



June 22, 2022

ASX Limited  
P.O. Box H224  
Australia Square  
Sydney, NSW 1215  
Attention: Mr. Kevin Lewis

Sent electronically to: [kevin.lewis@asx.com.au](mailto:kevin.lewis@asx.com.au)

**Re: Comments regarding ASX Public Consultation Question 8.3.1**

Dear Mr. Lewis:

Blue Tractor Group, LLC (“Blue Tractor”) is pleased to provide ASX Limited (“ASX”) with comments pertaining to the ASX’s April 26, 2022 public consultation document entitled *Enhancing the ASX Investment Products Offering* (the “ASX Consultation Document”) <sup>1</sup>.

Note that Blue Tractor has limited its response to Question 8.3.1 in the ASX Consultation Document, which asks:

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?

**Blue Tractor Group, LLC**

Based in New York City, Blue Tractor developed the Shielded Alpha<sup>®</sup> semi-transparent exchange traded fund (“ETF”) wrapper for active portfolio management <sup>2,3</sup>. The Shielded Alpha<sup>®</sup> structure received its regulatory exemptive relief under the Investment Company Act of 1940 by way of approval Orders from the United States Securities and Exchange Commission (“SEC”) in December 2019 and March 2021 <sup>4,5</sup>.

A semi-transparent wrapper provides active managers with an ETF structure that obscures, or shields, their actual portfolio on a daily basis from the capital markets, while still providing sufficient metrics and

<sup>1</sup> <https://www2.asx.com.au/about/regulation/public-consultations>

<sup>2</sup> See <https://www.sec.gov/Archives/edgar/data/1668791/000168035919000611/bluetractor40appa10232019.htm> for Blue Tractor’s application dated October 23, 2019 that received an approval Order from the SEC on December 10, 2019 authorizing use of the Shielded Alpha<sup>®</sup> ETF wrapper.

<sup>3</sup> See <https://www.sec.gov/Archives/edgar/data/1668791/000113743921000048/bt40appamend01192021.htm> for a subsequent application from Blue Tractor dated January 19, 2021 that received an approval Order from the SEC on March 9, 2021 authorizing use of Custom creation and redemption baskets for the Shielded Alpha<sup>®</sup> ETF wrapper.

<sup>4</sup> See <https://www.sec.gov/Archives/edgar/data/0001668791/999999999719007792/9999999997-19-007792-index.htm> for the December 10, 2019 SEC approval Order.

<sup>5</sup> See <https://www.sec.gov/Archives/edgar/data/0001668791/999999999721001094/9999999997-21-001094-index.htm> for the March 9, 2021 SEC approval Order.

information so that the ETFs trade efficiently in both the primary and secondary markets. The key benefit to the active manager is that through the portfolio protection conferred by the semi-transparent wrapper, predatory traders are unable to reverse engineer the actual underlying portfolio, thereby protecting the portfolio manager's proprietary strategy. And because all portfolio trading actively is also obfuscated, front-running the actively managed portfolio is inhibited, thereby preserving fund returns and ultimately shareholder wealth.

Blue Tractor has licensed the Shielded Alpha® semi-transparent ETF wrapper to asset managers and service providers domiciled in the United States. Actively managed ETFs employing the Blue Tractor wrapper are listed on the NYSE Arca and Nasdaq stock exchanges and further issuances have been announced<sup>6, 7, 8</sup>.

### **Semi-Transparent ETF Compared to a Fully Transparent ETF**

Under its SEC exemptive relief, an actively managed ETF using the Shielded Alpha® semi-transparent wrapper is not required to publish daily the actual portfolio contents (i.e., all portfolio names and actual percentage weightings a.k.a. a *pro rata* slice). In lieu of full portfolio transparency, the fund publishes a daily basket that holds all portfolio names, but the actual correct percentage weightings for each security are scrambled by the proprietary Blue Tractor algorithm, so as to obscure actual portfolio holdings. The scrambled weightings conform to a framework whereby the aggregate overlap between the weightings in the basket and the weightings in the actual portfolio are at least 90%.

Every day a new basket is published with randomly scrambled weightings, even if no changes to the underlying portfolio have been made. Moreover, because the Blue Tractor wrapper is a cloud hosted service a manager can quickly and efficiently modify one or more security weightings in the published basket to further obfuscate trading activity, including when entering a new portfolio position or exiting from one.

The Blue Tractor wrapper is designed to provide an optimal balance between the transparency the capital markets require to trade efficiently in the primary and secondary markets, combined with the opacity an active portfolio manager desires to protect their confidential portfolio strategy and trading activity.

More information about Blue Tractor and the Shielded Alpha® ETF wrapper is available at [bluetractorgroup.com](http://bluetractorgroup.com).

### **U.S. Semi-Transparent ETF Market**

The SEC granted exemptive relief to six (6) semi-transparent ETF structures in 2019, including Blue Tractor<sup>9</sup>. The actively managed semi-transparent ETF space is a nascent and growing segment in the ETF market in the United States. Approximately 60 ETFs have been launched since April 2020 on the NYSE Arca, Nasdaq and Cboe exchanges, representing over U.S. \$4 billion in assets under management ("AUM")<sup>10</sup>.

