there any other issues with the provisions in the AQUA Rules regulating the use of OTC derivatives that you would like to see addressed in any re-write of the AQUA Rules? If so, please provide details and explain the reasons why.

## 7.7 Ancillary liquid assets and incidental investments

**Question 7.7.1:** Do you support the introduction of provisions into the AQUA Rules to recognise that from time to time an AQUA Product issuer may hold ancillary liquid assets or incidental investments that are not directly related to achieving its investment objective? If so, how would you frame those rules? If not, why not?

**Question 7.7.2:** Do you think there should be a limit on the amount (eg a maximum percentage of the underlying fund) that an AQUA Product issuer can hold in the form of ancillary liquid assets? If so, what should that limit be? If not, why not?

**Question 7.7.3:** Do you think there should be a limit on the time that an AQUA Product issuer can hold incidental non-complying investments before they are replaced by investments consistent with its investment mandate? If so, what should that limit be? If not, why not?

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# 8. Portfolio disclosure

## 8.2 Listed Investment Product portfolio disclosure requirements

**Question 8.2.1:** Do you support replacing the requirement for LICs and LITs to disclose in their annual report a list of all of their investments, with a requirement that they instead disclose this information on a quarterly basis by no later than the end of the month after quarter end? If so, why? If not, why not?

**Question 8.2.2:** Do you have any thoughts on the guidance that ASX should give to the market on the level of detail that should be included in periodic disclosures by LICs and LITs of their investment portfolio? If so, please tell us.

**Question 8.2.3:** Do you agree with ASX's position that REITs and IFs should not be subject to any additional portfolio disclosure requirements and should be treated on the same footing as other (non-investment) listed entities in this regard? If not, why not?

## 8.3 AQUA Product portfolio disclosure requirements

**Question 8.3.1:** Would you support shortening the period that an ETP with internal market making arrangements can delay disclosing its portfolio from up to 2 months after quarter end to one month after quarter end? If so, why? If not, why not?

**Question 8.3.2:** Do you support the introduction of an AQUA Rule requiring an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to disclose the level 1, level 2 and level 3 inputs it uses to value its investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement* (or its equivalent overseas) in its annual financial statements. If not, why not?

# 9. Management agreements

## 9.2 Listed Investment Product management agreements

**Question 9.2.1:** Should the Listing Rules require a listed entity (including, but not limited to, a LIC, LIT, REIT or IF) to immediately disclose to ASX the material terms of any new management agreement it enters into and also any material variation to an existing management agreement? If not, why not?

**Question 9.2.2:** Should the requirement for LICs and LITs to include in their annual report a summary of any management agreement that they have entered into be extended to all listed entities, including REITs and IFs? If not, why not?

**Question 9.2.3:** Should the constraints imposed by Listing Rule 15.6 on the terms LICs and LITs must include in any management agreement they enter into be extended to all listed entities, including REITs and IFs? If not, why not?

## 9.3 AQUA Product management agreements

**Question 9.3.1:** Do you agree that the AQUA Rules should require an AQUA Product issuer to immediately disclose to ASX the material terms of any new management agreement it enters into and also any material variation to an existing management agreement? If not, why not?

**Question 9.3.2:** Do you agree that the AQUA Rules should require an AQUA Product issuer to include in its annual report a summary of any management agreement that it has entered into? If not, why not?

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# 10 Management fees and costs

## 10.2 LIC management fees and costs

**Question 10.2.1:** Since most LITs, REITs and IFs are already required to comply with the enhanced fees and costs disclosure requirements set out in Part 7.9 Division 4C and Schedule 10 of the Corporations Regulations, would there be benefits in requiring LICs to present the same information about management fees and costs (at a company level rather than an individual investor level) in their annual report? If not, why not?

**Question 10.2.2:** Are there any difficulties that you can foresee in applying the enhanced fees and costs disclosure requirements to LICs? If so, what are they and how could they be addressed?

