

# Response to ASX Consultation Paper

## Enhancing the ASX Investment Products Offering (16 April 2022)



Name: Financial Services Council

Date: 30 June 2022

Not confidential

Consultation Question	Our Response
<p><b>2.2 Some threshold rule issues - Why three separate rule books?</b></p>	
<p><b>Question 2.2.1:</b> 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?</p>	<p><b>Answer:</b> We are generally in support of consolidating the rule books to make it simpler for issuers, however it needs to recognise the structure and operational requirements of each product including ETFs. There are currently AQUA Rules which are based off the Warrant Rules and do not consider the complexity of ETFs – for example the staggered opening auctions.</p> <p>We support the concept of having two rule books – one for structured products, including warrants and one for ETP's.</p>
<p><b>Question 2.2.2:</b> 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?</p>	<p><b>Answer:</b> We have no comments on Warrants being a subcategory of ETSPs. We are supportive of ETFs not being linked with structured products. These categories if public should align to the ASIC consultation on naming convention when finalised.</p>
<p><b>Question 2.2.3:</b> 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?</p>	<p><b>Answer:</b> We do not consider that the name AQUA has any currency with investors and advisors. To them such products are “listed on the ASX”. We do not see any benefit in maintaining the AQUA name.</p>

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<b>3.2 Approved issuers - Approved issuers of AQUA Products and Warrants</b>	
<p><b>Question 3.2.1:</b> Should the list of Approved Issuers of AQUA Products and Warrants be expanded to include entities that are prudentially regulated by an <b>overseas regulator equivalent to APRA</b>? If not, why not?</p>	<p><b>Answer:</b> Yes, where this relates to those jurisdictions which are acceptable to APRA and ASIC.</p>
<p><b>Question 3.2.2:</b> 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?</p>	<p><b>Answer:</b> Not at this stage.</p>
<b>3.3 Approved issuers - Financial products excluded from being AQUA Products</b>	
<p><b>Question 3.3.1:</b> 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?</p>	<p><b>Answer:</b> Yes as this generally relates to transparency and secondary market pricing. Our answer to this question is from an ETP Issuer perspective.</p>
<p><b>Question 3.3.2:</b> 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?</p>	<p><b>Answer:</b> No, the current rule is adequate, however it is unclear what is meant by ‘controlling interest’ i.e. is this meant to import the meaning from ASIC RG5?</p> <p>By way of further context, we note that we asked the ASX for feedback on what controlling interest refers to and we received from ASX on 9 June 2022 the following response: “The point we were getting to was that (arguably at least) an AQUA fund should be engaging in portfolio investments not trying to buy and sell control of companies.”</p> <p>Investment managers manage money on behalf of clients. The name on the register is the fund custodian and not the investment manager buying and selling control of the investment company. The only role of a manager is limited to governance and voting the shares on resolution.</p>

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<p><b>3.4 Approved issuers - Hybrid Listed/AQUA Product structures</b></p>	
<p><b>Question 3.4.1:</b> 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?</p>	<p><b>Answer:</b> There are no concerns provided that the disclosure obligations are the same for both classes. However if there is a disclosure obligation imbalance, then the most onerous set of obligations should apply to both classes.</p> <p>The underlying principal of treating all investors equally regardless of the access point must hold true. We understand that there is some debate on this point.</p> <p>All operational aspects for a seamless and scalable model must be in place in order for this mechanism to grow. This includes potential sharing of KYC/AML information and identifier for settlement.</p>
<p><b>4.2 Admission requirements and processes - Minimum fund size</b></p>	
<p><b>Question 4.2.4:</b> 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?</p>	<p><b>Answer:</b> We agree that it is not necessary to impose a minimum subscription or fund size requirement for AQUA Products as they are open ended and can be supported by market makers allowing for growth in the future.</p> <p>Funds below a particular scale have market maker requirements according to AQUA rules.</p>

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<p><b>Question 4.2.5:</b> 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?</p>	<p><b>Answer:</b> We do not believe that the ASX should need the power to order a wind-down of a product. It should be up to the issuer to make the decision whether they are running a sub-scale product.</p> <p>The focus of the ASX should only be to make a decision on whether a product is suitable to be quoted on the ASX (considering ongoing liquidity). If it is no longer suitable to be quoted, then the ASX can suspend the fund.</p> <p>If the fund is resulting in negative outcome for investors (e.g. not being able to get out of the product), or could result in a negative reputation for the overall product suite – in these circumstances the ASX should refer such a product to ASIC who has the relevant powers regarding product intervention powers (PIP). There are a number of important steps that ASIC undertakes before issuing a product intervention order, including consultation. See ASIC CP313 for more information.</p> <p>Whilst we do not support this, if the ASX were to have such a power there would need to be a clear and extensive period of consultation between the ASX and the Issuer, prior to the ASX being able to formally exercise such a power, noting that the powers and obligations on the issuer/trustee in the scheme constitution and the “higher best interests” obligations.</p>

