Public Consultation

Summary of responses to ASX consultation: Enhancing the ASX Investment Products Offering

September 2023

ASX

Contents

1. INTRODUCTION 3
2. SOME THRESHOLD RULE ISSUES 5
3. APPROVED ISSUERS 12
4. ADMISSION REQUIREMENTS AND PROCESSES 14
5. PRODUCT NAMES 17
6. INVESTMENT MANDATES 19
7. PERMITTED INVESTMENTS 23
8. PORTFOLIO DISCLOSURE 27
9. MANAGEMENT AGREEMENTS 29
10. MANAGEMENT FEES AND COSTS 31
11. PERFORMANCE REPORTING 32
12. LIQUIDITY SUPPORT 39
13. THE MFUND SETTLEMENT SERVICE 43
14. BETTER INFORMATION FOR INVESTORS ABOUT INVESTMENT PRODUCTS 51
15. MISCELLANEOUS ISSUES 55

ANNEXURE B – GLOSSARY 58

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1. Introduction

1.1 Background

On 26 April 2022 ASX released a consultation paper: Enhancing the ASX Investment Products Offering[1] (the **Consultation**).

The Consultation was phase one of a two phased consultation process seeking feedback on potential enhancements to the ASX Investment Products offering. The Consultation focused on potential improvements to the rules governing ASX's Investment Products[2] and increasing consistency between the differing rule frameworks for the benefit of investors and issuers.

The Consultation sought feedback across the following areas:

1. Some threshold rule issues
2. Approved issuers
3. Admission requirements and processes
4. Product names
5. Investment mandates
6. Permitted investments
7. Portfolio disclosure
8. Management agreement
9. Management fees and costs
10. Performance reporting
11. Liquidity support
12. The mFund Settlement Service
13. Better information for investors about Investment Products
14. Miscellaneous Issuers

Additional context and detail is set out in the Consultation.

1.2 Consultation feedback

ASX received 32 written responses from a broad range of stakeholders including Product Issuers (16), Industry Bodies (6), Participants (3), and other stakeholders (7). ASX would like to thank the many stakeholders that have provided written feedback.

Public non-confidential submissions were received from the following respondents:

- Alternative Investment Management Association
- Australian Custodial Services Association
- Bell Potter Securities
- Blue Tractor Group
- Financial Services Council
- Listed Investment Company & Trust Association
- Morningstar
- The Australian Financial Markets Association

1.3 Format of the consultation response

This paper summarises the feedback received from stakeholders on the Consultation.

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[1] https://www2.asx.com.au/content/dam/asx/about/regulations/public-consultations/2022/investment-products-phase-1-consultation-paper-final.pdf
[2] The Listing Rules, the AQUA Rules and the Warrant Rules

Feedback is presented in sections corresponding with the different topics set out in the Consultation. The first part of each section is a brief introduction to the topic. Subsections set out the associated questions and the summarised feedback.

With the exception of Exchange Traded Product (ETP) naming conventions in Section 5 and the ASX Managed Fund Settlement Service (mFund) in Section 13, at this stage ASX has not proposed policy positions in response to the feedback. Given the volume and range of feedback provided, ASX will be considering and prioritising which aspects of the consultation it will seek to progress before releasing a second phase consultation. ASX will update stakeholders accordingly as we progress our analysis.

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2. Some threshold rule issues

2.1 Background

Section two of the Consultation sought feedback on improving the consistency between the three separate rulebooks that currently govern the Investment Product offering and how the Listings Rules presently categorise and regulate investment entities.

There were 17 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

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?

All respondents were in favour of the proposal to combine the AQUA Rules and Warrants Rules into a single rule book. Respondents generally commented that this would provide more clarity and assist issuers when interpreting the rules. Respondents highlighted the importance of using sub-sections within the rule book to cater to different types of investment products (e.g. Warrants versus ETPs versus mFunds) and maintaining the retail investor protections that currently exist in the rules.

> **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?

Since the release of the consultation paper, ASIC has released Report 750 and made updates to the naming convention section of Information Sheet 230, which provides an updated meaning for Structured Products. ASX will no longer be pursing this proposal as it would not align with the updates made to Information Sheet 230.

> **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?

The majority of respondents did not feel that "AQUA" had any currency with retail investors and did not raise concerns if the name of the rule book was to change.

2.3 The position 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?

ASX received 15 responses to this sub-section and question.

The majority of respondents were in favour of an expanded definition for LICs/LITs and, in particular, there was strong support for including a broader range of underlying assets in the first limb of the definition.

Although there was high-level support for the proposal, there were a number of respondents that provided additional comments for considerations as follows:

- Underlying assets: Some respondents commented that the expanded list of underlying assets covered in the proposed definition was either not broad enough, or that there should not be a reference to the types of underlying assets that LICs and LITs are allowed to invest into. A number of these respondents were of the view that having an investment objective and/or strategy defines a LIC/LIT (or any other type of managed investment), not the types of underlying assets in which the entity invests. Further to this, respondents commented that the closed-ended nature of LICs/LITs means the types of underlying assets are less of a consideration for this type of product structure (compared to ETPs which, because of their open-ended and traded nature, require liquid underlying assets).
- Exercising control: Some respondents were opposed to including a reference to exercising control in the current and proposed definition for LICs/LITs. These respondents generally commented that control of an underlying entity can either occur incidentally, be required in order to help ensure the best outcome for investors, or be a genuine strategy in order to achieve a stated investment objective. Respondents commented that venture capital, private equity and activist investors were examples of investment strategies that may, for good reason, exercise control of an entity.

A number of respondents that objected to either one or both of the above points provided alternative definitions for consideration by ASX. While the proposed definitions varied from one respondent to another, at their core the respondents suggested that the focus of the definition should be on ensuring LICs/LITs have a clearly defined investment objective and strategy.

Additional comments on the topics of 'underlying assets' and 'exercising control' were provided in response to questions 2.6.2, 2.6.3, and 2.6.4.

2.4 The position 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?

ASX received nine responses to this sub-section. Feedback from respondents was mixed.

While a number of respondents were supportive of the proposals set out in question 2.4.1 and 2.4.2, some respondents expressed significant concerns with the practical application of defining REITs and Infrastructure Funds as simply "investment vehicles" and not "operating entities".

Feedback from one respondent highlighted the unique nature of REITs and difficulty in defining them as purely investment entities in that they exercise control over properties they own and are not passive owners of assets. For example, while REITs are vehicles that own property, they also undertake business activities beyond rent-collection. These activities include property development, funds management, third-party property management, provision of aged care, advertising and customer data collection, energy generation, and many other businesses. As such these entities exhibit both operational and investing features.

On balance, respondents were concerned that trying to define these entities and possibly apply separate (or additional) Listing Rule obligations may have unintended consequences for the compliance obligations of these entities or capital allocation decisions.

2.5 Towards a more aligned rule framework for Investment Products

ASX received 17 responses to this sub-section. A summary of the feedback from respondents across each of the questions is as follows:

> **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?

The majority of respondents were supportive of the proposed definition with the caveat that their support assumes that the considerations raised for the definitions of the three entities captured as "collective investment entities" are addressed.

Three respondents were against the proposed definition. One respondent noted that the proposed definition has the potential to confuse retail investors because it only captures closed-ended vehicles and not open-ended vehicles admitted under the AQUA Rules.

> **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?

Two respondents identified "private equity entities" and "venture capital entities" as other types of entities that should be formally recognised in the Listing Rules as either a separate category of entity or within the proposed entity definitions.

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

ASX received 17 responses to this sub-section. A summary of the feedback from respondents across each of the questions is as follows:

> **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?

The majority of respondents commented that the terms "LIC" and "LIT" are well recognised by retail investors. However, there were divergent views expressed as to whether retail investors understood the differences between the company and trust structure. Despite this, feedback in response to this question suggested that the "Company" and "Trust" elements of the term are important to help investors recognise that an entity is a company or trust and therefore has different tax treatments. Comments from respondents also highlighted the importance of the use of the term "Listed" when educating retail investors about 'closed-ended' versus 'open-ended' structures.

In relation to the connotation the terms "LIC" and "LIT" have with retail investors, a number of respondents submitted that "LIC" or "LIT" primarily leads investors to have the following feature-related associations:

- They are closed ended vehicle available on the ASX, that trade at a discount or premium to its NTA or NAV
- Professionally managed investment vehicles
- May be illiquid
- May pay fully franked dividends or have franking credits attached to the dividend.

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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?

The majority of respondents submitted that the current definition of "investment entity" in the Listing Rules should be broadened and should not be narrowed or more specific about the types of securities or derivatives in which the entity can invest.

Those in support of broadening the definition were generally of the view that ASX should have a flexible rule framework that adapts appropriately over time and the limitation on underlying assets should be as expressed in the relevant disclosure document for the entity. A number of respondents highlighted the importance of ensuring that the investment manager has a clear and objective investment mandate, which is set out in their disclosure documents. One respondent in support of widening the definition also highlighted the importance of ensuring, as part of the admission process, that the entity is subject to admission requirements that demonstrates there is a robust process in place for safe-keeping and valuing any novel assets in which they may invest.

While there were not many responses in relation to more specific asset classes that should be allowed if the definition was more specific, one respondent highlighted assets such as lending products, royalty products, and Limited Partnership arrangements.

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 feedback received in response to this question was similar to that received in 2.6.2. Broadly, respondents do not believe there should be constraints on the types of assets a LIC or LIT holds, and this view is extended to unlisted companies and OTC derivatives.

