

### WARRANT AND AQUA PRODUCT LIQUIDITY REQUIREMENTS

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist warrant issuers and their advisers to understand their obligation to ensure that a reasonable bid and volume is maintained in the market for each warrant series except in “permitted circumstances”</li> <li>To assist AQUA product issuers and their advisers to understand their obligation to ensure either that a reasonable bid and volume is maintained in the market for each AQUA product except in “permitted circumstances” or that other arrangements are in place to ensure sufficient liquidity in the AQUA product</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>The requirement for warrant issuers to ensure that a reasonable bid and volume is maintained in the market for each warrant series except in “permitted circumstances”</li> <li>The requirement for AQUA product issuers to ensure either that a reasonable bid and volume is maintained in the market for each AQUA product or that other arrangements are in place to ensure sufficient liquidity in the AQUA product</li> <li>The purpose of these liquidity requirements</li> <li>The criteria ASX uses to assess whether a bid is reasonable or liquidity is sufficiently maintained</li> <li>The “permitted circumstances” when a reasonable bid is not required</li> <li>The enforcement action ASX can take if a reasonable bid or other arrangements to ensure sufficient liquidity are not maintained</li> <li>Appeals against enforcement action by ASX</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>ASX Operating Rules Guidance Note 11 <i>Obligations on the Expiry of a Warrant</i></li> <li>ASX Operating Rules Guidance Note 16 <i>Removal of Warrants and AQUA Products from Trading Status</i></li> </ul>

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**Important notice:** ASX has published this Guidance Note to assist issuers of warrants and AQUA products to understand and comply with their obligations under the ASX Operating Rules. It sets out ASX’s interpretation of the ASX Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and issuers of warrants and AQUA products should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published by ASX Limited ("ASX") to assist:

- warrant issuers and their advisers to understand their obligation under Schedule 10 of the ASX Operating Rules<sup>1</sup> to ensure that a reasonable bid and volume is maintained in the market for each warrant series except in "permitted circumstances"; and
- AQUA product issuers and their advisers to understand their obligation under Schedule 10A of the ASX Operating Rules<sup>2</sup> to ensure either that a reasonable bid and volume is maintained in the market for each AQUA product except in "permitted circumstances" or that other arrangements are in place to ensure sufficient liquidity in the AQUA product.

<sup>1</sup> Unless otherwise indicated, references in this Guidance Note to a rule or procedure relating to warrants are to the warrant rules in Schedule 10 of the ASX Operating Rules and the procedures under those rules respectively.

<sup>2</sup> Unless otherwise indicated, references in this Guidance Note to a rule or procedure relating to AQUA products are to the AQUA rules in Schedule 10A of the ASX Operating Rules and the procedures under those rules respectively.

## 2. Liquidity requirements

### 2.1. The nature and purpose of the liquidity requirements

Broadly speaking, the warrant rules require the issuer of a warrant series to support its liquidity by ensuring that a reasonable bid<sup>3</sup> and volume<sup>4</sup> is maintained for the warrant series for the prescribed percentage of each trading day.

There is no requirement in the warrant rules for the issuer to ensure that there is a reasonable offer<sup>5</sup> and volume in each warrant series, although warrant issuers typically will maintain ‘two-way’ markets (ie both bids and offers) until the theoretical value of the warrant series drops below a certain point. The absence of a reasonable offer requirement reflects the fact that most warrant series are expiring products and ASX does not consider it necessary or appropriate to require an issuer to make ‘two-way’ markets at all times in the warrant series’ lifespan. The reasonable bid requirement ensures that holders have a reasonable opportunity to exit their investment on-market at a reasonable price.

The AQUA rules provide two alternatives for the issuer of an AQUA product to support its liquidity. The first is the same as the requirement for warrants – that is, ensuring that a reasonable bid and volume is maintained for the AQUA product for a prescribed percentage of each trading day. The second is to enter into alternative arrangements acceptable to ASX to ensure “sufficient liquidity” in the AQUA product, which ASX interprets as requiring both reasonable bids and offers for the AQUA product within a reasonable spread for a reasonable proportion of the trading day. There are two main ways of providing sufficient liquidity under this second alternative, categorised broadly as “external market making” and “internal market making”. With external market making, an external party’s capital is put at risk in making markets, whereas with internal market making the AQUA product’s assets are put at risk in making markets.

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

The purpose of these liquidity requirements is to ensure that there is an ongoing public ‘lit’ market for warrants and AQUA products and that the holders of those products have a reasonable opportunity to exit their investment on-market at a reasonable price.

### 2.2. The specific liquidity requirements for warrants

Unless ASX determines otherwise, a warrant issuer must on an ongoing basis ensure a reasonable bid and volume is maintained in the market for each warrant series admitted to trading status for at least 90% of the time between 10:15 am and the commencement of the pre-CSPA session state<sup>6</sup> on each trading day,<sup>7</sup> unless there are “permitted circumstances”.<sup>8</sup>

While ASX has the power to determine that a warrant issuer need not comply with this liquidity requirement, generally the only circumstance where ASX might consider doing so would be if ASX was satisfied that the warrant series had a sufficiently large spread of holders to guarantee reasonable liquidity in the warrant series without the issuer providing any liquidity support. ASX does not prescribe any parameters for what size spread of holders would

<sup>3</sup> “Bid” means an order to purchase a specified quantity of a financial product for a specified price (ASX Operating Rule 7100).