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<b>5.2 Product names - Naming requirements for AQUA Products and Warrants</b>	
<p><b>Question 5.2.1:</b> 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?</p>	<p><b>Answer:</b> We are supportive of the ASX mandating the use of the ASIC naming conventions in INFO 230 (following the ASIC consultation), and we agree with the proposed requirements such as issuers having to seek approval from the ASX for a change in product name and providing ASX the power to require an issuer to change the name of the product if it’s misleading to retail investors or does not conform to INFO 230.</p> <p>The FSC supports having simple, clear and easy to understand ETF naming conventions which are applied consistently across the industry (and without discretion). We support the labelling of:</p> <ul style="list-style-type: none"> <li>• ETF</li> <li>• Active ETF; and</li> <li>• Complex ETF.</li> </ul> <p>Apart from the changes that resulted from revised INFO 230, we do not support market operators adding further labelling conditions in order to support retail investor understanding and have consistency across the industry.</p>
<b>5.3 Product names - Naming requirements for Listed Investment Products</b>	
<p><b>Question 5.3.3:</b> 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??</p>	<p><b>Answer:</b> Yes, LIPs should be prohibited from being described as an ETF.</p>

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<b>6.2 Investment mandates - Investment mandates for AQUA Products</b>	
<b>Question 6.2.1:</b> 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”?	<b>Answer:</b> Yes, as long as it has an investment objective and investment strategy component in the definition.

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<p><b>Question 6.2.2:</b> 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?</p>	<p><b>Answer:</b> We do not support this being applied to ETFs or ETMFs, that ASIC already has in place a framework for these kinds of products and the ASX should not seek to introduce overlapping requirements in this space.</p> <ul style="list-style-type: none"> <li>• <b>(existing requirements are sufficient)</b> these products are generally registered schemes which are subject to continuous disclosure obligations, which would effectively require the product issuer to notify investors of material changes to a fund’s investment mandate. Investors would also be notified through a market announcement of an issue of a new PDS. Investors, once notified, would be capable of exiting the fund at close to NAV by selling their units on-market due to the liquidity requirements in place for those funds if they did not approve of the changes. In our view these existing requirements are sufficient to protect investor interests; and</li> <li>• <b>(uncertainty about changes to an investment mandate)</b> there would be some uncertainty about what would amount to a change of a fund’s “investment mandate”, because that term is not precisely or measurably defined. For instance, if a product issuer changes the ESG exclusion list that it applies to a fund, but otherwise leaves the investment process, strategy and objective unchanged, would that amount to a change to an investment mandate? What about a change to the software or procedures adopted by the product issuer for the fund?</li> </ul>

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<p><b>Question 6.2.3:</b> 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?</p>	<p><b>Answer:</b> The ASIC breach reporting regime already covers this matter, with existing requirements in place for managed investment schemes to share reportable situations to ASIC, which include material breaches of investment mandate. So as an issuer of an ETF which is also a managed investment scheme, whilst we agree with the requirement for advising the market when there is a material breach of investment mandate we don't see the need for the ASX to mandate this requirement.</p>
<p><b>Question 6.2.4:</b> Should the AQUA Rules require an ETF, ETMF, or ETSP that takes the form of a Collective Investment Product to confirm in its <b>annual report</b> 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?</p>	<p><b>Answer:</b> We do not support this proposal and question the benefit to investors compared to the compliance cost of including and auditing a statement of mandate compliance in an annual report. Ensuring compliance with timely disclosure requirements, product naming conventions and performance reporting will likely provide more value to investors rather than an audited statement of compliance.</p>
<p><b>7.2 Permitted investments - Acceptable underlying instruments for AQUA Products</b></p>	
<p><b>Question 7.2.1:</b> 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 <b>reliable and transparent pricing framework</b>? If not, why not?</p>	<p><b>Answer:</b> Yes because it allows the ASX flexibility to assess other underlying instruments for AQUA Products on a case-by-case basis. If the ASX were to do this the ASX would need to consider:</p> <ul style="list-style-type: none"> <li>a) only accommodating new types of instruments which have gone through the appropriate due diligence / approval process by the ASX; and</li> <li>b) elaborating on, and provide guardrails, on what would be considered a "reliable and transparent pricing framework."</li> </ul>