Across the consultation paper respondents were generally of the view that a broad investment universe available in a LIC/LIT structure is one of the key value propositions and allows retail investors to access asset classes or sectors that are difficult for them to access directly. Respondents were generally of the view that there should be appropriate levels of disclosure in offer documents and ongoing reporting for an investor to make an informed decision.

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?

Varying views were expressed in relation to ASX's question on whether a LIC or LIT should be allowed to exercise control on its underlying investment(s). Opinions on the topic were expressed at both ends of the spectrum, from exercising control over or managing another entity being a genuine investment strategy that can reduce investment risk and enhance potential returns to investors, through to comments that the

exercise of control distinction is important as it separates investment entities from other listed operational businesses.

Respondents in support of the current and proposed definition generally commented that it is not in the spirit of the rules that an investment entity be used to gain a controlling position in an underlying instrument. Some of these respondents were also concerned that if a LIC/LIT is allowed to exercise control over an underlying entity it could be used for inappropriate reasons or lead to potential conflicts.

Respondents in favour of an alternative to the current and proposed definition in relation to exercising control generally commented that control is not a defining characteristic of whether an entity is undertaking investment activities. One respondent commented that establishing greater control over an underlying investment, whether through increased governance, voting power, or other contractual obligations, is a proven investment strategy. The most common examples provided through the consultation paper of entities that may have the investment objective of exercising control were private equity and venture capital entities.

Multiple respondents suggested that there are mechanisms that can be used to ensure investors are fully informed as to the nature of the activities of the investment entity. These include the offering document disclosure, continuous disclosure under Chapter 3 of the Listing Rules, and the rules relating to periodic disclosure and changes to activities.

A number of considerations in response to this question were raised that will need to be worked through with industry.

> **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?

Similar to the responses received in 2.6.4, suggestions existed on a spectrum as follows:

- One respondent commented that ASX does not, or should not, have the right to prohibit this type of transaction. However, the type of investment being made should be commensurate with the investment mandate of the company and therefore already have the blessing of shareholders (who vote with their capital allocation). If this type of investment is substantially different to the investment mandate, then this should be adequately disclosed to investors.
- Another respondent commented that this type of transaction should be permitted with approval from investors.
- Another respondent expressed the view that this type of transaction should be prohibited outright.

> **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?

Apart from those respondents who commented that this type of activity should either be outright prohibited or permitted, one respondent was in favour of seeking shareholder approval, another respondent preferred the use of a waiver, and another respondent was open to both suggestions.

> **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*"?

All respondents that made submissions to this question were in support of the proposal.

> **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?

All respondents that made submissions to this question were opposed to this proposal.

> **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?

All except for one respondent objected to this proposal. Those against the proposal generally commented that the portfolio allocations decision should be left for the manager to decide and should be made clear in the investment strategy. Other respondents commented that this proposal was not practical due to the nature of different investment strategies (such as highly concentrated strategies) or the way in which valuations of certain assets can move around outside of the control of the investment manager.

One respondent in support of the proposal commented that it was appropriate to limit the concentration risk of investment portfolios.

> **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?

The majority of respondents were in support of this proposal.

One respondent in support of the proposal commented that this may be a good cover-all clause as there will always be entities that do not exactly fit to any one definition. A number of respondents commented that it was important that ASX makes the reasons for their determination clear.

One respondent against the proposal commented that they were concerned at ASX having too much discretion which could lead to uncertainty in the market.

> **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?

No additional feedback was provided in response to this question over and above what had already been provided in response to the questions in sub-section 2.6.

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3. Approved issuers

3.1 Background

Section three of the consultation paper sought feedback on whether the current list of Approved Issuers for AQUA Products and Warrants should be expanded to include other types of entities. It also seeks feedback on the types of products that are currently not able to be admitted and quoted as an AQUA Product, and feedback on hybrid structures.

ASX received 13 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

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?

ASX received 12 responses to this sub-section with mixed feedback from respondents.

Those in support of expanding the list of Approved Issuers of AQUA Products and Warrants to include entities that are prudentially regulated by an overseas regulator equivalent to APRA cited the importance of ensuring that the jurisdictions of the Approved Issuer also be acceptable to APRA and ASIC, and that the issuers should comply with the Australian financial services licensing requirements or any applicable exemptions.

Those against expanding the list of Approved Issuers were concerned that any changes may create an uneven playing field with the main concern being that overseas issuers may not appreciate the intricacies of the Australian regulatory environment.

3.3 Financial products excluded from being AQUA Products

ASX received 12 responses to this sub-section.

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?

All respondents to question 3.3.1 were in full support of 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.

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?

Feedback to question 3.3.2 was mixed.

Generally there was support for the position that AQUA Product issuer should be precluded from having a controlling interest in the issuer of an underlying instrument in its portfolio, though a number of responses wanted clarification that this would be done on a look-through basis.

Respondents were split almost equally regarding whether AQUA Rule 10A.3.3(d) as currently drafted was sufficiently clear.

Overall, feedback suggested that respondents are in support of an AQUA Product issuer being precluded from having a controlling interest in the issuer of an underlying instrument in its portfolio, however further clarity is required on the definition of the rule.

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?

ASX received 13 responses to this sub-section and question.

The majority of respondents did not raise objections to hybrid structures however generally expressed the importance of ensuring that investors understood the differences between the closed-ended and open-ended unit classes and that disclosure was consistent across both structures.

Those that raised objections to the hybrid structure felt that if the underlying investments were the same then there was little benefit to be had in operating both structures. There were also concerns raised that having two different structures available for the same investment strategy will create investor confusion and different performance outcomes given the inherent difference between the structures.

4. Admission requirements and processes

4.1 Background

Section four of the consultation paper sought feedback on the admission requirements and processes for:

- Listed Investment Products under the Listing Rules; and
- AQUA Products and Warrants under the AQUA Rules and Warrant Rules.

ASX received 16 responses to the section. A summary of the feedback from respondents across each of the sub-sections is as follows:

4.2 Minimum fund size

ASX received 16 responses to this sub-section.

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?

The majority of respondents were in agreement that a higher NTA would be suitable for LICs and LITs, however there was a wide range of suggestions on the appropriate minimum NTA size varying from a minimum NTA of $20 million up to $100 million.

A number of respondents both in favour of the current minimum NTA and those proposing an increase expressed that the issuer should be able to justify to investors that they will be able to implement the investment strategy given a particular fund size and that this is ultimately a commercial decision for issuers to make.

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?

There was mixed feedback from respondents to this question.

Those in favour of keeping the existing minimum NTA asked for evidence and examples of issues caused by funds attempting to list with lower NTAs that are justifying making any changes to the existing rule settings.

Those in favour of increasing the minimum NTA generally expressed that it should be consistent with the settings for LICs and LITs.

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?

One respondent suggested that the minimum NTA under the Listing Rules should be linked to inflation.

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?

There was broad agreement from respondents that the current settings in place are appropriate and there is no need to implement a minimum subscription or fund size requirement for AQUA Products or Warrants.

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?

The majority of respondents were of the view that ASX should not have the power to order an issuer to conduct an orderly wind down of an AQUA Product or Warrant.

Those in objection to the proposal generally commented that there are provisions in the Corporations Act 2001 (Cth) which govern the circumstances under which a registered managed investment scheme may be wound down, and that responsible entities are also subject to "best interest" duties under the Corporations Act 2001 (Cth).

Those in support of expanding ASX's power in this area commented that there would need to be clear and transparent criteria established, appropriate time-frames allowed to implement a wind-down, and the best interest of investors taken into account.

In their public submission, the Financial Services Council (FSC) suggested a middle ground, which is that if the fund is resulting in negative outcomes for investors or could result in a negative reputation for the overall product suite, then ASX could refer such a product to ASIC. ASIC has product intervention powers (PIP) and undertakes a number of important steps before issuing a product intervention order, including consultation.[3]

4.3 Commitments

ASX received eight responses to this sub-section.

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

Respondents generally were not supportive of excluding REITs and IFs from the "commitments test". Respondents reflected on the operational nature of REITs, the fewer and larger underlying assets they hold (relative to LICs and LITs) and investor expectations regarding these entities.

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?

One respondent commented that private equity and venture capital entities would need to be excluded from the commitments test.

[3] The non-confidential submission from FSC including their response to question 4.2.5 can viewed on the public consultation section of the ASX website: https://www2.asx.com.au/about/regulation/public-consultations

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?

ASX received 12 responses to this sub-section and question.

Feedback was mixed with almost half of respondents expressing that there should not be a new admission condition requiring Listed Investment Product issuers to 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. These respondents generally commented that licencing in relation to financial services is already comprehensively dealt with under the Corporations Act 2001 (Cth) and is the purview of ASIC. Introducing additional requirements under the Listing Rules would therefore be duplicative and unnecessary.

Those in favour of a new rule of this nature generally commented that this would place such entities on an equal footing to the obligation of an ASX approved product issuer, as contemplated in AQUA Rules.

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?

ASX received 16 responses to this sub-section and question.

Feedback was mixed with almost half of respondents expressing objections to a new rule being implemented on the same basis as cited in question 4.4.1, which is that these obligations are already required of Australian Financial Services Licensees under the Corporations Act 2001 (Cth). As such, including these requirements in the Listing Rules would be duplicative.

Those in favour of a new rule of this nature generally commented that this would place such entities on an equal footing to the obligation of an ASX approved product issuer, as contemplated in AQUA Rules.

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5. Product names

5.1 Background

Section five of the consultation paper sought feedback on the naming convention for AQUA Products, Warrants and Listed Investment Products.