**Question 10.2.3:** If you do not support the application of the enhanced fees and costs disclosure requirements to LICs, what information would you have them report about management fees and costs in their annual report?

# 11. Performance reporting

## 11.2 Listed Investment Product performance reporting requirements

**Question 11.2.1:** Do you support changing the requirement that LICs and LITs presently have under the Listing Rules to report their NTA backing on a monthly basis with requirements that:

(a) regardless of when they do it, whenever they formally calculate an NTA backing, they must give the NTA backing and the "as at" date it was calculated to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website and also publish it on the issuer's own website, and

(b) they publish on MAP their NTA backing on a quarterly basis, by no later than one month after quarter end?

If not, why not?

**Question 11.2.2:** Do you agree with the definition of "NTA backing" in the Listing Rules? If not, how would you amend it? In particular:

(a) Do you see merit in including examples of the intangible assets captured by the variable "I" in the definition and, if so, what would you include in those examples (commenting specifically on whether you would, or would not, include deferred tax assets and prepayments as "intangible assets" for these purposes)?

(b) In the case of lease right of use assets, do you agree with the policy position taken by ASX in other contexts that for the purposes of determining a Listed Investment Product's NTA backing under the Listing Rules, the lease right of use asset should be treated as tangible if the underlying asset being leased is tangible and intangible if the underlying asset being leased is intangible?

(c) Do you think the variable "L" in the definition adequately addresses taxation issues (including the different tax treatment of companies and trusts and how deferred tax liabilities should be accounted for)?

(d) Do you think the variable "N" in the definition adequately deals with partly paid securities?

(e) Do you also have a view on whether options should be counted in "N" if they are in the money at the relevant calculation date?

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**Question 11.2.3:** Do you support REITs and IFs being required to include in their annual report the NTA backing of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period, similar to what is currently required of LICs and LITs? If not, why not?

**Question 11.2.4:** Do you support LICs, LITs, REITs and IFs being required to include in their annual report their TSR for different nominated periods? If so, how would you define "TSR" and for what periods do you think they should report their TSR? If not, why not?

**Question 11.2.5:** Should a LIC, LIT, REIT or IF that has as its investment objective replicating or exceeding the return on a particular index or benchmark be required to include in its annual report a comparison of its performance against that index or benchmark over the reporting period? If so, how should it go about making that comparison? If not, why not?

**Question 11.2.6:** Are there any other performance metrics that you think LICs, LITs, REITs and IFs should be required to report to their investors? If yes, what are those metrics and where and with what frequency should those metrics be published?

## 11.3 AQUA Product performance reporting requirements

**Question 11.3.1:** Do you agree that ETSPs that take the form of a Collective Investment Product should be required to disclose their NAV on a daily basis? If not, why not?

**Question 11.3.2:** Do you support the proposed amendment to the AQUA Rules requiring ETFs and ETMFs (and, if you have answered Question 11.3.1 in the affirmative, those ETSPs that take the form of Collective Investment Products) to give their NAV and the "as at" date it was calculated to ASX for publication on the Listed Investment Products and AQUA Products information page on the ASX website, as well as publish it on the issuer's own website? If not, why not?

**Question 11.3.3:** Do you think the term "NAV" should be defined in the AQUA Rules? If so, how would you define it? Are there any elements of the definition of "NTA backing" in the Listing Rules that you think ought to be incorporated in the definition of "NAV" in the AQUA Rules? If so, please explain.

**Question 11.3.4:** Do you support ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products being required to include in their annual report the NAV per share/unit of their quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period? If not, why not?

**Question 11.3.5:** Do you support ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products being required to include in their annual report their TSR for different nominated periods? If so, how would you define "TSR" and for what periods do you think they should report their TSR? If not, why not?

**Question 11.3.6:** Should an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product which has as its investment objective replicating or exceeding the return on a particular index or other benchmark be required to include in its annual report a comparison of its performance against that index or benchmark over the reporting period? If so, how should it go about making that comparison? If not, why not?