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<p><b>Question 7.2.2:</b> 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.</p>	<p><b>Answer:</b> It would be better to have a list of prescribed index providers and new index providers continues to be the subject to a review by the ASX.</p> <p>Refer to ASIC INFO 225 – regarding eligible crypto assets. Inclusion of Crypto assets should be a on a ‘case by case basis’ as to whether it would be acceptable or not and the ASX should have regard of ASIC INFO 225 in relation to suitable cryptocurrency assets.</p>
<p><b>Question 7.2.3:</b> 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.</p>	<p><b>Answer:</b> No.</p>
<p><b>7.5 Permitted investments - Feeder-fund structures</b></p>	
<p><b>Question 7.5.1:</b> 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?</p>	<p><b>Answer:</b> We assume that this question is in relation to an AQUA Rules governed product ‘feeding’ into an unlisted underlying fund. On that assumption, we do not support the AQUA Rules applying on a standalone basis to the feeder fund, however we do not want products being developed to avoid the listing rules. There should be a materiality threshold in relation to this issue. Whilst we would not support the underlying fund having to disclose changes in the investment mandate however, if it resulted in changes at the headline level, then reporting to the ASX would occur – however it would be based on the change to the underlying fund but not the feeder fund.</p> <p>There is some ambiguity around what types of underlying funds the ASX is willing to accept in a feeder/interfund structure . It would be helpful to us if the ASX could provide further clarity on this. Refer also to our response to 3.3.2.</p>

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<b>7.6 Permitted investments - The use of derivatives</b>	
<p><b>Question 7.6.1:</b> 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?</p>	<p><b>Answer:</b> Yes. The list should be extended, which will provide more counterparties to support better execution and a better outcome for investors, but with a view on counterparty risk on the ETF and potential investment outcome.</p>
<p><b>Question 7.6.2:</b> 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&amp;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?</p>	<p><b>Answer:</b> Yes, specifically to credit bonds and semi-government bonds. This would assist with ETF products that have credit as part of their asset class. You don't want assets that don't correlate with the underlying fund to be held as collateral.</p>
<p><b>Question 7.6.3:</b> 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?</p>	<p><b>Answer:</b> Yes, as the collateral should match the product profile of the ETF.</p>
<p><b>Question 7.6.4:</b> 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.</p>	<p><b>Answer:</b> We support aligning the AQUA Rules with the naming convention rules in INFO 230 (currently under consultation), however where an inconsistency/conflict arises between the two, INFO 230 is the source of truth.</p>
<b>7.7 Permitted investments - Ancillary liquid assets and incidental investments</b>	
<p><b>Question 7.7.1:</b> 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?</p>	<p><b>Answer:</b> We support the recognition that AQUA Product issuers may need to hold ancillary liquid assets or incidental investments. However, the expression 'ancillary liquid assets or incidental investments' needs to be defined including a threshold to NTA taking into account any ASIC guidance to ensure no unintended disconnect.</p>

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<p><b>Question 7.7.2:</b> 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?</p>	<p><b>Answer:</b> No, in extreme liquidity events a portfolio manager needs to act in the best interests of the fund at the time. We assume that ‘underlying fund’ was intended to actually stated ‘fund’ or ‘product’ complementary to 7.7.3.</p>
<p><b>Question 7.7.3:</b> 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?</p>	<p><b>Answer:</b> No, in extreme liquidity events a portfolio manager needs to act in the best interests of the fund at the time. This restriction needs to be linked amount of ancillary assets and the ability for the manager to meet the investment objective without additional risks.</p>
<p><b>8.3 Portfolio disclosure - AQUA Product portfolio disclosure requirements</b></p>	
<p><b>Question 8.3.1:</b> 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?</p>	<p><b>Answer:</b> We do not support this. We think that the current position, requiring portfolio disclosure with a two month lag, is appropriate and we note that it was arrived at with proper consideration by ASX and by the issuers about the balance between the issuer’s confidential information and an informed market. ASX has not advanced any, and we do not see any, compelling reason why the existing position should be altered.</p>
<p><b>Question 8.3.2:</b> 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 <i>Fair Value Measurement</i> (or its equivalent overseas) in its annual financial statements. If not, why not?</p>	<p><b>Answer:</b> No. AASB 13 does not provide information in a meaningful way to investors who will not understand the information. The purpose of disclosure should be to enhance consumer understanding. It should also be in plain English. ETFs need to hold liquid investments as they need to redeem units on request. Valuing liquid investments is not mysterious. The ETF’s custodian subscribes to a number of data providers who provide the last trading prices. Furthermore, existing fund annual reports already include such details as it is a requirement under the applicable accounting standards.</p>