Since the release of the ASX Investment Products consultation paper, on 7 June 2023 ASX released a consultation paper entitled *Rule Amendments: AQUA Product naming conventions*. This paper relates to proposed amendments to the ASX Operating Rules and ASX Settlement Operating Rules to facilitate the implementation of ASIC's updated exchange traded product (ETP) naming expectations in the revised version of INFO 230 released by ASIC in November 2022. The consultation period closed on 19 July 2023.[4]

ASX received 17 responses to the section. A summary of the feedback from respondents across each of the sub-sections is as follows:

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?

ASX received 11 responses to this sub-section and question.

There was broad agreement from respondents that there was no need for additional naming constraints or requirements, apart from those set out in section 5.2 of the consultation paper.

5.3 Naming requirements for Listed Investment Products

ASX received 17 responses to this sub-section.

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?

There was broad support for 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. And, there was also broad support for seeking ASX approval for any name change after the entity is listed on ASX. A number of respondents commented that any rule(s) of this nature will help ensure similar treatment across Listed Investment Products and AQUA Products.

Respondents that objected to the proposals generally commented that ASIC should be solely responsible for naming requirements of Listed Investment Products, consistent with their regulatory powers and guidance on advertising financial products and services.

[4] The consultation paper released on 7 June 2023 can be found on the ASX public consultations page: https://www.asx.com.au/about/regulation/public-consultations

ASX

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?

There was unanimous agreement that Listed Investment Products should be prohibited from describing themselves as an "Exchange Traded Fund". One respondent was not supportive of this being prescribed in the Listing Rules and instead should be governed by ASIC.

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?

Two respondents commented that LICs and LITS should be clearly distinguished from one another as company or trust structures by using, respectively, "Company" or "Trust" in their name. The respondents commented that this was important to indicate their taxed and untaxed nature. In addition, the respondents felt it was important that the term "listed" was also used by LICs and LITs, as this is traditionally associated with closed-ended structures.

6. Investment mandates

6.1 Background

Section six of the consultation paper sought feedback on any rules or constraints that should apply to the definition, disclosure and alteration of the investment mandate for Collective Investment Products.

ASX received 18 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

6.2 Investment mandates for AQUA Products

ASX received 18 responses to this sub-section.

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"?

There was broad agreement for defining the term "investment mandate" in the AQUA Rules.

Those in favour highlighted the importance of ensuring "investment objective" and "investment strategy" were included in the definition as they are generally accepted terms used by the industry.

There were two objections to the proposal, with one respondent noting that "investment objective" and "investment strategy" were already defined in the ETF admission checklist so extending this to the AQUA Rules was unnecessary.

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?

The majority of respondents were in agreement that an obligation to notify investors of a change to investment mandate was an important and reasonable requirement to place on product issuers. Respondents were generally not in favour of any other constraints (such as a unit holder vote) to be placed on product issuers. However, there was mixed feedback as to whether the obligation to notify investors should be reflected in the AQUA Rules, or if it could be implemented in another way. A number of respondents observed that there are already continuous disclosure obligations in the Corporations Act 2001 (Cth) that would capture a change in investment mandate, and generally commented that any replications of these obligations in the AQUA Rules would be duplicative.

Question 6.2.3: Should the AQUA Rules require an ETF, ETMF or an 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?

There was mixed feedback from respondents to including disclosure obligations of AQUA Product issuers in the AQUA Rules in situations where there is a material breach of the investment mandate.

The majority of respondents were in agreement that notifying investors of a material breach was important, however there was mixed feedback as to whether this obligation should be reflected in the AQUA Rules or whether ASIC's breach reporting regime already covers this matter sufficiently. A number of respondents commented that if an obligation was introduced in the AQUA Rules that it should be aligned to ASIC's breach reporting obligations.

ASX

> **Question 6.2.4:** Should the AQUA Rules require an ETF, ETMF or an 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?

There was broad objection to this proposal.

The majority of respondents to questions 6.2.4 and 6.2.3 agreed that it was important for investors to know if the fund has materially complied with its investment mandate, however 13 respondents to 6.2.4 were generally against disclosure of this information in the annual report. Some of these respondents suggested continuous disclosure of breaches to the investment mandate (see question 6.2.3) was a better approach, and, given the timing of the annual report, some respondents observed that disclosure in the annual report may be of little value to investors.

In relation to introducing a requirement for the investment mandate statement to be audited or otherwise verified by an independent third party, respondents raised compliance cost concerns. One respondent suggested that 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 with the investment mandate.

Those in favour of the proposal generally commented that is was important to keep investors informed.

6.3 Investment mandates for Listed Investment Products

ASX received 18 responses to this sub-section.

> **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?

The majority of respondents were in agreement that an investment mandate (as defined in in section 6.2 of the consultation paper) should be required in the listing prospectus or PDS of a LIC or LIT as an admission condition.

Respondents generally commented that requiring this to be included improves the level of information being disclosed to investors.

However, a number of respondents raised concerns in relation to the requirement for the investment mandate to be "acceptable" to ASX. Generally, respondents commented that ASX may not be best placed to determine what is an acceptable investment mandate, and that the criteria for what is acceptable would also needed to be provided in the rules or through guidance.

A number of respondents in favour of requiring investment mandate to be included in the PDS also suggested additional investment features to be disclosed in the PDS. Suggestions included: benchmark, an ESG statement, risks, fees, past performance and management structure.

ASX

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?

There was broad agreement from respondents that the only constraint that should be placed on LICs and LITs from changing their investment mandate is to notify investors in advance of the change. However, there were differing views as to whether this obligation is already captured under the Listing Rules and/or Corporations Act (Cth), with a number of respondents commenting that, in their view, a change to an investment mandate may be considered a continuous disclosure obligation and there is already a requirement to notify investors of the change.

One respondent noted that a change to an investment mandate may be caught by ASX 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 the transaction to be approved by the entity’s security holders.

In relation to introducing any other constraints on LICs or LITs that wish to change its investment mandate, respondents were comfortable with having a notice period, however were against any further constraints (such as unit holder approval) being imposed on LICs and LITs.

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?

There was mixed feedback from respondents to including disclosure obligations on LICs and LITs in the Listing Rules in situations where there is a material breach of the investment mandate. While the majority of respondents were in agreement that notifying investors of a material breach was an important obligation, there were mixed views as to whether this obligation should be reflected in the Listing Rules or whether ASIC’s breach reporting regime already covers this matter sufficiently. One respondent reflected that for any material breach in investment strategy of the LIC and LIT, entities would be required to consider any of their continuous disclosure obligations under Listing Rule 3.1 and therefore an additional rule to cover this scenario was not required.

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?

There was mixed feedback from respondents to this proposal.

Respondents against the proposal generally commented that it was important for investors to know if the fund has materially complied with its investment mandate, however their view was that the best way to achieve this was through continuous disclosure of any breaches to the investment mandate, rather than a statement in the annual report.

The Listed Investment Company & Trust Association (LICAT) provided feedback to this question commenting that the issue ASX is seeking to address could be more properly described as the requirement for the entity to operate in accordance with their AFS licensing obligations. As such, LICAT suggested that ASX may consider how best to have entities confirm annually if they have complied with the obligations under their AFSL, and for ASX to prepare guidance that material breaches of AFSL obligations by the entity would be expected to be reported under Continuous Disclosure.[5]

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?

The majority of respondents were supportive of this proposal.

One respondent was against the proposal, suggesting that there was insufficient evidence for making changes to the admission or reporting requirements on REITs.

[5] The non-confidential submission from the Listed Investment Company & Trust Association including their response to question 6.3.4 can viewed on the public consultation section of the ASX website: https://www2.asx.com.au/about/regulation/public-consultations

7. Permitted investments

7.1 Background

Section seven of the consultation paper sought feedback on the underlying instruments permitted in an AQUA Product, Warrant, or Listed Investment Product.

ASX received 17 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

7.2 Acceptable underlying instruments for AQUA Products

ASX received 16 responses to this sub-section.

> **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?

The majority of respondents were in favour of ASX's proposal.

Respondents generally commented that such a policy would enable innovation and provide flexibility when bringing new strategies to market. In developing rules to support this proposal, one respondent suggested that it should be sufficiently broad and flexible so as to encourage innovation. Another respondent also suggested that new types of instruments should be subject to appropriate due diligence and ASX would need to consider the definition of a "reliable and transparent pricing framework".

> **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.

A number of respondents to this question suggested that ASX should not have a prescribed list of indices that are considered acceptable underlying instruments for AQUA Products. Instead, ASX should have a list of prescribed index providers that continues to be subject to review by ASX.

In terms of specific financial products or underlying instruments that should be acceptable for AQUA Products, a number of respondents suggested allowing unlisted securities and pre-IPO securities, subject to a prescribed NAV limit.

> **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.

No respondents considered there were any products in the current list of acceptable underlying instruments for AQUA Products that should be excluded.

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?

ASX

ASX received three responses to this sub-section.

Respondents were generally in favour of aligning the Warrant Rules and AQUA Rules so that they have the same types of acceptable underlying instruments.

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?

ASX received 16 responses to this sub-section.

All respondents were in favour of ASX’s suggestion that it was 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 their proposed definitions.

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?

ASX received 17 responses to this sub-section.

The majority of respondents were supportive of ASX’s intention regarding the proposed rule changes.

Respondents in support of rule changes that deal with feeder funds generally commented that rules were required to provide issuers with certainty in expectations when this structure is proposed for use.

A number of respondents requested further consultation with ASX on aspects of the proposed rules and how they will be applied in practice. In particular, respondents raised questions about the types of contractual arrangements ASX would expect issuers to put in place between the feeder fund and the underlying fund for the provision of information. Respondents highlighted that responsible entities must treat all unit holders equally, so putting in place specific contractual obligations may not be a reasonable obligation to place on issuers.

One respondent against the proposal commented that the ‘look-though’ approach currently in place was sufficient.