<sup>4</sup> ASX reads the phrase “reasonable bid and volume” as effectively meaning a bid at a reasonable price and for a reasonable volume. The rules could have just used the phrase “reasonable bid” without the reference to “volume” since a bid must include both price and quantity and therefore a “reasonable bid” must be a bid that is reasonable both as to price and as to quantity.

<sup>5</sup> “Offer” means an order to sell a specified quantity of a financial product for a specified price (ASX Operating Rule 7100). It is sometimes also referred to as an “ask”.

<sup>6</sup> This refers to the phase of the market immediately ahead of the closing single price auction. During this phase, trading stops and brokers enter, change and cancel orders in preparation for the market closing. On most trading days, this occurs between 4.00 pm and 4.10 pm (Sydney time).

<sup>7</sup> Procedure 10.3.11 (first paragraph). References to time in that procedure are to Sydney time (ASX Operating Rule 7000(l)).

<sup>8</sup> Rule 10.3.11. See also ‘2.4 Permitted circumstances’ on page 5.

be sufficient for this purpose as that issue needs to be addressed on a case-by-case basis and in the context of the particular warrant series. In ASX's experience, however, it would be relatively rare for a warrant series to have a sufficiently large spread of holders at the time of its initial admission to trading status for ASX to be satisfied that no liquidity support is required by the issuer.<sup>9</sup>

### 2.3. The specific liquidity requirements for AQUA Products

Unless ASX determines otherwise, an AQUA product issuer must with respect to each AQUA product admitted to trading status<sup>10</sup> on ASX either:

- (a) on an ongoing basis ensure a reasonable bid and volume is maintained in the market for each AQUA product admitted to trading status for at least 90% of the time between 10:15 am and the commencement of the pre-CSPA session state<sup>11</sup> on each trading day,<sup>12</sup> unless there are "permitted circumstances" (the "reasonable bid alternative");<sup>13</sup> or
- (b) have in place other arrangements which meet the requirements set out in the procedures and, in the opinion of ASX, provide a mechanism for sufficient liquidity in the AQUA product (the "sufficient liquidity alternative").<sup>14</sup>

The reasonable bid alternative in (a) above is essentially the same obligation as applies to the issuers of warrant series.

Under the sufficient liquidity alternative in (b) above, the AQUA product issuer must have entered into an agreement with a market maker (for products with external market making arrangements) or a market making agent (for products with internal market making arrangements) satisfactory to ASX to ensure reasonable bids and offers are maintained in the market for each AQUA product for a nominated percentage of the trading day, with agreed parameters as to the minimum quantity of each bid and offer and the maximum spread between the bid price and the offer price. These parameters must be agreed with ASX prior to the AQUA product being admitted to trading status on ASX and can only be varied thereafter with the agreement of ASX.<sup>15</sup>

In practice, ASX generally requires the market making commitment under the sufficient liquidity alternative to apply for at least 80% of the time between 10:15 am and the commencement of the pre-CSPA session state<sup>16</sup> on each trading day, unless there are "permitted circumstances" or other closely analogous circumstances acceptable to ASX.

In determining the parameters for the minimum quantity of each bid and offer and the maximum spread between the bid price and the offer price for those AQUA product issuers who have applied for admission under the sufficient liquidity alternative, ASX will have regard to:

- the asset class and liquidity of the underlying instruments for the product;
- the concentration of holdings in the product; and
- the minimum quantity and maximum bid/offer spread applied to other products that have similar underlying instruments,

<sup>9</sup> If ASX were to admit a warrant series to trading status on this basis, it would invariably impose a condition on admission that ASX can require the issuer to comply with the liquidity requirements in rule 10.3.11 if, in ASX's opinion, there is an unacceptable widening in the bid-offer spread for, or there otherwise is insufficient liquidity in, the warrant series.

<sup>10</sup> These requirements do not apply to AQUA products that are admitted only to the AQUA Quote Display Board or for settlement through the Managed Fund Settlement Service (see the opening paragraph to rule 10A.3.6).

<sup>11</sup> See note 6 above.

<sup>12</sup> Procedure 10A.3.6 (first paragraph). Again, references to time in that procedure are to Sydney time (ASX Operating Rule 7000(I)).

<sup>13</sup> Again, see '2.4 Permitted circumstances' on page 5.

<sup>14</sup> Rule 10A.3.6.

<sup>15</sup> Procedure 10A.3.6 (second paragraph).

<sup>16</sup> See note 6 above.

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

Again, while ASX has the power to determine that an AQUA product issuer need not comply with the liquidity requirements mentioned above, generally the only circumstance where ASX might consider doing so would be if ASX was satisfied that the AQUA product had a sufficiently large spread of holders to guarantee reasonable liquidity in the AQUA product without the issuer providing any liquidity support. ASX does not prescribe any parameters for what size spread would be sufficient for this purpose as that issue needs to be addressed on a case-by-case basis and in the context of the particular AQUA product. In ASX's experience, however, it would be relatively rare for an AQUA product to have a sufficiently large spread of holders at the time of its initial admission to trading status for ASX to be satisfied that no liquidity support is required by the issuer.<sup>17</sup>

### 2.4. Permitted circumstances

Under the warrant and AQUA rules, a warrant issuer and an AQUA product issuer that has applied for admission of an AQUA product under the reasonable bid alternative is specifically relieved of its obligation to maintain a reasonable bid for the warrant or AQUA product in "permitted circumstances".