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<b>9.3 Management agreements - AQUA Product management agreements</b>	
<p><b>Question 9.3.1:</b> Do you agree that the AQUA Rules should require an AQUA Product issuer to immediately disclose to ASX the material terms of any new <b>management agreement</b> it enters into and also any material variation to an existing management agreement? If not, why not?</p>	<p><b>Answer:</b> It would be helpful if the ASX could clarify exactly what it means by management agreements. Is this specifically relating to <b>investment</b> management agreements and any agreements relating to a ‘RE-for-hire’ structure (see also 9.3.2).</p> <p>We assume that the reference ‘to ASX’ is ASX and not about a public disclosure through its ‘MAP’ and the question is about the Issuer itself and not about Products. The usual protocol of talking to ASX first then as to what/if any steps are to be taken. The requirements should not require disclosure of commercially sensitive information.</p>
<p><b>Question 9.3.2:</b> 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?</p>	<p><b>Answer:</b> No; The ASX should clarify exactly what it means by management agreements. Is this specifically relating to <b>investment</b> management agreements and any agreements relating to a ‘RE-for-hire’ structure (see also 9.3.1).</p> <p>We are assuming that this refers to agreements with service providers like registry, benchmark and administrators, which ASX is given copies of as part of a new product admission due diligence.</p> <p>These are confidential agreements with commercial terms and should not be shared in an annual report.</p>
<b>11.3 Performance reporting - AQUA Product performance reporting requirements</b>	
<p><b>Question 11.3.1:</b> 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?</p>	<p><b>Answer:</b> Yes. If there is going to be a single rule book (or two rule books per our answer to 2.2.1) for all such that are not a public equities companies.</p>

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<p><b>Question 11.3.2:</b> 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?</p>	<p><b>Answer:</b> No, this is a matter for the AQUA Product issuer/manager to determine where such information will be published. Just about all issuers publish the NAV on their respective websites. Mandating a requirement to publish this information on the ASX website is unwarranted, and in any case, must consider the benefit/value of investors compared to the cost of administering this information. Even with STP, an IT build is likely to be required to automate this process and the ongoing maintenance controls and costs must be considered in implementation.</p>
<p><b>Question 11.3.3:</b> 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.</p>	<p><b>Answer:</b> The majority of product disclosure statement (PDS) note that an ETF is either (a) a registered managed investment scheme with a single class of units quoted on the ASX; or (b) a class of units categorised as an ETF which is a class of units in an unlisted fund. Regardless, the NAV is simply total assets less total liabilities divided by the number of shares/units outstanding. If there is no defined methodology or well-understood market practice then we recommend that the FSC and the ASX work together to formalise one.</p>

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<p><b>Question 11.3.4:</b> 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?</p>	<p><b>Answer:</b> We do not support the additional information being included in annual report;</p> <ul style="list-style-type: none"> <li>• feedback from some members notes that unit redemption prices are disclosed as at 30 June for the current and previous financial year in the annual report. Whilst this does not specifically provide an explanation of the change over the period, the Statement of Comprehensive Income, Balance Sheet and Statement of Equity and accompanying Notes would provide that level of detail. We question the benefit to investor for adding an explanation line; and</li> <li>• the annual report is not a report that most investors read, and so this additional disclosure may not be meaningful to investors. Also it is unclear to us what would be expected for an “explanation of any change”. ETFs and ETMFs have their units priced daily and there would be an unaccountably high number of changes throughout the year. In simple terms, a NAV changes because the value of the underlying constituents change in value. See also response to 11.3.6 below.</li> <li>• In addition, we note that this information is already provided to retail investors in the form of periodic and exit statements, under section 1017D of the Corporations Act.</li> </ul> <p>The annual report should be governed by its specific accounting regulations and not be subject to a listing requirement.</p>

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<p><b>Question 11.3.5:</b> 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?</p>	<p><b>Answer:</b> As above, this is different to a listed stock, the annual report for managed fund is already subject to rules and auditor sign off.</p> <p>We oppose this requirement being included in the annual report. We consider that the annual report for such Products is not a type of report that most investors will read and we question whether this additional disclosure would be meaningful to investors. Further, these disclosures are provided by many funds more frequently so this additional disclosure may not be meaningful to investors. We are not aware of any annual reports for an AQUA Product giving rise to a price movement in response to the information in that report following its public release. If the ASX proceeds with this requirement however, then issuers should be provided with flexibility on where this is best communicated (e.g. marketing materials, website – not just the annual report).</p>