7.6 The use of derivatives

ASX received 10 responses to this sub-section.

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?

There was broad support for extending the list of acceptable counterparties to an OTC derivative. Suggestions from respondents included extending the list of acceptable countries to those with a similar level of prudential regulation as Australia. Suggestions included adding countries from the G20, as well as specific suggestions such as Hong Kong, Singapore, Japan, Canada

One respondent was against restricting counterparties based on their country of operation or regulatory oversight. Instead, the respondent suggested aligning the list of acceptable counterparties to an OTC derivative to those entities that have an ISDA Master Agreement. Their view was that an ISDA Master Agreement is observed to be an international industry standard agreement that is used to provide certain legal and credit protection for parties entering into OTC derivatives transactions.

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?

There was broad support for extending the list of acceptable assets.

Generally, some respondents commented that extending the list would help ensure that assets being held as collateral correlate with the underlying fund or may suit the preferences of the manager. For example, international equity funds may prefer to hold government bonds or debentures from other countries.

In terms of the types of assets that should be included, responses ranged from mentioning specific assets, such as international government bonds, through to aligning the assets with the types of underlying assets directly permitted for ETPs.

One respondent suggested that the test for the types of assets should include assets that are acceptable to both parties, provided they are at arm's length.

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?

There was mixed feedback from respondents on this question.

Those in favour of having similar constraints (as discussed in 7.6.2) provided comments suggesting that consistency was important and that the collateral should match the product profile.

Those against the proposal commented that different considerations apply to securities lending and prime broking arrangements, and generally commented that these arrangements are conducted under industry standard agreements.

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.

Feedback was provided on three items:

- Disclosure requirements: Two respondents suggested improving the disclosure requirements. One suggested that the current disclosure requirements were leading to obscure disclosure from issuers that was not helpful for investors. Another respondent suggested that investors should be made aware when security lending occurs.

- Look-though application of OTC derivatives rules: One respondent reflected that where an AQUA Product invests into an offshore ETF that uses OTC derivatives, it may not be possible for that offshore ETF to comply with the AQUA Rules. As such, the respondent suggested that some flexibility should be available to accommodate AQUA Products that invest into offshore ETFs that are regulated in a similar but not identical manner.
- Definition of OTC Derivatives Based Managed Fund: One respondent suggested increasing the percentage-based test in the current definition from 5% to 10%[6].

7.7 Ancillary liquid assets and incidental investments

ASX received 13 responses to this sub-section.

> **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?

There was broad agreement from respondents supporting 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. Support was generally provided on the basis that such provisions provide greater flexibility for the issuer to manage the AQUA Product.

> **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?

The majority of respondents disagreed with introducing a limit on the amount (e.g. a maximum percentage of the underlying fund) that an AQUA Product issuer can hold in the form of ancillary liquid assets (question 7.7.2).

There was also broad disagreement with introducing 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 (question 7.7.3).

Some respondents against the proposal generally commented, in respect of both questions, that responsible entities must act in the best interests of unit holders, by implication suggesting that this is a sufficient obligation to ensure issuers were endeavouring to achieve the stated objective of the fund.

Other respondents against the proposal suggested that limits (in terms of % of NAV or time) were matters for the issuer, should form part of PDS disclosure, were not practicable and may be outside of the issuer's control.

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[6] See the definition of that term in ASX Operating Rule 7100.

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8. Portfolio disclosure

8.1 Background

Section eight of the consultation paper sought feedback on a proposal for LICs and LITs to be subject to similar portfolio disclosure obligations under the Listing Rules as issuers of Collective Investment Products are under AQUA rules. It also seeks feedback on the currently portfolio disclosure obligations for AQUA Products.

ASX received 18 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

8.2 Listed Investment Product portfolio disclosure requirements

ASX received 18 responses to this sub-section.

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?

There was mixed feedback from respondents to changing the disclosure requirements from annual to quarterly for LICs and LITs.

Those in favour commented that providing more frequent disclosure increases the transparency of these products and brings them into closer alignment with the portfolio holding disclosure practices of other funds[7] and ETPs. Some in favour of the proposal also commented that it may assist in closing the discount to NTA that some LICs and LITs trade on.

Those opposed to the proposal were concerned that more frequent disclosure may put at risk the intellectual property of the manager and it may result in front running on certain stocks held in the portfolio. Some respondents against the proposal also suggested that it may be challenging to value illiquid assets on such a frequent basis. A number of respondents against the proposal suggested that more frequent disclosure of a particular number or percentage of the portfolio (such as top 10 or 20 holdings) would be a better solution to help balance the needs of issuers while providing investors with more regular and useful information.

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.

The majority of responses received were in favour of ASX's proposal on the basis that it will help ensure a consistent standard is achieved across the market with periodic disclosure.

Most respondents agreed with ASX's proposed disclosure about securities held in the portfolio, to the extent it does not conflict with any confidentiality and non-disclosure agreements LICs or LITs may have in place with issuers of the securities.

Respondents also commented that there are standard templates used by managed funds across the industry (such as when sending portfolio holding information to data providers such as Morningstar) that could be utilised by the ASX.

[7] While funds in Australia are generally not required to provide portfolio holding disclosure, one respondent to the consultation cited that their data showed that up to 60% of managed funds covered provide up-to-date portfolio holding data either monthly or quarterly. That number drops to 20% for LICs and LITs.

ASX

In relation to the disclosure of derivatives positions, there were concerns raised by some respondents that there was too much detail to be useful to most investors. These respondents requested further discussion with ASX on the topic.

> **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?

The majority of responses received were in agreement with ASX's position on not increasing portfolio disclosure requirements for these entities.

8.3 AQUA Product portfolio disclosure requirements

ASX received 15 responses to this sub-section.

> **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?

The majority of respondents were against this proposal.

Those in objection generally commented that reducing the period of disclosure to one month after quarter end will put at risk the intellectual property of the managers while providing little additional benefit to investors.

Some respondents commented that the iNAV and daily NAV provided by issuers was a better source of information to help investors make an informed decision on the pricing of the fund.

Respondents in support of shortening the disclosure period to one month after quarter end generally commented that it would improve transparency for investors.

> **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?

There was mixed feedback in response to this question.

Those against the proposal commented that this standard is already outlined by the Corporations Act (Cth) and the Australian Accounting Standards, and any inclusion in the AQUA Rules by the ASX would be duplicative.

One respondent in support of the proposal commented that as they were already following the standard there was no additional effort required by issuers if this requirement was included in the AQUA rules.

ASX

9. Management agreements

9.1 Background

Section nine of the consultation paper sought feedback on the disclosure of management agreements under the Listing Rules and AQUA Rules.

ASX received 15 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

9.2 Listed Investment Product management agreements

ASX received 15 responses to this sub-section.

> **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?

Respondents provided mixed feedback regarding this proposal.

While the majority of respondents agreed with the principle of disclosure (immediate or otherwise) of the material terms of management agreements, a number of respondents commented that, in their view, this requirement was already sufficiently dealt with via existing Listing Rules and guidance, specifically Chapter 3 of the Listing Rules (Continuous Disclosure) and Guidance Note 26 (Management Agreements). A such, a number of respondents suggested that a new rule was not required for this scenario.

> **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?

The majority of respondents were in support of this proposal. Some of those in favour commented that this created a level playing field between different entity types and is important to keep investors adequately informed.

One respondent against the proposal suggested that it may be too much information for investors, and another commented that the content of an annual report should be governed by accounting standards, not Listing Rules.

> **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?

The majority of respondents were in support of extending this to all listed entities. Those in support generally commented that it created a level playing field.

One respondent was against this proposal, commenting that there appears to be no drivers for the change, and listed entities are already subject to significant disclosure requirements.

9.3 AQUA Product management agreements

ASX received 14 responses to this sub-section.

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?

Respondents provided mixed feedback to this proposal.

Those against the proposal commented that issuers of AQUA Products are already subject to continuous disclosure obligations under the Corporations Act 2001 (Cth), and that disclosure relevant to investors is made available via the PDS or a supplementary PDS. As such, the view of respondents against the proposal was that material changes to management agreement would subsequently be disclosed via the ASX and therefore a rule requiring this would be duplicative.

Some respondents wanted to seek clarification as to what ASX meant by “management agreements” and the scope of disclosure, noting that there may be aspects of agreements which are confidential.

Respondents supportive of the proposal suggested that the changes were important to ensure investors are kept informed and that there was a level playing field between Listed products and AQUA Products.

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?

Respondents provided mixed feedback to this proposal.

Respondents in agreement with the proposal suggested that the changes were important to ensure investors are kept informed and that there was a level playing field between Listed Investment Products and AQUA Products.

Some respondents wanted further clarification as to what ASX defines as a “management agreement” before committing to the proposition.

Respondents against the proposal generally commented as follows:

- Material changes to a management agreement would be disclosed through a PDS update and this was more appropriate and timely than disclosure via the annual report.
- ASIC does not require a fund to report the terms of any management agreement in the annual report therefore ASX should not require this of AQUA Product issuers.

ASX

10. Management fees and costs

10.1 Background

Section 10 of the consultation paper sought feedback on requiring LICs to present the same information about management fees and costs in their annual report as the enhanced fees and costs disclosure requirement set out in Part 7.9 Division 4C and Schedule 10 of the Corporations Regulations.

ASX received 13 responses to this section.

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?

The majority of respondent were in favour of the proposal, with most advocates commenting that the enhanced fees and costs disclosure provides better transparency to investors and will enable comparability across products.