**Question 11.3.7:** Are there any other performance metrics that you think ETFs, ETMFs, or ETSPs that take the form of a Collective Investment Product should be required to report to their investors? If yes, what are those metrics and where and with what frequency should those metrics be published?

## 11.4 A possible uniform reporting standard

**Question 11.4.1:** Do you support ASX introducing a new Listing Rule and AQUA Rule mandating the use of FSC Standard 6 for all ASX listed or quoted Collective Investment Products to calculate their TSR? If not, why not?

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**Question 11.4.2:** Are there any difficulties that you can foresee in applying FSC Standard 6 to LICs or ETFs? If so, what are they and how could they be addressed?

**Question 11.4.3:** If you don't support mandating the use of FSC Standard 6 for all ASX listed or quoted Collective Investment Products to calculate their TSR, what standard would you recommend?

# 12 Liquidity support

## 12.2 AQUA Product liquidity support requirements

**Question 12.2.1:** Are there any issues with the existing liquidity support arrangements for AQUA Products that you would like to see addressed in any re-write of the AQUA Rules?

## 12.3 Warrant liquidity support requirements

**Question 12.3.1:** Are there any issues with the existing liquidity support arrangements for Warrants that you would like to see addressed in any re-write of the Warrant Rules?

## 12.4 Listed Investment Product liquidity support requirements

**Question 12.4.1:** Do you think that it might assist the share/unit price of a LIC/LIT to track its NTA backing more closely if the LIC/LIT were to publish an indicative NTA backing to the market during market hours that is independently calculated and frequently updated? If so, why? If not, why not?

**Question 12.4.2:** As a fall-back, do you think that it might assist the share/unit price of a LIC/LIT to track its NTA backing more closely if the LIC/LIT were to publish an independently calculated end-of-day indicative NTA backing to the market prior to the commencement of trading on the next trading day? If so, why? If not, why not?

**Question 12.4.3:** Noting that there will be some LICs/LITs with asset portfolios that are net readily valued on a frequent basis or for which an iNAV may not necessarily be all that accurate, if your answer to question 12.4.1 or 12.4.2 is "yes", how would you go about identifying those LICs/LITs that would benefit from publishing more frequent information about their iNAV and encouraging them to do so?

**Question 12.4.4:** Short of allowing LICs and LITs to have treasury stock, are there any changes that could be made to the laws in Australia regulating buy-backs that might assist LICs and LITs to better address the propensity for their securities to trade at a discount to the NTA backing? If so, what are they and how would they help?

**Question 12.4.5:** Are there any other measures that could be implemented to address the propensity for the securities of a LIC or LIT to trade at a discount to the NTA backing? What are they and how would they help?

## 12.5 AQUA Products with dual on-market/off-market entry and exit mechanisms

**Question 12.5.1:** Do you have any views about hybrid structures where an AQUA Product has dual on-market/off-market entry and exit mechanisms? What do you see as the advantages and disadvantages of these hybrid structures? Do you see any particular risks associated with, or have any other concerns about, these hybrid structures that you would like to see addressed in any re-write of the AQUA Rules?

# 13. The mFund Settlement Service

## 13.2 The funds that qualify for admission to the mFund Settlement Service

**Question 13.2.1:** Do you support amending the AQUA Rules to allow any Unlisted Managed Fund that is registered as a managed investment scheme in Australia to be admitted to settlement via the mFund Settlement Service? If not, why not?

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**Question 13.2.2:** Do you support amending the AQUA Rules to allow any entity that qualifies to be an Approved Issuer of AQUA Products and can lawfully offer its shares or units to retail investors in Australia to be admitted to settlement via the mFund Settlement Service? If not, why not?