An AQUA product issuer that has applied for admission of an AQUA product under the sufficient liquidity alternative is also generally relieved of its market making obligations in "permitted circumstances", by the incorporation of a provision to that effect in the agreement with its market maker or market making agent.

"Permitted circumstances" are defined in the warrant rules for a warrant series<sup>18</sup> and the AQUA rules for an AQUA product<sup>19</sup> as:

- (a) the underlying instrument or the underlying hedge instrument<sup>20</sup> of the warrant series or AQUA product is placed in pre-open session state or is subject to a suspension or trading halt or is otherwise unavailable for trading;
- (b) the warrant series or AQUA product itself is subject to a suspension or trading halt or is placed in pre-open session state or is otherwise unavailable for trading;
- (c) the theoretical value of the warrant series or AQUA product is below the relevant minimum price step of the ASX trading platform (currently \$0.001);
- (d) the issuer has advised the market that it or its market maker or market making agent would breach laws, regulatory rules or similar constraints (whether in Australia or elsewhere) by fulfilling its market making obligations, provided that:
  - where appropriate, it endeavours to obtain any necessary regulatory relief that will enable it to continue to make a market in that warrant series or AQUA product; and
  - it advises the market upon being able to continue to make a market in that warrant series or AQUA product;
- (e) the issuer of the warrant or AQUA product has advised the market that it or its market maker or market making agent has suspended the warrant series or AQUA product whilst it continues to experience an

<sup>17</sup> Again, if ASX were to admit an AQUA product to trading status on this basis, it would invariably impose a condition on admission that ASX can require the issuer to comply with the liquidity requirements in rule 10A.3.6 if, in ASX's opinion, there is an unacceptable widening in the bid-offer spread for, or there otherwise is insufficient liquidity in, the AQUA product.

<sup>18</sup> Rule 10.3.11.

<sup>19</sup> Rule 10A.3.6.

<sup>20</sup> An underlying hedge instrument is any product (other than the underlying instrument itself) in which an issuer takes positions as part of its genuine hedging arrangements for the warrant series or AQUA product in question. Whether a hedging arrangement is genuine is a matter of fact to be determined on a case-by-case basis having regard to all relevant circumstances.

interruption to its normal operating environment that substantially prevents the timely and accurate entry of market making orders into the trading platform within 30 minutes of the interruption occurring;<sup>21</sup> and

- (f) any other circumstances set out in the procedures<sup>22</sup> and notified to ASIC.

For the purposes of circumstance (d) above, a legal, regulatory or other constraint will be taken to prevent an issuer (or its market maker or market making agent) from fulfilling its market making obligations not only if it directly has that effect but also if it prevents the issuer (or its market maker or market making agent) from acquiring or disposing of the underlying instrument or underlying hedge instrument for the relevant warrant series or AQUA product.<sup>23</sup> This recognises, consistently with circumstance (a) above, that it is integral to an issuer (or its market maker or market making agent) making a market in a warrant series or an AQUA product that it is able to hedge and un-hedge its exposures.

Examples of the types of interruptions that meet circumstance (e) above include, but are not limited to:

- a loss of power, telecommunication lines or market data feeds;
- the malfunction of an automated market making system or other IT system upon which the operation of issuer's market making activities is dependent;
- a temporary unavailability of key systems because of a need to shut down and re-boot those systems; and
- a loss of access to or need to evacuate premises.

In addition to permitted circumstances set out above, ASX recognises that various transient events may result in an issuer not being able to provide a reasonable bid or reasonable offer for a short period of time. Examples of such events include:

- temporary interruptions to the issuer's normal operating environment that last for less than 30 minutes;
- large offers being executed that match all existing bids and result in a temporary absence of bids from the trading platform; and
- an adjustment to pricing models as part of appropriate risk management processes.

Provided these transient events only last a short time, ASX generally will not take enforcement action against a warrant issuer or AQUA product issuer for failing to meet its liquidity obligations for the duration of these events. If, however, they are not able to be rectified within a short time, ASX will expect the issuer to promptly notify ASX of the event and to discuss with ASX whether trading in the affected product should be halted or suspended until the issue is resolved and the issuer is able to resume complying with its liquidity obligations.

### 2.5. Pricing considerations

In structuring their liquidity arrangements, warrant issuers and AQUA product issuers should have due regard to the impact that the price of the product could have on bid/offer spreads.

Products with a market price of up to 9.9 cents trade on ASX in minimum increments (often referred to as "tick sizes") of 0.1 cents, while products with a market price between 10 cents and \$1.995 trade in minimum increments of 0.5 cents, and those with a market price of \$2.00 and above trade in minimum increments of 1 cent.

ASX strongly encourages warrant issuers and AQUA products issuers to structure their products so that they will have a market price on admission that is not less than \$1.00, and preferably well in excess of \$2.00, as that will

<sup>21</sup> Procedures 10.3.11 (second paragraph) and 10A.3.6 (third paragraph). There is no need to make an announcement or suspend the Warrant series or AQUA product if the interruption is resolved within 30 minutes.

<sup>22</sup> Nothing is presently specified in the Procedures.

<sup>23</sup> This might apply, for example, where foreign ownership or takeover restrictions prevent the issuer from acquiring or holding the underlying instrument or underlying hedge instrument.

help to facilitate relatively narrower bid/offer spreads as a percentage of traded prices compared to other price ranges.