The Listed Investment Company and Trust Association (LICAT) agreed with the intent of the proposal however raised concerns about being able to translate Schedule 10 to LICs. LICAT's rationale and recommendations for meaningful fee disclosure for LICs (and LITs) can be viewed on the public consultation section of the ASX website.[8]

One respondent commented that LICs already provide fee information in the annual report and would need further time to understand the implications of adopting the proposal.

With the exception of the respondent mentioned above, other respondents didn't raise concerns in relation to difficulties that could arise from implementing this change in disclosure.

[8] https://www2.asx.com.au/about/regulation/public-consultations

ASX

11. Performance reporting

11.1 Background

Section 11 of the consultation paper sought feedback on the performance reporting requirements that apply to the Listed Investment Products and Exchange Traded Products.

ASX received 16 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

11.2 Listed Investment Product performance reporting requirements

ASX received 16 responses to this sub-section.

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?

There was mixed feedback from respondents in relation to the proposals in question 11.2.1.

Broadly, all respondents were in favour of publishing the NTA backing and "as at" date on an information page on the ASX website as well as the issuer's website whenever the issuer calculated the NTA backing.

The majority of respondents were against the proposal in part (b) of 11.2.1. Generally, respondents commented that moving from a monthly to quarterly NTA backing calculation requirement would be a backward step for LICs/LITs. A number of respondents suggested less frequents disclosure of NTA backing would reduce market transparency and result in a less informed market in these securities.

A number of respondents also provided additional suggestions for ASX to consider in relation to the reporting of NTA backing as follows:

- NTA backing information should be distributed in a machine readable format form e.g. via ASX Reference Point. This would facilitate the onward provision of this data point to retail investors and support trading closer to NTA.
- Some respondents commented that the current requirement to report NTA backing within at least 14 days after the end of the month was materially too long. These respondents suggested this should be reduced to no more than 5 days after the end of the month.
- ASX should work with the industry to adopt a framework that accommodates more frequent disclosure of an indicative/estimated NTA/NAV.

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?

There was mixed feedback in response to question 11.2.2 with almost half of respondents in support of the current definition of "NTA backing" and the other half suggesting that certain aspects of the current definition be updated.

A number of respondents also provided holistic comments in response to this question that, effectively, call for a review and re-working of the NTA backing definition and calculation methodology. Generally, a number of these suggestions were provided with the objective of achieving comparability across product structures, consistency in the market and transparency for investors. An example of this is the public submission from the Listed Investment Company & Trust Association who suggested that ASX should not adopt a definition of asset backing that is adjusted for tangibility, and instead move towards disclosure of Net Asset Backing so that it is more consistent with other investment entities including ETFs and unlisted managed funds.[9]

A summary of the comments provided from respondents to each part of 11.2.2 is as follows:

- 11.2.2(a): A number of respondents would like to see examples of the intangible assets captured by the variable "I" in the definition. One respondent commented that, in their view, there are currently different approaches in the market in relation to the treatment of deferred tax assets. As such, they would like to see worked examples including deferred tax assets so as to provide the market with clarity.
- 11.2.2(b): Two respondents did not agree with the current policy position in relation to the lease right of use assets. One respondent commented that not recognising the asset when there is a corresponding liability directly linked to that asset creates imbalance in the balance sheet. Whilst the other respondent commented that they consider that the asset should be recognised as having value if it is recognised as having value for accounting purposes.
- 11.2.2(c): A number of respondents commented that the current formula/definition in relation to the variable "L" was inadequate, and that it did not adequately address tax issues of comparability across LICs and LITs. One respondent commented that deferred tax assets, liabilities and prepayments should be disclosed to the market, while another respondent suggested four separate

[9] The non-confidential submission from LICAT including their recommendations in response to Question 11.2.2. can viewed on the public consultation section of the ASX website: https://www2.asx.com.au/about/regulation/public-consultations

NTA disclosures were required in order to adequately address taxation matters and ensure a fully informed market.

- 11.2.2(d): There was mixed feedback in response to this question, with some respondent agreeing that variable "N" in the definition adequately deals with partly paid securities, while other respondents did not agree with the position.
- 11.2.2(e): There was mixed feedback in response to this question, with some respondents of the view that options should be counted in the variable "N" if they are in the money, while other respondents commented that they should not be included in the variable "N" but should be disclosed in footnotes.

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?

The majority of respondents were supportive of the proposal, commenting that it would provide additional transparency for investors.

One respondent was against the proposal and requested further information on the rationale for the additional reporting obligation.

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?

The majority of respondents did not support this proposal. A number of different views were expressed across the following two areas:

- **Place of disclosure:** Some respondents felt that the annual report was not an appropriate place for this reporting requirement as it has a narrow focus and is not consumed by the average retail investor. A view was held by one respondent that the annual report should be subject to the applicable accounting regulations, not the Listing Rules. Instead, one respondent suggested making the data points available through MAP and reference point, and expanding the data set to include performance as measured by both share price performance and NTA backing performance. Another respondent commented that this information should be made available on issuer websites, while another respondent commented that regardless of where this information is disclosed, LICs should have to adhere to the reporting standards as outlined in ASICs Regulatory Guide 53 – "The use of past performance in promotional material", so that performance reporting is in line with other managed investment products.
- **Total shareholder return (TSR) methodology:** A number of respondents commented that using "share price" as the input to TSR was not the most appropriate measure for LICs/LITs, and instead NTA backing should be the input to the calculation as this is the true reflection of the performance of the underlying assets, not the share price, as this is only a representation of buyers/sellers in the market.

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?

The majority of respondents were supportive of this proposal.

Those in support of the proposal generally commented that comparison against a stated index is a standard measure of performance in the funds management industry and should be extended to LICs/LITs. Some respondents expressed differing views about what the most appropriate place and period was for this type of disclosure (such as monthly on the issuer's website), however agreed with the principle of the disclosure requirement. One respondent in favour of the reporting obligation commented that it was important when determining entity performance that it is compiled on a like-for-like comparable basis to the index.

One respondent opposed to the reporting obligation commented that most issuers would already be reporting performance against their benchmark, so there was no benefit to be gained by introducing it as a Listing Rule requirement.

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?

There were a number of additional performance metrics suggested by respondents as follows:

- The split of capital gains/losses and income attributable to performance figures.
- Periodic reporting of the premium/discount to NTA backing at which the entity has traded.
- The ASX should implement rules around the reporting of Profit Reserves and stipulate that Profit Reserves per share cannot be quoted in isolation, and if quoted must be quoted alongside Accumulated Losses and franking capacity per share. A clear note should be included that the ability to pay fully franked dividends is dictated by the lower of the profit reserve (plus any positive retained earnings) and the franking capacity.
- Monthly disclosure of top holdings (for example top 5 or 10 holdings) and commentary on the performance of the portfolio for the prior month.
- Details of distributions.
- NTA per share return.

One respondent commented that performance metrics should not be required to be reported to investors under ASX's rules.

11.3 AQUA Product performance reporting requirements

ASX received 15 responses to this sub-section.

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?

All respondents were in favour of this proposal, commenting that it provided a level playing and enhanced transparency for investors.

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?

The majority of respondents were supportive of this proposal, generally commenting that the ASX website could be a useful central source for this type of information that is easily accessed by investors.

A number of respondents both in support of the proposal and against it provided the caveat that this requirement should not add operational burden to issuers. They noted that issuers already produce this information on their own websites and disseminate the information to data vendors, therefore ASX would need to determine the most efficient way of collecting this data without resulting in manual effort or a technology build from the issuer's perspective.

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.

There was mixed feedback to this question.

Those in support of the proposal provided their support on the basis that any changes made to the AQUA Rules should refer specifically to ASIC Regulatory Guide 94 *Unit pricing: Guide to good practice (RG 94)*.

Respondents that were not in support of the proposal provided the following feedback:

- "Net Asset Value" (NAV) is a defined term in the Constitution of an issuer's fund(s) and if ASX were to define NAV then there is a risk that it may differ from the term specified in the fund's constitution.
- Issuers are under an obligation to follow RG94 and ASIC reviews the Constitution before registration of the fund. Therefore, introducing an AQUA Rule that references RG94 is unnecessary and duplicative.

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?

There was mixed feedback to this question with approximately half of respondents in favour of the proposal and the other half against it.

Respondents against the proposal provided the following rationale for their objections:

- Investment managers currently provide timelier reporting for investors about fund performance - usually monthly via their website. Concerns were raised that a backward looking summary in the annual report would not be timely or add value to investors. It was also commented that investors rarely read the annual report, so this disclosure would not be widely read.
- Some respondents commented that the performance of ETFs, ETMFs, and ETSPs is already transparent as investors have access to the intra-day traded price, last close, and daily NAV. Therefore, disclosure of this information in an annual report is unnecessary.
- Information provided in the annual report would need to be audited, therefore extra cost would be incurred by the issuer.
- Issuers of these products may issue the ETF, ETMF or ETSP as a separate unit class of the fund, and only one annual report is lodged for the fund with ASIC. ASIC does not require the proposed information within the annual report of the fund.

ASX

- The annual report should be governed by its specific accounting regulations and not be subject to Listing Rules.

Two respondents in support of the proposal provided their reasons. One respondent commented that if this information was required for LICs/LITs then it should also be required for ETFs, ETMFs and ETSPs to create a level playing field. The other respondent commented that it would increases transparency and better inform retail investors.

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?

The majority of respondents were opposed to this proposal for the same reasons provided in response to 11.3.4. One response against the proposal also commented that ASIC Regulatory Guide 53: *The use of past performance in promotional material* (RG53) provides detailed information about performance reporting. Their view was that the majority of issuers would already be following this guidance and provide performance reporting on a timelier basis than annually in the annual report.

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?