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<p><b>Question 11.3.6:</b> 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?</p>	<p><b>Answer:</b> No, we do not support this proposal. We would question the value of adding this information in the annual report – by the time the annual report is published there will have been more frequent and up to date information published by the issuer such as the NAV, portfolio holdings, performance (capital and income, and any adhoc announcements. Some members already disclose this via a Fact Sheet which sets out:</p> <ul style="list-style-type: none"> <li>• Returns assume than an investor purchased shares at Net Asset Value (NAV) and does not reflect the transaction costs imposed on the creation and redemptions of ETF units, brokerage or the bid ask spread that investors pay to buy and sell ETF securities on the Australian Securities Exchange</li> <li>• ETF gross returns are before management fees and taxes, but after transaction and operational costs. ETF total return is the ETF gross return less management fees.</li> <li>• Index returns do not allow for taxes, management, transaction and operational costs.</li> </ul> <p>Issuers should be able to determine which mechanism they will disclose relevant information. For the vast majority of Issuers this is their website.</p> <p>Should the ASX proceed with mandating further reporting/disclosure to investors however, then issuers should be given the flexibility to determine how this is to be implemented (e.g. marketing materials, website, etc).</p>



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Consultation Question	Our Response
<p><b>Question 11.3.7:</b> 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?</p> <p>No. Total returns (net of fees) and returns broken down by distribution vs. growth. We believe these metrics are useful to investors, for example members typically publish this type of information monthly in product fact sheets which are available publicly on each member’s website.</p>	<p><b>Answer:</b> No. We <u>oppose</u> the imposition by ASX of any such additional reporting obligation - disclosure of performance metrics should align between listed and unlisted managed funds. However, if this is imposed, then the issuer</p> <ul style="list-style-type: none"> <li>a) is only required to publish such information on its website as this is the appropriate ‘reporting’ mechanism for investors and financial professionals; or</li> <li>b) should be given the flexibility to determine how this is to be implemented (e.g. marketing materials, website, etc).</li> </ul>
<p><b>11.4 Performance reporting - A possible uniform reporting standard</b></p>	
<p><b>Question 11.4.1:</b> 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?</p>	<p><b>Answer:</b> The FSC has developed Standard 6 to provide consistency in performance calculations however we do not support mandating this in the ASX listing rules. Standard 6 is currently being converted into a Guidance Note, and whilst we expect the substance of the document to remain the same, we note that;</p> <ul style="list-style-type: none"> <li>• Standard 6 was not developed for quoted products (it explicitly excludes Exchange Traded Funds) and was developed for unlisted funds. For example, the requirement to calculate performance using the transaction price poses a challenge to quoted products that offer intra-day transactions as there can be multiple transactions during a trading day; and</li> <li>• we consider that the methodology is best set out in Standard 6 (or the relevant Guidance Note once converted to guidance) which is subject to periodic review and updating rather than listing rules.</li> <li>• If a methodology is to be mandated however, it is important that it also comes with a requirement/ability to disclose departure from the methodology.</li> </ul>

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Consultation Question	Our Response
<p><b>Question 11.4.2:</b> 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?</p>	<p><b>Answer:</b> The FSC does not support Standard 6 being mandated in the Listing rules for the reason outlined in response in 11.4.1.</p>
<p><b>Question 11.4.3:</b> 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?</p>	<p><b>Answer:</b> We do not recommend other standards as international standards have a different assumption around the timing of distribution reinvestments which can cause differences in performance, resulting in a more difficult comparison for investors.</p>
<p><b>12.2 Liquidity support - AQUA Product liquidity support requirements</b></p>	
<p><b>Question 12.2.1:</b> 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?</p>	<p><b>Answer:</b> We have received feedback from potential / new participants is that 'the requirements to satisfy ASX can be excessively onerous.</p>
<p><b>12.5 Liquidity support - AQUA Products with dual on-market/off-market entry and exit mechanisms</b></p>	
<p><b>Question 12.5.1:</b> 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?</p>	<p><b>Answer:</b> There is sometimes unclear reporting between listed and unlisted flows / volume traded due to hybrid structures. As hybrid structures continue, reporting should be differentiated between the on-market and off-market mechanisms. The split reporting will provide better clarity to the market and the industry. Otherwise the flows can seem inflated and could require some data analysis to try to get a better picture of flows. In any such reporting should be at a headline level broken down by the off-market and the on-market activity.</p> <p>We assume the disclosure obligations will be the same for an unlisted class as well as the listed class.</p>