### 3. Reasonable bids

This section deals with the liquidity obligations of warrant issuers and AQUA product issuers who maintain liquidity under the reasonable bid limb of rule 10A.3.6.

#### 3.1. Admission requirements

An applicant seeking to have admitted to trading status a warrant, or an AQUA product where the applicant has applied for admission to meet its liquidity obligations using the reasonable bid alternative, must identify in its admission application who will be entering bids into the market on its behalf, that is, whether:

- it has appointed an ASX trading participant or participants to act as its market making agent(s) to enter reasonable bids and volumes into the market on its behalf;
- it has in place arrangements with an ASX trading participant allowing it to directly enter reasonable bids and volumes on its own account; or
- it is an ASX trading participant who will be maintaining reasonable bids and volumes on its own account.

In the first and second cases above, the applicant must include a copy of the agreement(s) with relevant trading participant(s).

In all cases, the applicant must include a statement describing any arrangements it has in place with the relevant trading participant(s) and the competencies, resources, policies, procedures, systems and controls the applicant has in place to ensure that it can maintain reasonable bids and volumes.

ASX may reject the application if it is not satisfied that the applicant will have in place adequate facilities, expertise, procedures, personnel and financial resources to perform its reasonable bid obligations.<sup>24</sup>

#### 3.2. ASX's approach to assessing whether a bid is reasonable

In assessing whether a bid by an issuer of a warrant series or AQUA product is reasonable for these purposes, ASX applies two sets of criteria – one objective and the other qualitative.

If the objective criteria are met, ASX will consider the bid to be reasonable without any further regard to the qualitative criteria. If the objective criteria are not met, ASX will consider the qualitative criteria to determine whether, in its opinion, the issuer has been complying with its reasonable bid obligations.

If neither set of criteria is satisfied, ASX may exercise its enforcement powers referred to in section 6 below.

#### 3.3. Objective criteria for assessing whether a bid is reasonable

ASX will consider an issuer's bid for a warrant series or an AQUA product to be reasonable for the purposes of the liquidity requirements above if, for 90% of the time during the obligation period (ie, between 10:15 am and the commencement of the pre-CSPA session state<sup>25</sup>), it satisfies the following criteria:

- in relation to price, the issuer (or its market maker or market making agent) posts both bids and offers and the spread between the bid price and the offer price is:
  - when the bid price is 10 cents or greater, no more than 10% of the bid price; or
  - when the bid price is less than 10 cents, no more than 1 cent; and

<sup>24</sup> Rules 10.2.1(2) and 10A.2.1(2).

<sup>25</sup> See note 6 above.

- in relation to volume, the minimum bid value is:
  - when the bid price is 5 cents or greater, \$1,000; or
  - when the bid price is less than 5 cents, \$500.

ASX monitors the bids made by warrant issuers and by those AQUA product issuers who maintain liquidity under the reasonable bid alternative against the objective criteria mentioned above and may contact an issuer if it fails to meet those criteria to discuss whether it is in compliance with its reasonable bid obligations.

### 3.4. Qualitative criteria for assessing whether a bid is reasonable

If an issuer does not meet the objective criteria for a reasonable bid set out in the preceding section, ASX will then have regard to relevant qualitative factors, such as:

- whether there is evidence of consistent pricing over time and a correlation between the price and volume of the bids displayed by the issuer (or its market maker or market making agent) in the relevant warrant series or AQUA product compared to the price and volume of the bids available in the market for the underlying instrument or underlying hedge instrument, having regard to:
  - the terms and features of the warrant series or AQUA product, including its gearing or delta;
  - time and/or interest decay;
  - the liquidity of the underlying instrument or underlying hedge instrument and the transaction costs involved in hedging or un-hedging positions;
  - the normal application of sound risk limits around execution, liquidity and other market risks; and
  - a reasonable margin for the costs of issuing and administering the warrant series or AQUA product;
- where the warrant series or AQUA product has derivative characteristics, the application of generally accepted derivative pricing models to the bid and offer prices in the market for the underlying instrument or underlying hedge instrument;<sup>26</sup>
- whether any pricing inconsistency or lack of correlation can be explained by events affecting the market for the underlying instrument or underlying hedge instrument, such as:
  - an announced takeover, scheme, merger or other control transaction;
  - an impending corporate action; or
  - a temporary lack of liquidity, an unusual spike in volatility, unusually wide spreads or other market anomalies;
- whether, at the time, there were any holders in the warrant series or AQUA product;
- any explanations from the issuer as to why a particular bid was reasonable; and
- any advice from a warrants product committee or AQUA product committee regarding the range of prices they would consider to be a reasonable bid.<sup>27</sup>

<sup>26</sup> This may involve the use of a range of generally accepted market assumptions regarding key derivative pricing variables such as expected dividends, expected dividend payment dates, volatility of the underlying instrument, interest rates, exchange rates, etc.

<sup>27</sup> See note 48 below and the accompanying text.



### 4. External market makers

This section deals with the liquidity obligations of AQUA product issuers who have applied for admission under the sufficient liquidity alternative and who propose to have external market making arrangements in place.