The majority of respondents were opposed to this proposal for the same reasons provided in response to 11.3.4 and 11.3.5.

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?

Additional performance metrics suggestions by respondents included tracking error across specific trailing time periods (such as 1 month, 3 month, 12 month, 1 year, 3 years, 5 years, since inception) and details of distributions (such as the components of distributions).

A number of respondents commented that performance reporting should not be mandated by ASX. One respondent commented that industry practice and market forces result in regular performance reporting by issuers, and the standards for performance reporting are set out in ASIC regulatory guides and FSC standards.

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?

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?

ASX received 15 responses to this sub-section.

While the majority of respondents were supportive of the concept of introducing a uniform reporting standard for calculating TSR, a number of respondents raised concerns and challenges in trying to use FSC Standard 6 to achieve this objective.

In particular, the Financial Services Council (FSC) did not support mandating Standard 6 in the ASX Rules. The primary challenge raised by the FSC is that this standard was developed for unlisted funds, not ASX listed or quoted Collective Investment Products. The FSC also commented that if a standard methodology is to be mandated, it is important that it also comes with an ability to disclose departure from the methodology.[10]

There were no other suggestions provided on standards that could be used for calculating TSR.

[10] The non-confidential submission from FSC including their response to Section 11.4 can viewed on the public consultation section of the ASX website: https://www2.asx.com.au/about/regulation/public-consultations

ASX

12. Liquidity support

12.1 Background

Section 12 of the consultation paper sought feedback on liquidity support arrangements for AQUA Products, Warrants and Listed Investment Products.

ASX received 15 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

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?

ASX received eight responses to this sub-section and question.

The majority of respondents did not raise any issues with the existing liquidity support arrangements for AQUA Products.

One respondent commented that they would like to see increased incentives to encourage new market makers to enter the Australian market and support AQUA Products.

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?

ASX received two responses to this sub-section and question.

One respondent commented that the existing arrangements work well and there was no need for any changes to the Warrant Rules.

Another respondent commented that they would like ASX to consider whether to cease allowing "*good till cancelled"* orders for products with market makers.

12.4 Listed Investment Product liquidity support requirements

ASX received 15 responses to this sub-section.

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?

ASX received mixed responses to this question.

Respondents that supported publishing an indicative NTA backing to the market generally commented that it would provide more transparency to the market, assist in understanding the indicative value of the fund, and would therefore be helpful for investors.

Respondents that were against publishing an indicative NTA backing to the market generally drew on their own experiences when reporting NTA backing more frequently and/or an indicative NTA. These respondents commented that regularly updated information on NAV/NTA is helpful but does not solve the issue of a LIC/LIT trading at a discount to NAV/NTA. These and other respondents against the proposal generally commented that discounts to NTA/NAV are ultimately driven by investor demand for a fund and that this is a

function of a range of factors including, but not limited to, the performance of the investment manager and the attractiveness of the asset class or investment strategy.

A number of respondents that were either supportive or against the proposal raised the following challenges and concerns with being able to produce an indicative NAV/NTA for LICs/LITs:

- There will be certain strategies and asset classes where producing a frequent indicative NAV/NTA may not be practical or appropriate, for example, LICs/LITs that invest in illiquid underlying assets such as unlisted private equity or debt.
- An indicative NTA/NAV is only as helpful as the inputs provided, as such there would need to be an agreed industry standard for producing this data point.
- There would be a requirement to take into account the different accounting and tax treatments for a company structure versus a trust structure.
- There will be additional costs to investors and issuers associated with producing an indicative NTA/NAV.

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?

The feedback received in relation to this question was similar to that received in 12.4.1. While some respondents commented that an end-of-day indicative NTA backing would be easier to implement than an intra-day indicative NTA backing, many of the same challenges would continue to exist for those LICs/LITs investing in underlying assets that are illiquid. As such, an end-of-day indicative NTA backing would still only be helpful for a sub-set of LICs and LITs.

Irrespective of the views on the challenges that need to be overcome in calculating an end-of-day indicative NTA backing, respondents opinions still diverged on if this data point would be helpful in assisting the share/unit price of a LIC/LIT to track its NTA backing more closely.

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, 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 mentioned above in questions 12.4.1 and 12.4.2, a number of respondents agreed 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.

However, there will be some LICs/LITs for which an iNAV may be accurate and beneficial. In terms of identifying those LICs/LITs that would benefit from publishing more frequent information about their iNAV and encouraging them to do so, two respondents provided suggestions to this question.

One of the respondent suggested that such reporting should be voluntary or optional, and the only mandatory reporting (in relation to NTA) should be a monthly NTA. The other respondent suggested that the expectation should be that an intraday NTA is provided unless it is not practicable to do so or would likely be inaccurate or misleading.

ASX

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?

Responses to this question fell into two broad categories as follows:

1. Buy-backs:

Overall, five respondents provided suggestions for changes that could be made to the laws in Australia or Listing Rules regulating buy-backs as follows:

- Four respondents suggested that ASX should work in conjunction with ASIC and Treasury to facilitate increasing the buyback limits or improving the flexibility of buyback for LICs and LITs. The respondents generally commented that the current restrictions in the Corporations Act around buybacks hamper any attempt to use buybacks as a means of closing the discount to NTA;
- One of these respondents also suggested that consideration should be given to amending Listing Rule 12.12, which requires an entity's trading policy to have fixed closed periods. While the respondent believed this would only have a marginal positive impact, their view was that the current regime of having a fixed closed period has the effect of interfering with the ability of LICs/LITs to conduct a buy-back and can lead to a wider discount to NTA over that period;
- One respondent commented that for LITs the Corporations Act currently allows them to withdraw their units, therefore it is the ASX Listing Rules which restrict LITs' ability to undertake buy-backs.

There were two respondents to this question that rejected the premise that buy-backs can address the propensity for the securities of LICs/LITs to trade at a discount to the NTA backing. They generally commented that buy-backs were a short term fix and do not replace longer term fundamentals such as the performance of the fund.

2. Treasury stock:

A number of respondents commented that they would like to see ASX, Treasury and ASIC work together to facilitate the holding of treasury stock. These respondents were of the view that allowing LICs and LITs to hold treasury stock (within certain limits) can be an effective mechanism to enable the securities of LICs/LITs to trade at or near the NTA backing of the entity. Three of these respondents commented that a treasury stock model has operated successfully in the UK for nearly 20 years there is good evidence to suggest similar functionality could be adopted in Australia.

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?

Respondents provided some additional ideas on measures that could be taken to help address the propensity of a LIC or LIT to trade at a discount to NTA backing. These suggestions included:

- Additional promotion and awareness of LICs and LITs, including centralised lists on the ASX website (similar to the mFund.com.au web page) and periodic reports (such as the ASX monthly investment products report).
- Allowing a "hybrid structure" whereby investors can redeem at NAV/NTA on a periodic basis if they convert their units from CHESS sponsored to Issuer sponsored.

- Allowing the ability for issuers to obtain synthetic exposure to their own LIC/LIT's share price via an equity swap. The respondent commented that for LIC/LITs trading at a discount there may be an investment benefit in obtaining this exposure as the Manager is effectively buying assets in the portfolio for less than their value. As and when the discount to NTA narrows, the LIC/LIT Manager can unwind the swap, realising gains for the LIC/LIT investors on the synthetic/swap investment.

The Listed Investment Company & Trust Association disagreed with the premise that LICs and LITs have the propensity to trade at a discount to NTA. The analysis provided in their submission suggests that the total LIC/LIT sector weighted average premium/(discount) for the last six quarters has been between (1%) and +1%, and a premium for 50% of that time[11]. Broadly they disagree with the expectation that LICs and LITs should always trade at net asset backing and considers it important to understand that there will be many times when divergences of price from net asset backing are a rational part of normal market operation.[12]

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?

ASX received 12 responses to this sub-section and question. All respondents were supportive of the dual access structure with many commenting that there was no need for any re-write of the AQUA Rules to address any concerns.

Some respondents highlighted operational challenges at the unit registry level with these products and ASX is aware of at least one industry working group that is attempting to address some of these issues. Some of the issues raised include performing 'know-your-client' (KYC) and collecting investor details (including to satisfy FATCA/CRS obligations) once an investor has converted their holdings from the CHESS-sponsored sub-register to the Issuer-sponsored sub-register.

Another respondent commented that there is sometimes unclear reporting between the on-market versus off-market flows into these products, so they would like to see improved reporting to provide better clarity to the industry.

[11] Source: Bell Potter summary of LIC/LIT premiums/discounts Dec 20-Mar 22

[12] The non-confidential submission from LICAT including their response to Question 12.4.5 can viewed on the public consultation section of the ASX website: https://www2.asx.com.au/about/regulation/public-consultations

ASX

13. The mFund Settlement Service

13.1 Background

Section 13 of the consultation paper sought feedback on the mFund Settlement Service (mFund). ASX received 10 responses to this section and a summary of the feedback from respondents across each of the sub-sections is provided below.

Since the release of the ASX Investment Products Consultation paper, ASX released a consultation paper on 6 July 2023 to seek feedback regarding a proposed wind down and closure of the service.

The consultation will seek feedback on matters such as industry preferences for transacting in managed funds via ASX and key considerations (such as timing and process) relevant to a wind down should a decision be made to close mFund. The consultation period closed on 18 August 2023.[13]

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

ASX received 10 responses to this sub-section.