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Consultation Question	Our Response
<b>13.2 The mFund Settlement Service - The funds that qualify for admission to the mFund Settlement Service</b>	
<p><b>Question 13.2.1:</b> 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?</p>	<p><b>Answer:</b> Yes.</p>
<p><b>Question 13.2.2:</b> 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?</p>	<p><b>Answer:</b> Yes.</p>
<p><b>Question 13.2.3:</b> 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 retail 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?</p>	<p><b>Answer:</b> None that come to mind.</p>
<p><b>Question 13.2.4:</b> 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 retail 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?</p>	<p><b>Answer:</b> Perhaps the ASX could include a clear note to the effect that the mFund SS is only a paperless settlement alternative, not an exchange.</p>

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Consultation Question	Our Response
<b>13.3 The mFund Settlement Service - The obligations of mFunds</b>	
<p><b>Question 13.3.1:</b> 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?</p>	<p><b>Answer:</b> We consider that it is the Issuer’s responsibility to ensure the updated PDS is made available on the mFund website. Beyond this, the onus sits with the broker to ensure they have provided the latest PDS to the investor and have provided the date of PDS to the Issuer’s registry/mFund’s Product Issuer Settlement Participant (PISP) at the time of application. Whilst the registry/mFund’s PISP is responsible for cross-checking the date of the PDS given to the client against the date of the current PDS, we are of the view that it is unnecessary to require the Issuer to also:</p> <ul style="list-style-type: none"> <li>- inform the clients that they should have received a copy of an up-to-date PDS, specifying the date of the PDS; and</li> <li>- notify ASX within 10 Business Days of all situations where an investor has indicated that they were not given a copy of an up-to-date PDS.</li> </ul> <p>The additional steps above add unnecessary administration as welcome letters need to be changed (with new hard-coded wording) each time a newly dated PDS is made available.</p>
<b>13.4 The mFund Settlement Service - The obligations of brokers transacting in mFunds</b>	
<p><b>Question 13.4.1:</b> 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.</p>	<p><b>Answer:</b> No comment.</p>

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Consultation Question	Our Response
<b>13.5 The mFund Settlement Service - mFund profiles</b>	
<p><b>Question 13.5.1:</b> 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?</p>	<p><b>Answer:</b> We do not think that this provides meaningful information for investors. We expect that most investors would look at the issuer’s website as the primary source of information about a fund and that this is the appropriate place for published information.</p> <p>Further, rather than providing a Fund Profile containing already available information to the investor (via the Issuer’s website), it would add more value to the brokers/investors if important additional information is made available via the mFund website, such as types of investors that are accepted by the mFund, notifications of soft/hard closures, etc.</p>
<p><b>Question 13.5.2:</b> What additional information do you think could be usefully captured in an mFund’s Fund Profile?</p>	<p><b>Answer:</b> See response to question 13.5.1.</p>
<b>13.6 The mFund Settlement Service - Information about an mFund’s NAV</b>	
<p><b>Question 13.6.1:</b> 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?</p>	<p><b>Answer:</b> No, we are not supportive of this requirement given daily NAV information is already generally made available on each issuer’s website, along with historical NAV data. In addition, it will add to administrative tasks that mFund issuers must adhere to, for no added value, since this information is already provided to third party vendors (such as Financial Express and Morningstar).</p> <p>We believe it would be of better value for ASX to obtain this information through a subscription service with third party data providers.</p>

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Consultation Question	Our Response
<b>13.7 The mFund Settlement Service - Information about an mFund’s issues and redemptions</b>	
<p><b>Question 13.7.1:</b> 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?</p>	<p><b>Answer:</b> We do not believe disclosing this information adds any value to the investor, however should ASX wish to proceed on this basis this information should be disclosed on a quarterly basis instead of monthly.</p>
<p><b>Question 13.7.2:</b> 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?</p>	<p><b>Answer:</b> No, we are not supportive of this requirement given daily issue and redemption prices are already made available on issuers’ websites. It will simply add to the compliance burden that mFund issuers must adhere to, since this information will need to be uploaded on a daily basis on the mFund information page.</p> <p>We believe it would be of better value for ASX to continue to obtain this type of information from third party data providers and determine whether improvements can be made to the timing of the feeds it receives from such vendors.</p>
<b>13.8 The mFund Settlement Service - Information about an mFund’s total units on issue</b>	
<p><b>Question 13.8.1:</b> 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?</p>	<p><b>Answer:</b> Yes, we are supportive of an STP service that allows Issuers to periodically update the total number of units on issue where it replaces the need to publish this information via MAP. We however still question the need to provide this information to investors via the mFund website, given this information is already available on Issuers’ websites and collateral.</p>
<p><b>Question 13.8.2:</b> 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?</p>	<p><b>Answer:</b> Quarterly is sufficient, however we still question the need to provide this information.</p>