#### 4.1. The role of market makers and authorised participants

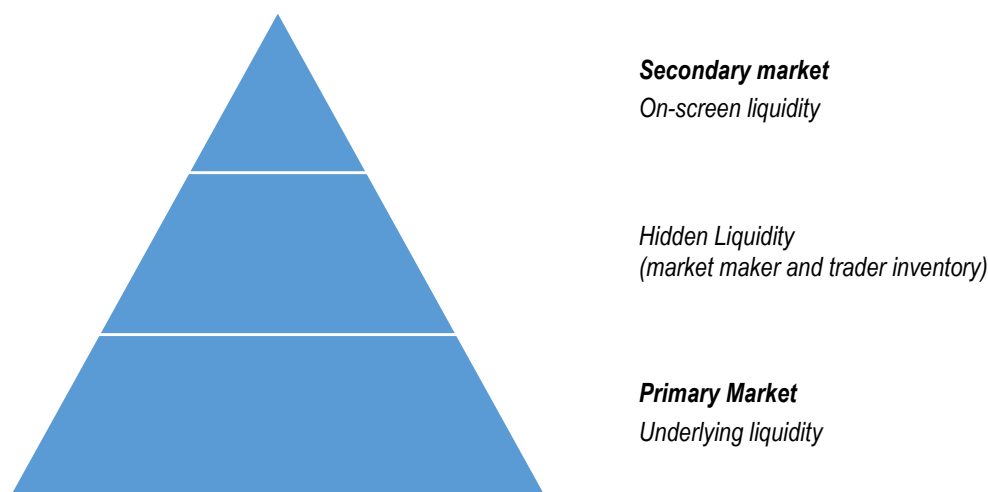
Liquidity in the AQUA market is a function of:

- the primary market, where AQUA products are created and redeemed usually at a price referable to their net asset value (“NAV”), plus a premium (in the case of a creation), or minus a discount (in the case of a redemption), to cover transaction costs associated with creating or redeeming new AQUA products; and
- secondary markets, where AQUA products are traded on a licensed exchange. Liquidity in the secondary market consists of the on-screen liquidity displayed by market makers and other traders on the exchange and the hidden liquidity represented by the inventory they hold in AQUA products.

Due in part to the large size of AQUA product “creation baskets”, the role of creating and redeeming AQUA products in the primary market is usually confined to larger participants on the relevant exchange. They are usually referred to as “authorised participants”. They make requests to the AQUA product issuer to create new units/shares in an AQUA product and pay for them by providing the issuer with an equivalent “basket” of the underlying instruments for the AQUA product (in-kind or in specie creation) or by paying cash to the issuer equal to the NAV of the creation basket, usually with a creation fee. The reverse is done during the redemption process.

Due to the large size of many AQUA product “creation baskets”, market makers will generally have more inventory than is required to be posted on exchange by the AQUA rules. While market makers will often post more orders than the minimum the AQUA rules require, they will not post more than they want to risk trading at the levels quoted. This excess inventory held by market makers is therefore described as “hidden liquidity”. This hidden liquidity can usually be accessed by talking to the capital markets teams at the AQUA product issuer or by approaching the market maker directly.

AQUA product liquidity is often portrayed as a pyramid, as set out in the diagram below. On-screen liquidity is made up of natural buyers and sellers, as well as the mandatory liquidity provided in accordance with the AQUA rules.<sup>28</sup> The “secondary market” is made up of on-screen liquidity and the inventory held by market makers and traders.



To promote liquidity in the secondary market, AQUA product issuers who propose to utilise external market making arrangements are required by the AQUA rules to maintain a minimum amount of on-screen liquidity. This is defined

<sup>28</sup> As required under rule 10A.3.6.

by reference to the maximum spread between the best bid and offer with a minimum value offered on each side for a prescribed percentage (usually 80%) of each trading day.

### 4.2. Arbitrage mechanism

Most AQUA product issuers who propose external market making arrangements have formal arrangements with professional third party market makers, who are tasked with providing 'two-way' markets in satisfaction of these obligations. Market makers are typically proprietary trading firms who have access to the AQUA market as well as the market in the underlying instruments. Along with the rest of the market, they are given detailed information about the composition of the AQUA Product's investment portfolio on a daily basis and use sophisticated trading technology that allows them to identify any mispricing between the AQUA market and the market in the underlying instruments to exploit any arbitrage opportunity. For example, when an AQUA product is in high demand, its price may trade above its NAV. When this happens, the market maker's systems will detect that the AQUA product is trading at a premium to the creation basket. Once that premium becomes large enough, the market maker will typically seek to exploit the arbitrage opportunity by selling the AQUA product at the higher market price, buying the creation basket at the lower price and then using that to apply to the AQUA product issuer for new AQUA products to cover its short position in the AQUA products. These activities will generally put downward pressure on the price of the AQUA product causing it to revert towards NAV. Conversely, when an AQUA product is in low demand, its price may trade below its NAV. When this happens, the market maker's systems will detect that the AQUA product is trading at a discount to the creation basket. Once that discount becomes large enough, the market maker will typically seek to exploit the arbitrage opportunity by buying the AQUA product at the lower market price, selling the creation basket at the higher price and then redeeming the AQUA product to cover its short position in the creation basket. These activities will generally put upward pressure on the price of the AQUA product again causing it to revert towards NAV. This arbitrage mechanism is considered advantageous to both the market maker and the market – the market maker profits by buying at a lower price and selling at a higher price, while prices in the market are driven back in line with NAV.