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 majority of respondents to this question were in favour of 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. One respondent provided a caveat that before expanding mFund the following existing structural issues with the service need to be addressed:

- Providing the ability to transfer units across HINs (effectively replicating the functionality that currently exists for other securities, such as shares and ETFs). Currently, if an investor wishes to change HINs, the investor needs to convert their mFund units to issuer sponsored, complete an Australian Standard Transfer Form, and then perform another conversion from issuer sponsored to their new CHESS sponsored HIN. Due to these manual steps an extension of funds admitted to mFund would greatly increase the burden on registries, brokers, financial advisers and investors.
- Expand the number of brokers offering mFund. Currently, if an investor wishes to move brokers and the new broker does not offer mFund, the investor must either hold their units as issuer sponsored or redeem their units entirely.

Two respondents were against the proposal and provided the following responses:

- One respondent commented that mFund has had sufficient time to grow its market share and in their view has been unsuccessful. Instead, the respondent believes any focus and resources dedicated to mFund should be allocated elsewhere for greater impact.
- One respondent was of the view that having minimum standards, like those that exist with mFund today, is a positive for the Australian market as it curates a “less-risky” set of investments available for retail investors through this channel.

[13] The consultation paper released on 6 July 2023 can be found on the ASX public consultations page: https://www.asx.com.au/about/regulation/public-consultations

ASX

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?

The majority of respondents were supportive of this approach.

There were two respondents against this proposal and provided the same reasoning to their objections raised in 13.2.1.

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?

The following suggestions were provided in terms of additional things that should be considered for mFund:

- An additional obligation for the broker to ensure the client has received an up to date TMD, and acknowledge that they are within the target market for the product, or notify the product issuer of a significant dealing.
- Higher minimum disclosure in the PDS (or product profile published on ASX website) that better explains the practical experience and methods investors have at their disposal for managing a change of address or change of name, managing their distribution instructions, providing their email address and selecting their correspondence preferences.

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 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?

There were no comments provided on additional things ASX should do 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.

One respondent commented that in their view retail investors have not been troubled by this issue.

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?

ASX received five responses to this sub-section and question.

The following suggestions were made to reduce the burden of the current requirements without compromising investor protections:

- Remove the requirement for issuers to inform investors after an application into a fund that the investor should have received a copy of an up-to- date PDS, specifying the date of the PDS; and
- Remove the requirement for issuers to 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.

Generally, the comments highlighted that the requirements mentioned above add unnecessary administration and duplication of effort as it is the responsibility of the broker to provide the PDS to the investor.

One respondent pointed out that a control is already in place to ensure the investor has received the correct version of the PDS from the broker. This occurs when the broker indicates the date of the PDS in the initial application mFund message that is sent from the broker to the Product Issuer Settlement Participant (PISP). Given that this control exists and can be verified by the PISP, the above two requirements become unnecessary.

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.

There were no comments provided in response to this question.

13.5 mFund profiles

ASX received nine responses to this sub-section.

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?

ASX received mixed feedback to this question.

Those that are supportive of the proposal commented that the information provided in the Fund Profile is useful for investors and therefore should be kept up to date.

Those against the proposal generally commented that the information in the Fund Profile is provided in the PDS of the fund and also on the Issuer's website, so producing the information for another source required duplication of effort.

One respondent commented that they would like ASX to combine the Fund Profile with the target market determination document for the fund.

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

ASX

The following suggestions were provided for additional information that could be captured in an mFund's Fund Profile:

- A standard set of ESG characteristics of the fund
- Amend the field "Min Application Amount" to "Min Initial Application Amount"
- Add a new field called "Min Additional Application Amount"
- Include a better explanation of the practical experience and methods investors have at their disposal for managing a change of address or change of name, managing their distribution instructions, providing their email address and selecting their correspondence preferences. In addition, a better explanation of how FATCA and CRS information is gathered from the information provided by the broker.

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?

ASX received 10 responses to this sub-section and question, with mixed feedback from respondents.

While the majority of respondents were supportive of ASX displaying NAV and the "as at" date at which it was calculated on the ASX website, there were mixed views as to how ASX should obtain this information.

Respondents that were against ASX providing an STP service to collect this information generally commented that funds have operational processes in place to disseminate unit prices and are already reporting this data to third party vendors (such as Financial Express and Morningstar). In order to avoid duplication and the effort of building a new service, it was suggested that ASX should consider how it can obtain this information from the existing operational processes carried out by funds or through a subscription service with third party data providers.

ASX

13.7 Information about an mFund's issues and redemptions

ASX received nine responses to this sub-section.

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 received mixed feedback to this question.

Respondents supportive of the change did not raise any issues with adding the new data point or moving to a quarterly basis, though one respondent commented that the existing monthly reporting cycle was acceptable.

Respondents against the proposal generally commented that this information was either not useful for investors, or was available elsewhere and is therefore duplicating existing processes in the market.

One respondent commented that ASX already has this information available and can calculate the figure itself, though acknowledged this would only represent the applications and redemptions received through the mFund channel, not all activity within the fund.

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?

Feedback to this question was very similar to the feedback received in response to question 13.6.1.

Respondents that were against ASX providing an STP service to collect this information generally commented that funds have operational processes in place to disseminate unit prices and are already reporting this data to third party vendors (such as Financial Express and Morningstar). In order to avoid duplication and the effort of building a new service, it was suggested that ASX should consider how it can obtain this information from the existing operational processes carried out by funds or through a subscription service with third party data providers.

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?

ASX received nine responses to this sub-section. All respondents were supportive of the proposal in question 13.8.1.

The majority of respondents thought that this information should be updated quarterly to align with the same reporting period as issues and redemptions, while one respondent would like to see this information published daily, or at least as often as the fund strikes a unit price.

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?

ASX received eight responses to this sub-section and question.

The majority of respondents were supportive of the proposal. One respondent in support of the proposal commented that there were industry standard formats for this type of information so it was important for the smart form to be able to ingest uploaded data files. Another respondent in support of the proposal commented that it was important that the information submitted via the smart form was able to be disseminated via data services (such as ReferencePoint).

Respondents that were against ASX providing an STP service to collect this information generally commented that funds have operational processes in place to disseminate distribution information and are already reporting this data to third party vendors (such as Financial Express and Morningstar). In order to avoid duplication and the effort of building a new service, it was suggested that ASX should consider how it can obtain this information from the existing operational processes carried out by funds or through a subscription service with third party data providers.

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?

ASX received eight responses to this sub-section and question with mixed feedback from respondents.

Those in support of the proposal generally commented that, in their view, it was important for the TMD to be made available anywhere the PDS was made available as the TMD contained key information for investors to consider, and should be available in as many locations as possible.

Those against the proposal generally commented that the TMD was not required by ASIC to be provided to retail investors, so therefore should not be required on a retail investor facing website such as the one contemplated by ASX. Other respondents against the proposal commented that a link to the TMD is typically provided in the PDS and is already available on the issuer's website.

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?

ASX received six responses to this sub-section and question.

The following suggestions were provided in relation to additional data points about investors that could usefully be captured through the mFund Settlement Service:

- Distribution election details
- Banking details
- A standardised set of DDO questions as follows:
  - Questions for financial advisers:
    - Was financial advice provided?
    - Was the investor determined to be in the target market of the fund?
  - Questions for self-directed investors:
    - What is your investment objective?
    - What is your investment timeframe?
    - What is your liquidity requirement?
    - What is your risk/return appetite?
- Collection of investor details to cover all CRS & FATCA scenarios

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?

ASX received six responses to this sub-section and question, with five respondents supportive of introducing transfer functionality. A number of the respondents suggested that an example use-case for this functionality was for SMSF Trustees, such as when a trustee retires or has been replaced.

One respondent suggested that CHESS to CHESS conversions would also be useful functionality.

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?

ASX received five responses to this sub-section and question.

One respondents was of the view that a parallel system was not required. Instead, the respondent suggested that it would make sense to open up mFund to all ASX settlement participants if they choose to use it as the restriction to trading participants is not required.

Another respondent commented that this service is akin to a neutral and secure settlement depository for large transactions and should only be developed if a commercial business case was established in consultation with the most likely service providers such as custodians, margin lenders and investment platforms.

Two other respondents requested to engage further with ASX to discuss the concept in further detail.

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?

ASX received six responses to this sub-section and question with mixed feedback from respondents.

Two respondents were in support of the concept. One suggested that this was worth exploring in relation to Managed Accounts, while the other respondent suggested that expanding the range of financial products on offer would help support retail wealth management platforms and benefit retail investors.

Four respondents were against the concept, two of whom generally commented that there was too much complexity in implementing such a service.

ASX

14. Better information for investors about Investment Products

14.1 Background

Section 14 of the consultation paper sought feedback on the collection of information about investment products covered in the consultation paper.

ASX received 17 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

14.2 Information to be captured on Collective Investment Products

ASX received 17 responses to this sub-section.

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?

The majority of respondents were in support of this proposal with the main sentiment being that having this information readily available via the ASX website would lead to greater engagement with retail investors and would allow them to make more informed investment decisions.

Respondents against the proposal generally commented that this may create duplication with what is already on the product issuer's website and would create extra compliance and operational costs for issuers. Some also commented that this information is available via third party data vendors (such as Financial Express and Morningstar) and ASX should look to source the information from those providers.

An approach between the two was also suggested, where links could be compiled on the ASX page which would lead directly to the product issuer's website or PDS.

One respondent replied that the facilities on ASX Online already enable the population of information such as contact details, share registry, website etc. This information is viewable on the ASX website and is typically provided without having a rule present within the Listing or AQUA rules. The respondent suggested enhancing the fields available to cater to product issuers.

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?

Responses to this question were varied with support received for all the different time frames mentioned.

Support for daily disclosure was limited but those in favour mentioned that it should be done at this frequency to address any movement in the market. However, one respondent commented that daily disclosure would increase the cost of providing this information and there would be little benefit to the investor. Another respondent mentioned that daily disclosure is already available on the issuer's website in addition to other various data distributors and doing this on the ASX website could lead to a duplicative effect.