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Consultation Question	Our Response
<b>13.9 The mFund Settlement Service - Information about an mFund's distributions</b>	
<p><b>Question 13.9.1:</b> 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?</p>	<p><b>Answer:</b> Yes, we are supportive of an enhanced service such as a smart online form for publishing distribution information, that would replace uploading of announcements via MAP. Given we are unsure of what this functionality will look like, we encourage ASX to first consult with Issuers to ensure it is user-friendly and eliminates the administrative burden of entering information separately for multiple mFunds.</p>
<b>13.10 The mFund Settlement Service - DDO information</b>	
<p><b>Question 13.10.1:</b> 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?</p>	<p><b>Answer:</b> Technically ASIC does not see the TMD as a public facing document. Most promotional materials need to say where the TMD is available and these will typically say that these are available on the Issuer's website. In addition the TMD is quite long and wordy and includes material more relevant to a distributor than a retail investor.</p>

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Consultation Question	Our Response
<b>13.11 The mFund Settlement Service - Collection of additional investor information</b>	
<p><b>Question 13.11.1:</b> 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?</p>	<p><b>Answer:</b> The following data points would assist, asking investors/advisers (as relevant) to answer the questions to the standard DDO questions.</p> <p>Questions for the adviser</p> <ul style="list-style-type: none"> <li>• Was financial advice provided?</li> <li>• Was the investor determined to be in the TMD</li> </ul> <p>Questions for the investor if financial advice was not provided:</p> <ul style="list-style-type: none"> <li>• What is your investment objective</li> <li>• What is your investment timeframe</li> <li>• What is your liquidity requirement</li> <li>• What is your risk/return appetite</li> </ul>
<b>13.12 The mFund Settlement Service - Transfers of units in mFunds</b>	
<p><b>Question 13.12.1:</b> Do you see benefit in the replacement CHES settlement system having the functionality to process transfers of mFund units? How much use do you think this functionality would receive in practice?</p>	<p><b>Answer:</b> Yes, it may help improve the process currently for ‘change in trustee’ situations, albeit not a common event.</p>



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Consultation Question	Our Response
<b>14.2 Better information for investors about Investment Products - Information to be captured on Collective Investment Products</b>	
<p><b>Question 14.2.1:</b> 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?</p>	<p><b>Answer:</b> We do not support this proposal. The issuer’s website is the appropriate place for published information and ongoing disclosure and not the ASX website. This is a commercial decision by AQUA Product issuers in marketing their products. The additional compliance and operational cost of distributing this information for uploading on the ASX website needs to be considered, as it is unclear that any additional benefit is provided to AQUA Product investors and runs the risk of the information being out of date or inconsistent with FSC member websites.</p> <p>The rules should cover public disclosure of certain data but not specifically on the exchange website. It should also be noted that this would not create a complete overview of the ETF market with product listed on another exchange.</p>
<p><b>Question 14.2.2:</b> 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?</p>	<p><b>Answer:</b> Based on the proposed changes under question 14.4.1 below, we would welcome a move to quarterly disclosure of the number of shares/units on issue. As noted above, this is currently a manual process both to gather the information as well as upload to MAP. Increasing the frequency increases the cost of providing this information and we doubt there is any additional benefit for investors.</p> <p>If more frequent disclosure is mandated by the rules, it should not be prescriptive on where this disclosure is required to be shown. Some issuers show daily data on their website and via data distributors such as Bloomberg or Morningstar.</p>

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Consultation Question	Our Response
<p><b>Question 14.2.3:</b> 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?</p>	<p><b>Answer:</b> No, we do not believe that it would be helpful to issuers to require TMDs on the ASX information page as this information is available on issuer’s websites and requires a manual upload. If the relevant ASX information page could link to various issuer webpages which contain the TMD and other disclosure documents, this could be helpful to investors without resulting in additional compliance cost.</p>
<p><b>14.3 Better information for investors about Investment Products - Information to be captured on Derivative Investment Products</b></p>	
<p><b>Question 14.3.1:</b> 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?</p>	<p><b>Answer:</b> No.</p>
<p><b>14.4 Better information for investors about Investment Products - Information about AQUA Product issues and redemptions</b></p>	
<p><b>Question 14.4.1:</b> 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?</p>	<p><b>Answer:</b> No, we would questions the value to investors compared to the compliance cost of providing that level of information. Currently, an ETF has to release through MAP its units outstanding announcement even though that information is not relevant to the secondary market (it is a HIN + SRN number for ASX purposes). In addition, most issuer’s publish the NAV and a NTA fund size for their products (some issuers also publish daily the number of units outstanding) on their respective websites.</p> <p>In normal markets value would not be materially different to publicly available reports that use the monthly unit change and close price. The cost would outweigh, or be a non-material gain for investors. This would not be needed with Daily unit disclosure as it can easily be calculated.</p> <p>For ETMFs, we are supportive of the proposed change to move to quarterly disclosure of existing requirements such as the amount and value of units redeemed and the total units on issue.</p>