Daily portfolio disclosure may also encourage other proprietary traders to look for and exploit arbitrage opportunities, resulting in competitive bids and offers, providing additional liquidity and promoting tighter spreads.

### 4.3. Admission requirements

An applicant seeking to have an AQUA product admitted to trading status where the AQUA product issuer will meet its liquidity obligations using authorised participants and external market makers must include with its admission application:

- details of the minimum market making parameters it proposes to maintain, in terms of the maximum bid/offer spread, the minimum quantity on either side and the minimum percentage of time each trading day;
- the name of the lead market maker and a copy of the agreement with that market maker;
- the name(s) of the authorised participant(s) it has appointed to create and redeem the AQUA products together with a copy of the agreement(s) with those participant(s) or, if any ASX trading participant can create and redeem the AQUA products, a statement to that effect;
- a summary of the AQUA product issuer's processes for creating and redeeming AQUA products as part of its liquidity arrangements, which covers:
  - who can create and redeem AQUA products;
  - what are the processes for them to do so; and
  - whether or not the issuer is relying on ASIC Class Order [CO 13/721] to allow unequal treatment in the provision of information to authorised participants or in withdrawing from the AQUA product and, if so, how will it ensure compliance with the conditions in that class order; and
- a summary of the AQUA product issuer's processes for disclosing the composition of the underlying portfolio, including whether the issuer will disclose:

- the full portfolio of the AQUA product's holdings;
- a creation/redemption basket that closely reflects the portfolio composition; or
- material portfolio information ("MPI"), such as a basket of proxy assets,

and how and when the issuer will make that disclosure. Consistent with ASIC's guidance,<sup>29</sup> where the issuer publishes MPI, it must do so on a daily basis prior to the commencement of trading on each trading day and disclose on a quarterly basis the tracking performance between the disclosed MPI and the full portfolio.

## 5. Internal market making

This section deals with the liquidity obligations of AQUA product issuers who have applied for admission under the sufficient liquidity alternative and who propose to have internal market making arrangements in place.

### 5.1. The role of the issuer in an internal market making arrangement

Typically in an internal market making arrangement, the issuer appoints a trading participant to act as its execution agent to enter bids and offers in the AQUA products throughout the day on behalf of the issuer (in its capacity as the responsible entity of the underlying fund rather than in its personal capacity). Under this arrangement, at the end of the trading day, any profit or loss based on the market-making activity is attributed to the AQUA product and a net creation or redemption in the AQUA product is performed by the issuer to cover its long or short position in the AQUA product.

Internal market making arrangements have developed to allow AQUA product issuers to protect the intellectual property of certain AQUA products through delayed disclosure of the underlying portfolio of assets.

### 5.2. When will ASX allow internal market making arrangements?

ASX generally will only permit an internal market making arrangement where:

- the AQUA product is a high conviction actively managed fund with a concentrated portfolio of underlying equity instruments that have transparent pricing and reasonable liquidity;
- the AQUA product issuer can demonstrate to ASX's satisfaction that without delayed portfolio disclosure, the AQUA product issuer's intellectual property is at risk (in the sense that others might seek to replicate the portfolio to the detriment of the AQUA product and its investors); and
- the AQUA product issuer has acceptable arrangements in place to publish an indicative net asset value ("iNAV") for the AQUA product throughout trading hours in Australia (see below).

If an AQUA product issuer cannot meet these requirements, it must have acceptable external market making arrangements in place for the AQUA product.

ASX will generally work with an AQUA product issuer to achieve a situation where full portfolio holdings disclosure is delayed only to the extent necessary to protect the issuer's intellectual property.

### 5.3. ASIC Guidance on internal market making

ASIC has given extensive guidance on its expectations for internal market making arrangements in ASIC Information Sheet 230 *Exchange traded products: Admission guidelines* ("IS 230")<sup>30</sup> and ASIC Report 583 *Review of exchange traded products* ("REP 583").<sup>31</sup> ASX expects issuers of AQUA products with internal market making arrangements to comply fully with ASIC's guidance.

<sup>29</sup> See IS 230 under the heading "Disclosure of portfolio holdings", sub-heading "Delayed disclosure of portfolio holdings" and sub-sub-heading "Material portfolio information disclosure model".

<sup>30</sup> A copy of IS 230 is available online at: <https://asic.gov.au/regulatory-resources/markets/supervision/exchange-traded-products-admission-guidelines/>.

<sup>31</sup> A copy of REP 583 is available online at: <https://download.asic.gov.au/media/4835387/rep583-published-02-august-2018.pdf>.

### 5.4. Requirement for internal market making procedures

ASX requires every AQUA product issuer proposing an internal market making arrangement to prepare detailed procedures (“internal market making procedures”) that are consistent with ASIC’s guidance in IS 230 and REP 583 and that cover the entirety of the internal market making process. This includes not only the specific process for making bids and offers in the market, but also its processes for creating and redeeming AQUA products, publishing the portfolio composition, and calculating and publishing an iNAV.

The issuer must provide its internal market making procedures to ASX with its admission application for ASX to confirm that they meet the requirements in this Guidance Note.