The majority of support came through for the longer intervals – in particular, monthly was favoured as it is already in line with AQUA rule requirements. Additionally, one respondent mentioned that any increase to frequency beyond monthly disclosure could be problematic to listed companies who already report on a monthly basis.

ASX

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?

The majority of respondents were in favour of the TMD being made available on the ASX website. However, there were different views expressed as to whether this should be mandatory under the AQUA Rules or voluntary. In addition, much like the responses received for 14.2.1, multiple respondents commented that this information is already available on the product issuer's website and that a link should lead investors and advisers to the their web page rather than a document needing to be uploaded via ASX. Another respondent commented that this information is available via third party data vendors (such as Financial Express and Morningstar) and ASX should look to source the information from those providers.

A respondent that objected to the proposal commented that the requirements under the Corporation Act are already sufficient therefore it should not be mandatory to host the TMD on the ASX webpage.

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?

ASX received six responses to this sub-section and question.

There was broad support for displaying information about these products on the ASX website and respondents commented generally that this would assist in increasing investor education.

One respondent specifically mentioned that information regarding strikes, stop loss levels and gearing levels would be particularly useful information for investors. The same respondent commented that the disclosure of open interest would not be positive and could lead to front running on certain products and lead to reduced confidence within the warrants market.

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?

ASX received 12 responses to this sub-section and question.

There was broad support for this proposal, however there were mixed views expressed from both those in support of and against the change.

One respondent supportive of the proposal suggested that reporting movement in net units is more effective to convey the growth or shrinkage of a fund as opposed to the reporting of gross units issued and gross units redeemed. Another in support of the change suggested that this should be available daily rather than calculated quarterly. One respondent suggested that to avoid preparing a separate announcement for ASX, the information should be made available on the issuer's website and investors directed to this location to find the information.

Those against the proposal generally questioned the value if this information to investors versus the cost to deliver it. Others against the change suggested fund size was a better figure to report or that the monthly units outstanding disclosure currently in place is sufficient.

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?

ASX received 12 responses to this sub-section and question.

The majority of respondents were in favour of introducing a new STP service for AQUA product issuers to disclose information about dividends and distributions, with supporters generally commenting that this service would be beneficial for both investors and issuers.

Multiple respondents stressed that ASX Online in its current form is not designed effectively to service AQUA products and system changes would need to be implemented that cater to the needs of product issuers. A number of suggestions were also made in relation to the design of the smart online form. Improvements to ASX Online and suggestions for the online form included:

- A single login for all products;
- The ability to service multiple products at once via the smart online form;
- The ability to upload information to the form (rather than keying it in) which has been designed to an industry standard template and includes all the different distribution tax components that may be applicable;
- Include the ability to add any relevant disclaimers and references to the issuer website.

Respondents against the proposal suggested that this information is already available elsewhere (including via third party data vendors), so this is likely to be a duplicative requirement.

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?

ASX received 14 responses to this sub-section and question.

Suggestions regarding additional information about investors that should be captured by the CHESS system include:

- Client email address and phone number to communicate expiry notifications, dividend statements etc;
- Direct credit details to assist with off market settlement requirements;
- TFN/ABN numbers to assist with the onboarding of new investors and ensure investors receive distributions without unnecessary tax withheld;
- Ability for investors to set global level communication preferences;
- Investor type e.g. retail, advised or institutional;

- FATCA and CRS related information to alleviate the existing operational efforts required to collect this information on a post-trade basis via the share/unit registries.

Multiple respondents also stressed the importance of the security of investor data and that privacy protections are implemented (if not already in place) before the collection of this data is considered.

15. Miscellaneous issues

15.1 Background

Section 15 of the consultation paper addresses miscellaneous issues relevant to investment products, including the AQUA Quote Display Board (QDB), the admission application processes as well as seeking any other feedback not addressed in this paper.

ASX received 12 responses to this section. A summary of the feedback from respondents across each of the sub-sections is as follows:

15.2 The AQUA Quote Display Board

Question 15.2.1: Were you aware that the QDB exists?

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?

ASX received 11 responses to this sub-section.

The majority of respondents were aware of the QDB however there was broad agreement that the service either offers very little value or will require a revamp of features in order to make it a viable service.

More than half of responses received were either neutral or supportive to the notion of ASX possibly decommissioning the service.

One respondent suggested improving the functionality of the QDB so that it is comparable to services such as Tradeweb or Bloomberg RFQ.

15.3 Admission application forms and processes

ASX received 12 responses to this sub-section.

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?

There were no examples provided regarding a recent application for a LIC, LIT, REIT or IF. One respondent commented that the ASX forms and processes are not difficult to navigate.

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?

Respondents provided feedback on the AQUA Product application process as follows:

1. **Application Forms:** There was generally positive feedback in relation to the changes made to the application forms in 2019. Suggestions on areas for improvement were as follows:
   - Enabling an existing issuer to attest that no details have changed, referencing the most recent application the issuer has submitted.
   - In Section B, instead of requiring sections of the PDS to be transposed into the application form, simplifying the task by only asking for the page reference numbers.
   - Standardising the material required to be submitted in a product application. Using the AQUA Information Sheet and Checklist for an ETF to illustrate, it was recommended that ASX provide templates for Annexures A6, B2, B8, B11 and B13. Standardising these particular annexure forms will make it clear to issuers what ASX expects to see.
   - Reducing the repetition within the application documents. One respondent provided an example where policies and procedures are required to be provided and then those same documents are required to be reworded in other documents and legal advice.
   - Moving to an online application process in order to help track the status of applications and create a level of standardisation.
2. **Admission process:** The majority of respondents commented that the existing admission process needs to be improved in order to provide issuers, service providers and potential investors with greater clarity and commercial confidence on timing when launching a product. The recommended areas for improvement are as follows:
   - Committing to clearer timeframes or a service standard for the admission process. A number of respondents commented that at times and particularly with novel products, it is unclear how long an application will take to consider, and more complex products can often experience significant delays compared to the original intended launch date.
   - Providing more frequent updates on the status of the application. As mentioned above, it was suggested that moving to an online application process will assist so that the status of the application in each stage of the process can be seen by the issuer.
   - Providing clarity on what products are non-novel vs novel.
   - When approvals on aspects of the product admission are required, providing clarity on the timing and scope of the approvals being sought. That is, being clear about what approvals may be required and when each Panel/Committee will provide those approvals or comments.
   - Providing clarity around when ASIC must be involved in the approval process and the extent to which decision making is required to be deferred to ASIC or is within ASX's purview. Feedback noted that there are times when ASIC can be involved well into the assessment process which then adversely impacts planned launch dates.
   - Providing further resources and guides for issuers, such as FAQs and guidance to help issuers navigate common issues. This also includes updating the processes and timeframes quoted from the brochures released in 2019 so that they align with today's standards.

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?

ASX

The respondent to the above questions suggested three improvements to the process:

1. More automation within the process, such as using file transfer protocol (FTP) rather than emailed spreadsheets;
2. To provide an online portal to check the availability of new codes;
3. Changing the default MINI expiry date to a date further into the future for existing products.

The respondent also remarked that it would not be feasible to change the warrant application process to be more in line with AQUA products.

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?

ASX received six responses to this sub-section and question.

Other issues for consideration raised by respondents were as follows:

- Warrants: One respondent proposed three changes regarding warrants:
    1. The allowance of continuous trading of index, FX and commodity warrants between 4:00pm and 4:12pm, rather than going into the CSPA.
    2. Addressing the current AQUA market rules relating to special size trades in market making regarding warrants.
    3. To overhaul the ticker convention to allow 7 letter codes.
- REITs: One respondent requested further discussion with ASX regarding the intention to treat REITs separately from non-investment entities.
- Listed alternative products: One respondent requested further discussion with ASX regarding further changes that are required to support listed venture capital and private equity products.
- Dividend Reinvestment Plan (DRIP) elections: One respondents suggested that deadlines should be updated to record date plus one. This will mitigate the need for custodians to run multiple separate submissions of elections based on investor activity. This change will also alleviate stress and time pressures faced by both investors and custodians.
- Tax information: One respondent suggested that there should be more information via the ASX website in relation to the taxable components of distributions, including tax-free amounts, CGT-concession amounts, capital returns, tax-exempted amounts, tax-deferred amounts and AMIT cost base adjustments.
- One respondent proposed that all collective investment products be universally placed under the same rulebook, where extra subsets for each product type were detailed and applied when appropriate.

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Annexure B – Glossary

ADI	authorised deposit-taking institution
AFSL	Australian financial services licence
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
ARFP	Asia Region Funds Passport
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited
CCIV	a corporate collective investment vehicle under proposed new Chapter 8B of the Corporations Act
Collective Investment Product	a share or unit in a LIC, LIT, REIT, IF, ETF, ETMF, or an 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
ETC	exchange traded commodity
ETF	exchange traded fund
ETI	exchange traded instrument
ETMF	exchange traded managed fund
ETN	exchange traded note
ETP	exchange traded product (the term ASIC uses in INFO 230 to refer to AQUA Products and the equivalent products traded on Chi-X)
ETSP	exchange traded structured product
FESE	Federation of European Securities Exchanges
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
IP	intellectual property
IPO	initial public offering
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
SEC	U.S. Securities and Exchange Commission

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 Chi-X market
US 1940 Act	Investment Company Act 1940 (USA)
Warrant	a warrant under the Warrant Rules
Warrant Rules	the rules in Schedule 10 of the ASX Operating Rules
WFE	World Federation of Exchanges

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