**Question 13.2.3:** Are there additional things ASX could or should require of mFunds or brokers transacting in mFunds for their clients, over and above the protective measures mentioned in sections 13.3 and 13.4 of this consultation paper, to reduce the risk of retails clients not understanding that mFund units are not traded on ASX or the different settlement cycles that apply to mFunds compared to products that are traded on ASX?

**Question 13.2.4:** Are there additional things ASX could or should do itself (for example, with the disclosures and disclaimers on the ASX mFund website) to reduce the risk of retails clients not understanding that mFund units are not traded on ASX or the different settlement cycles that apply to mFunds compared to products that are traded on ASX?

## 13.3 The obligations of mFunds

**Question 13.3.1:** Are there any particular mFund obligations mentioned in section 13.3 of the consultation paper that you view as unnecessary or unduly onerous on mFunds? Please explain your view and put forward any suggestions you may have to reduce the burden of these requirements without compromising investor protections?

## 13.4 The obligations of brokers transacting in mFunds

**Question 13.4.1:** Are there any particular obligations imposed on ASX trading participants entering into transactions for their clients in mFunds mentioned in section 13.4 of this consultation paper that you view as unnecessary or unduly onerous on those participants? Please explain your view and put forward any suggestions you may have to reduce the burden of these requirements without compromising investor protections.

## 13.5 mFund profiles

**Question 13.5.1:** Do you support the AQUA Rules being amended to require an mFund to provide a Fund Profile to ASX and to keep it up to date? If not, why not?

**Question 13.5.2:** What additional information do you think could be usefully captured in an mFund's Fund Profile?

## 13.6 Information about an mFund's NAV

**Question 13.6.1:** Do you see benefit in an STP service for mFunds that would allow them to upload their NAV and the "as at" date at which it was calculated directly onto the mFund information page on the ASX mFund website and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

## 13.7 Information about an mFund's issues and redemptions

**Question 13.7.1:** Do you support the proposed amendments to the AQUA Rules to require an mFund to publish on MAP and on the mFund issuer's website on a quarterly basis the amount and value of units it has issued or redeemed that quarter? If not, why not?

**Question 13.7.2:** Do you see benefit in an STP service for mFunds that would allow them to upload their issue and redemption prices and the respective "as at" dates for which they were determined directly onto the mFund information page on the ASX mFund website and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

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### 13.8 Information about an mFund's total units on issue

**Question 13.8.1:** Do you see benefit in an STP service for mFunds that would allow them to upload the total number of units they have on issue directly onto the mFund information page on the ASX mFund website and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

**Question 13.8.2:** How often do you think an mFund should be obliged to update information about the total number of units it has on issue: quarterly, monthly, weekly or daily?

### 13.9 Information about an mFund's distributions

**Question 13.9.1:** Do you see benefit in an STP service for mFunds that would allow them to use a smart online form to provide and publish on MAP more comprehensive information about their dividends and distributions and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

### 13.10 DDO information

**Question 13.10.1:** Are there any additional documents or information that could be published on the ASX mFund website that may assist mFunds in complying with their DDO? For example, would it be helpful to mFunds if their Target Market Determination could be published on that website? Should there be a rule making this mandatory?

### 13.11 Collection of additional investor information

**Question 13.11.1:** Are there any additional data points about investors that could usefully be captured through the mFund Settlement Service that would help mFunds to better perform their back office processes? If so, what are those data points and how do they assist mFunds in performing their back office processes?

### 13.12 Transfers of units in mFunds

**Question 13.12.1:** Do you see benefit in the replacement CHESS settlement system having the functionality to process transfers of mFund units? How much use do you think this functionality would receive in practice?

### 13.13 A wholesale mFund service?

**Question 13.13.1:** Do you see benefit in ASX developing a parallel settlement service to the mFund Settlement service designed specifically for wholesale investors? If so, what features do you think that parallel service should have to attract Unlisted Managed Funds and wholesale investors to the service?