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<sup>6</sup> <http://stancefunds.com/>

<sup>7</sup> <https://www.alpsfunds.com/products/etf/REIT>

<sup>8</sup> <https://www.globenewswire.com/news-release/2022/04/11/2420281/0/en/Blue-Tractor-Group-Announces-Licensing-Agreement-With-Summit-Global-Investments.html>

<sup>9</sup> Precidian (Franklin Templeton), Fidelity Investments, New York Stock Exchange/Natixis, Invesco, T. Rowe Price & Blue Tractor

<sup>10</sup> <https://www.nyse.com/products/exchange-traded-products/active-semi-transparent/updates/2022-05-23>

Wall Street trading firms are comfortable with the semi-transparent ETF structures; the average bid/ask spread for these issued products is currently approximately 21 basis points, demonstrating their efficient trading dynamics despite the current market volatility brought on from the Ukraine crisis, rising rates & commodity prices and fears of a global recession.

Highly respected trading firms acting as Lead Market Makers in these products includes Citadel Securities, GTS Mischler, Virtu, RBC Capital Markets and Flow Traders. Globally recognized banks acting as Authorized Participants for these products includes Goldman Sachs, Bank America Merrill Lynch, Bank of New York and UBS, amongst others.

### **Australian ETF Portfolio Transparency**

The ASX Consultation Document on page 42 summarizes the policy of the Australian Securities & Investments Commission (“ASIC”) regarding daily ETF portfolio transparency; more fully described in the ASIC Information Sheet 230 Exchange traded products: Admission Guidelines [INFO 230]:

*“We [ASIC] 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...”*

ASIC’s policy on published daily portfolio transparency for both passive and actively managed ETFs is in line with Rule 6c-11 at the SEC and the feedback questions to DP6 by the Central Bank of Ireland; two regulatory bodies that oversee the vast majority of global ETF AUM <sup>11, 12</sup>.

However, the ASX Consultation Document also highlights three (3) situations where listed actively managed ETFs do not have to provide daily portfolio transparency.

First, an ASIC policy amendment known as Class Order [CO 13/721] permits an ETF to privately disclose a portfolio to an authorized participant on Day T, but that portfolio must be made available to the overall market on Day T+1.

Second, under INFO 230 an ETF can arrange for *internal market making* processes which allows the fund to disclose daily on a confidential basis the actual fund portfolio to a market maker, while only publishing a snapshot of its actual portfolio on a lagged basis (currently quarterly, with a two-month lag).

And finally, also under INFO 230 an ETF is permitted to negotiate with a market maker to provide substitute portfolio information in lieu of actual daily full portfolio transparency. This substitute information might be a proxy portfolio and other market metrics (and is known as *material portfolio information (MPI)* disclosure). A fund can negotiate its own version of MPI and the standard and quality of disclosure between funds could vary considerably depending upon business and capital market dynamics at the time of negotiation. Again, a snapshot of the actual portfolio must be published quarterly (with a two-month lag).

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<sup>11</sup> [SEC.gov | SEC Adopts New Rule to Modernize Regulation of Exchange-Traded Funds](#)

<sup>12</sup> [Feedback Statement on Exchange Traded Funds \(centralbank.ie\)](#)

The INFO 230 exemptions for full portfolio transparency are designed for an active manager wishing to obscure their confidential portfolio and trading activity from the capital markets.

**Response to Question 8.3.1**

We respectfully suggest that the successful launch of semi-transparent ETFs in the United States provides the ASX (and ultimately ASIC) with a roadmap to permit semi-transparent wrappers to be used by asset managers seeking to list actively managed ETFs on the ASX that also confer portfolio protection.

Australian ETF regulations could be streamlined by doing away with portfolio disclosure exceptions under [CO 13/721] and INFO 230 permitting internal market making and MPI disclosure.

For example, use of the Blue Tractor Shielded Alpha® ETF wrapper would negate the need for funds to enter into a private *internal market making* process and would provide the capital markets with a level-playing field for all market participants, because all parties view the same daily published basket.

Moreover, the algorithmic methodology underpinning the Shielded Alpha® ETF wrapper is market tested and proven to be robust, despite the current global market turmoil. Regulators can therefore be assured that the “MPI” disseminated by the daily Blue Tractor basket is highly correlated to the actual undisclosed portfolio and that this MPI is consistent across all ETFs using the methodology.

To that end, our core response to Question 8.3.1 is that it is in the interest of all Australian investors and the capital markets to do away with any private dealings between fund managers and market makers and instead provide a level-playing field for all through use of the semi-transparent ETF wrappers now in use in the United States.

Of course, we fully respect that the ASX and ASIC would want to conduct a methodical authorization process and undertake due diligence on the structures now in use in the United States. Blue Tractor would be pleased to work closely with the ASX and ASIC on this initiative.

Thank you for the opportunity to provide the ASX with comments. Blue Tractor welcomes any follow-on questions the ASX may have.

Sincerely,

Simon Goulet

Co-Founder

Blue Tractor Group, LLC

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