### 5.5. Market making bids and offers

An AQUA product issuer’s internal market making procedures must address its processes for making bids and offers, including:

- How and by whom is the ‘fair value’ of the AQUA product established throughout the trading day in order to determine what bids/offers to make and does that person have access to alternate pricing inputs if the primary pricing inputs used are faulty or unavailable?
- How are the issuer’s instructions on what bids/offers are to be made conveyed to the market making agent?
- When might the market making agent seek the issuer’s approval to depart from the issuer’s instructions and what are the processes for doing this?
- Will the bids/offers be executed by way of automated order processing or by an individual?
- If bids/offers will be executed by an individual, what processes are in place to cover for that individual if he or she is indisposed or on leave?
- What is the rate at which bids/offers are to be refreshed?
- How many levels of bids/offers will be shown on screen, and at what price, steps and volume will these orders be placed?
- What “circuit breakers” are there to protect the fund for technical errors, human errors, high-frequency trading activity or extraordinary market conditions and under what circumstances are these “circuit breakers” triggered?
- What is the maximum volume of AQUA products that the issuer reasonably anticipates will need to be available for market making activities each trading day and what are the procedures for refreshing this volume if it is depleted?
- What processes are in place to manage large market movements, heightened volatility and liquidity events (such as maximum daily limits for creations)?
- What processes are in place to manage instances of disorderliness or substantial information asymmetry in the market?
- What information barriers and other compliance arrangements are in place at the issuer and its market making agent<sup>32</sup> to avoid their respective market making activities breaching insider trading laws?<sup>33</sup>

<sup>32</sup> This should address the arrangements in place to prevent persons or systems placing market making orders from having access to information that is not generally available and that a reasonable person would expect to have a material effect on the price or value of the AQUA product (including information about the current portfolio holdings where that information is not generally available). If the market making agent also provides other services to the issuer (eg hedging services), this should address the arrangements in place to quarantine information provided to persons or systems providing those other services from persons or systems providing market making services.

<sup>33</sup> Sections 1043A(1) and (2) of the Corporations Act.

- Where the issuer has a discretion to override established market-making instructions, what safeguards are in place to avoid the risk of that breaching insider trading laws?
- What interim processes are in place during the initial stages of quotation when funds under management may be limited to manage the risk there may be more demand for market making at that time due to the small number of holders or investors having received an inducement to participate in the initial quotation and being keen to sell?
- What processes are in place to continually monitor the market making activity in the AQUA product to ensure that the minimum market making specifications agreed with ASX are met?

An AQUA product issuer's internal market making procedures must also provide for ASX to be notified immediately if the market making activity does not achieve the minimum market making specifications agreed with ASX on any particular trading day.

### 5.6. Creating and redeeming AQUA products

An AQUA product issuer's internal market making procedures must address its processes for creating and redeeming AQUA products as part of its liquidity arrangements, including:

- who can create and redeem AQUA products; and
- what are the processes for them to do so.

### 5.7. Portfolio disclosure

An AQUA product issuer's internal market making procedures must address its processes for disclosing the composition of the underlying portfolio. Consistent with ASIC's guidance,<sup>34</sup> disclosure of full portfolio holdings must only be delayed to the extent necessary to protect the issuer's intellectual property, and must be provided at least quarterly with a delay of no more than two months.

### 5.8. Calculation and publication of iNAV

An AQUA product issuer's internal market making procedures must address its processes for calculating and publishing the iNAV. This includes:

- How and by what person or system is the iNAV calculated?
- How and when does the person or system calculating the iNAV receive the daily portfolio composition file, and if there are material changes to the portfolio, how and when are they informed of those changes?
- Does the person or system calculating the iNAV have access to alternate pricing inputs if the primary pricing inputs used are faulty or unavailable?
- What processes are in place to maintain the integrity and continued distribution of the iNAV (eg, does the issuer undertake its own monitoring and integrity checks or have a contract with a second iNAV provider as a backup)?
- Where the iNAV is calculated independently by multiple parties (eg the issuer, iNAV calculation agent and market-making agent), what processes are in place to validate any differences in the iNAV and the prices available on screen and to quickly escalate the matter where there is a material deviation?
- How often is the iNAV updated?
- Will the iNAV reflect live FX rates?

<sup>34</sup> See IS 230 under the heading "Disclosure of portfolio holdings", sub-heading "Delayed disclosure of portfolio holdings" and sub-sub-heading "Internal market making".

- Will the iNAV use proxies to estimate the real-time value of securities that are not traded during Australian trading hours?
- Which data vendors will the iNAV be disseminated to?
- Will the iNAV be available on the issuer's website and, if so, where?
- What escalation procedures are there should the iNAV cease to be accurate or available (including procedures to request a trading halt or suspension where appropriate)?

Consistent with ASIC's guidance,<sup>35</sup> the iNAV calculation must be calculated by an independent professional third party with reasonably reliable and robust systems or be able to be independently verified. It must represent the AQUA product issuer's best estimate of the fair value of the AQUA product on a per unit basis having regard to its underlying assets and liabilities. The iNAV must be updated as frequently as practicable possible, given the nature of the fund, and at intervals of no more than every 15 minutes throughout each trading day to reflect live market prices for underlying assets that are traded during Australian trading hours and a reasonable estimate of fair value for underlying assets that are not traded during Australian trading hours.<sup>36</sup>

### 5.9. Conflicts of interest

An AQUA product issuer's internal market making procedures must include arrangements to manage the inherent conflicts of interest in the issuer undertaking an internal market making arrangement.<sup>37</sup> These arrangements should specifically address the conflicts arising from the issuer's ability to decrease the bid price in order to discourage the selling of AQUA products and to retain funds under management (thereby maintaining the issuer's management fees). It should also address the conflicts arising from the issuer's ability to widen spreads greater than the transaction costs associated with creating or redeeming AQUA products in order to generate profits and thereby improve the apparent performance of the AQUA product.