### 13.14 Extending mFund to a broader class of financial products?

**Question 13.14.1:** Do you see benefit in ASX developing an mFund-style settlement service for other financial products that are traditionally provided on an OTC basis? What products do you think might usefully benefit from such a service? What features do you think that service should have to attract both product issuers and investors to the service?

## 14. Better information for investors about Investment Products

### 14.2 Information to be captured on Collective Investment Products

**Question 14.2.1:** Do you support there being an information page on the ASX website for the Collective Investment Products traded on ASX and the Listing Rules and AQUA Rules being amended to facilitate the capture of the information needed to populate that page?

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**Question 14.2.2:** How often do you think an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product should be obliged to update information about the total number of shares/units it has on issue: quarterly, monthly, weekly or daily?

**Question 14.2.3:** Are there any additional documents or information that could be published on the proposed information page on the ASX website for the Collective Investment Products traded on ASX that may assist issuers in complying with their DDO. For example, would it be helpful to issuers if their Target Market Determination could be published on that website? Should there be a rule making this mandatory?

### 14.3 Information to be captured on Derivative Investment Products

**Question 14.3.1:** Do you support there being an information page on the ASX website for the Derivative Investment Products traded on ASX and the AQUA Rules and the Warrant Rules being amended to facilitate the capture of the information needed to populate that page?

### 14.4 Information about AQUA Product issues and redemptions

**Question 14.4.1:** Do you support the AQUA Rules being amended to require ETFs, ETMFs, and ETSPs that take the form of Collective Investment Products to publish on MAP and on the issuer's website on a quarterly basis the amount and value of units they have issued and redeemed that quarter? If not, why not?

### 14.5 Information about AQUA Product dividends and distributions

**Question 14.5.1:** Do you see benefit in an STP service for AQUA Product issuers that would allow them to use a smart online form to provide and publish on MAP more comprehensive information about their dividends and distributions and are you supportive of the proposed changes to the AQUA Rules to facilitate that service?

### 14.6 Collection of additional investor information

**Question 14.6.1:** Are there any additional data points about investors that could usefully be captured through the CHESS settlement system that would help issuers of Listed Investment Products or AQUA Products to better perform their back office processes? If so, what are those data points and how do they assist issuers in performing their back office processes?

## 15. Miscellaneous issues

### 15.2 The AQUA Quote Display Board

**Question 15.2.1:** Were you aware of the existence of the QDB?

**Question 15.2.2:** Do you consider that the QDB serves any useful purpose in relation to AQUA Products? Should ASX retain the current QDB service for AQUA Products or scrap it?

**Question 15.2.3:** Are there any improvements that ASX could make to the QDB that might make it more likely to be used by AQUA Product issuers?

**Question 15.2.4:** If the QDB could be extended to other financial products apart from AQUA Products and the capacity to quote prices could be made available to all participants and not just participants representing AQUA Product issuers, would the QDB be a service of interest to you? How might you see yourself using that service?

### 15.3 Admission application forms and processes

**Question 15.3.1:** Have you had any recent experience of applying to be admitted to the ASX official list as a LIC, LIT, REIT or IF? If so, do you have any suggestions on how the application forms and processes for the admission of LICs, LITs, REITS and IFs to the official list could be improved?

**Question 15.3.2:** Have you had any recent experience for applying for the quotation of AQUA Products using the upgraded application forms and processes that ASX introduced in 2019? If so, do you have any suggestions on how the upgraded application forms and processes for AQUA Products could be improved?

**Question 15.3.3:** Have you had any recent experience of applying for the quotation of Warrants? If so, do you have any suggestions on how the application forms and processes for the admission of Warrants to quotation could be improved?

**Question 15.3.4:** Do you have any other suggestions on systems or process enhancements that ASX could make to assist Warrant issuers with the ongoing maintenance and refreshing of data related to Warrants?

## 15.4 Any other issues with ASX's Investment Product rules

**Question 15.4.1:** Are there any other issues that you would like to see addressed in any re-write of the Listing Rules applicable to LICs, LITs, REITs and IFs, or the AQUA Rules or Warrant Rules?