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Consultation Question	Our Response
<b>14.5 Better information for investors about Investment Products - Information about AQUA Product dividends and distributions</b>	
<p><b>Question 14.5.1:</b> 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?</p>	<p><b>Answer:</b> Yes, we do support the proposal and do see a benefit of an STP. However, the question needs clarifying. There is already a STP portal available but which is limited to a single product access level. This means that the ETP issuer has to log in/out of each product when using the STP. This is very time consuming when using it to announce dividends for multiple funds paying out on the same timetable. The majority – if not all – issuers have since reverted back to the traditional paper PDF announcements option. ASX needs to refocus on delivering an issuer-level STP solution that enables an issuer to select and populate multiple funds with the same data (for a multi-fund dividend cycle, this is approximately 80% of the information).</p>
<b>14.6 Better information for investors about Investment Products - Collection of additional investor information</b>	
<p><b>Question 14.6.1:</b> Are there any additional data points about investors that could usefully be captured through the CHES 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?</p>	<p><b>Answer:</b> We support this proposal to capture in CHES additional data points about investors provided there is no obligation created in this regard on the ETP issuer. We note that ASX, is currently working with its participant brokers to increase the pass-through of this type of information (email addresses in particular) as part of its wider electronic communications projects which started with enabling the emailing of CHES holding statements. CHES could then in turn push this data to the registry services providers: email address, communication preferences, nominated bank account details etc. This will in time aid in reducing the carbon footprint of the funds management industry and reduce operating costs.</p> <p>Data on the investor type (retail, advised or institutional) would be helpful. Also, FATCA/CRS data, banking details, email address, communication preferences TFN. This reduces the need to investors to provide information directly to the registry.</p>

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Consultation Question	Our Response
<b>15.2 Miscellaneous issues - The AQUA Quote Display Board</b>	
<b>Question 15.2.1:</b> Were you aware of the existence of the QDB?	<b>Answer:</b> There is mixed awareness in the industry. We have received feedback that some members were not aware whilst others were aware.
<b>Question 15.2.2:</b> 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?	<b>Answer:</b> The use seems limited given that it is not executable. If this is a comparable product to tradeweb or Bloomberg RFQ then it could be applicable to the growth of ETFs.
<b>Question 15.2.3:</b> Are there any improvements that ASX could make to the QDB that might make it more likely to be used by AQUA Product issuers?	<b>Answer:</b> No. Please also refer to above.
<b>Question 15.2.4:</b> 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?	<b>Answer:</b> It may be of interest, see above.

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Consultation Question	Our Response
<b>15.3 Miscellaneous issues - Admission application forms and processes</b>	
<p><b>Question 15.3.2:</b> 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?</p>	<p><b>Answer:</b> Yes. Feedback has noted that for any ‘novel’ new product or material change to an existing product, there is a lack of clarity around when ASIC must be involved in the approval process. Feedback noted that this can happen well into the assessment process which then adversely impacts planned launch dates.</p> <p>It would greatly assist issuers to have more frequent updates from the ASX outlining the status of the application process. Feedback has raised concerns that there seems to be some lack of clarity or over cautiousness, with ASX legal/compliance deferring decision making to ASIC, when ASIC in turn telling the product issuer that the decision is within ASX’s purview.</p> <p>Feedback has noted that, a public ‘service standard’ regarding product admission processes, including commitments regarding timeframes, and clear explanations of when ASX would need to involve ASIC would greatly assist and provide greater certainty to issuers.</p>
<b>15.4 Miscellaneous issues - Any other issues with ASX’s Investment Product rules</b>	
<p><b>Question 15.4.1:</b> 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?</p>	<p><b>Answer:</b> The most important priority is for a ‘service standard’ for processing and decision-making new product applications plus clarity on what products are non-novel vs novel and clear explanation of when the ASX would need to involve ASIC to provide greater certainty to issuers.</p>