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## Annexure B – Glossary

| | |
|---|---|
| AML/CTFA | Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) |
| Approved Issuer | an issuer approved to issue AQUA Products under the AQUA Rules or Warrants under the Warrant Rules |
| AQUA Product | an ETF, ETMF or ETSP subject to the AQUA Rules |
| AQUA Rules | the rules in Schedule 10A of the ASX Operating Rules |
| ASIC | Australian Securities and Investments Commission |
| ASX | ASX Limited |
| CCIV | a corporate collective investment vehicle registered under Chapter 8B of the Corporations Act |
| Collective Investment Product | a share or unit in a LIC, LIT, REIT, IF, ETF, ETMF, or ETSP that is structured as an interest in a collective investment vehicle |
| Corporations Act | Corporations Act 2001 (Cth) |
| Corporations Regulations | Corporations Regulations 2001 (Cth) |
| Derivative Investment Product | an ETSP that is structured as a derivative-style instrument, or a Warrant |
| DDO | The design and distribution obligations in Part 7.8A of the Corporations Act |
| DLT | distributed ledger technology |
| ETF | exchange traded fund |
| ETMF | exchange traded managed fund |
| ETP | exchange traded product (the term ASIC uses in INFO 230 to refer to AQUA Products and the equivalent products traded on Cboe Australia) |
| ETSP | exchange traded structured product |
| FSC | Financial Services Council |
| FSC Standard 6 | FSC Standard No. 6: *Investment Option Performance - Calculation of Returns* July 2018 |
| FUM | funds under management |
| GIPS | the Global Investment Performance Standards published by the CFA Institute |
| GN 26 | ASX Listing Rules Guidance Note 26 *Management Agreements* |
| HIN | holder identification number |
| IF | infrastructure fund (proposed to be called an "infrastructure investment entity" in ASX's revised Listing Rules) |
| iNAV | indicative NAV |
| Investment Product | a Listed Investment Product, AQUA Product or Warrant |
| IPO | initial public offering |

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| | |
|---|---|
| INFO 230 | ASIC Information Sheet 230 *Exchange traded products: Admission guidelines* |
| KYC | know your client |
| LIC | listed investment company (proposed to be called a “financial investment entity” in ASX’s revised Listing Rules) |
| Listed Investment Product | a share or unit in a LIC, LIT, REIT or IF admitted to the official list of ASX |
| Listing Rules | the ASX Listing Rules |
| LIT | listed investment trust (also proposed to be called a “financial investment entity” in ASX’s revised Listing Rules) |
| mFund | an Unlisted Managed Fund participating in the mFund Settlement Service |
| mFund Settlement Service | the settlement service operated by ASX under section 18 of the ASX Settlement Operating Rules |
| NAV | net asset value |
| NFPF | notified foreign passport fund |
| NTA | net tangible assets |
| OTC | over-the-counter |
| PDS | product disclosure statement |
| PISP | product issuer settlement participant |
| QDB | AQUA Quote Display Board |
| RE | responsible entity |
| REIT | real estate investment trust (proposed to be called a “real estate investment entity” in ASX’s revised Listing Rules) |
| RG 94 | ASIC Regulatory Guide 94 *Unit pricing: Guide to good practice* |
| RG 97 | ASIC Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* |
| RPP | regular payment plan |
| RWP | regular withdrawal plan |
| STP | straight-through processing |
| Target Market Determination | the determination made in accordance with a product issuer’s DDO |
| TSR | total shareholder/unitholder return |
| Unlisted Managed Fund | a managed fund that is not admitted to the official list of ASX and is not admitted to trading on the ASX AQUA market or the Cboe Australia market |
| Warrant | a warrant under the Warrant Rules |
| Warrant Rules | the rules in Schedule 10 of the ASX Operating Rules |

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