### 5.10. Other Corporations Act compliance issues

In preparing its internal market making procedures, an AQUA product issuer must have regard to its legal obligations to act in the best interests of AQUA product holders and to treat holders of the same class of AQUA product equally and holders of different classes of AQUA products fairly.<sup>38</sup> To this end, the issuer should endeavour to ensure that all holders (existing, incoming and departing) are not worse off as a result of it choosing to provide liquidity via an internal market making arrangement than if external market makers were engaged.

The issuer must also have regard to the prohibitions against market manipulation<sup>39</sup> and insider trading.<sup>40</sup> To this end, the issuer's internal market making procedures should preclude the issuer or its market making agent from buying or selling AQUA products in order to produce a particular market price (eg the previous day's NAV) or to artificially increase, decrease or maintain the market price of the AQUA products and ensuring that those involved in deciding when and at what price to place market making orders are shielded from material non-public price-sensitive information.

### 5.11. Daily creations and redemptions

An AQUA product issuer's internal market making procedures must preclude the issuer from retaining an inventory of AQUA products (ie 'treasury stock') to use to maintain liquidity in the AQUA product. A net creation or redemption of AQUA products should occur after each trading day reflecting the trading activity of that day. If the issuer has a net long position in the AQUA product at the end of the trading day, this should be flattened by the redemption and

<sup>35</sup> See IS 230 under the heading "Disclosure of portfolio holdings".

<sup>36</sup> For example, where the underlying assets of the AQUA product are not traded during Australian trading hours, the iNAV could be based on the closing price of the assets in question adjusted for foreign exchange movements, with an additional adjustment for after-hours trading conditions where appropriate (eg by looking at moves in derivative markets, if they provide a reasonable proxy).

<sup>37</sup> Section 912A(1)(aa) of the Corporations Act.

<sup>38</sup> Sections 601FC(1)(c) and (d) of the Corporations Act.

<sup>39</sup> Sections 1041A, 1041B and 1041C of the Corporations Act.

<sup>40</sup> Sections 1043A(1) and (2) of the Corporations Act.

cancellation of an appropriate number of AQUA products. If the issuer has a net short position in the AQUA product at the end of the trading day, this should be flattened by the issue of an appropriate number of AQUA products. This should occur before the beginning of the next trading session.

### 5.12. PDS disclosure

The PDS or other disclosure document for an AQUA product with internal market making arrangements should include appropriate information about the issuer's internal market making arrangements and disclose the additional risks associated with those arrangements compared to external market making arrangements. The disclosed risks should include (at a minimum) that:

- the issuer may not always be able to make a market in times of uncertainty about values, due to its duty to act in the best interests of members, and
- the assets of the AQUA product will bear the risk of market-making activities, which may result in a profit or loss to holders of the AQUA product.

The PDS or other disclosure document should also disclose where investors can find out information about the average bid/offer spread for the AQUA Product.

### 5.13. Admission requirements

An applicant seeking to have an AQUA product admitted to trading status where the AQUA product issuer will meet its liquidity obligations using an internal market making arrangement must include with its admission application:

- a copy of its internal market making procedures;
- if the applicant has appointed one or more ASX trading participant(s) to act as its market making agent(s) to assist it in maintaining liquidity, a copy of the market making agency agreement(s); and
- if the applicant will itself be maintaining liquidity without appointing any ASX trading participant to act as its market making agent, a statement describing the competencies, resources, policies, procedures, systems and controls the applicant has in place to do this.<sup>41</sup>

ASX may reject the application if it is not satisfied that the applicant will have in place adequate facilities, expertise, procedures, personnel and financial resources to perform its liquidity obligations.<sup>42</sup>

ASX will invariably impose a condition on the admission of an AQUA product with an internal market making arrangement that the issuer:

- must publish a frequent<sup>43</sup> iNAV for the AQUA product;
- disclose its portfolio holdings at the end of each calendar quarter within two months of the end of that quarter<sup>44</sup> or with such other frequency as ASX may require;<sup>45</sup>
- does not describe the AQUA product as an "ETF" or "exchange traded fund", including in the PDS, marketing materials or product title for the AQUA product;
- ensures the AQUA product is labelled as a "Managed Fund";

<sup>41</sup> This statement may appear in the applicant's Product Disclosure Statement ("PDS") or other disclosure document or it may be provided separately to ASX.

<sup>42</sup> Rule 10A.2.1(2).

<sup>43</sup> "Frequent" means at least every 15 minutes throughout each trading day.

<sup>44</sup> That is, that the issuer disclose its portfolio holdings as at 31 March, 30 June, 30 September and 31 December by no later than the following 31 May, 31 August, 30 November and 28/29 February respectively.

<sup>45</sup> The frequency of disclosure will be determined by ASX in conjunction with the issuer, taking into account the underlying instruments for the AQUA product, the frequency of disclosure ASX has imposed on other comparable AQUA products and ASX's firm preference for frequent disclosure.

- markets the AQUA product as an active product and not give the impression that it will track a benchmark (including inversely or with leverage); and
- makes available on the AQUA product's website the methodology used to calculate the AQUA product's iNAV,

and notify ASX immediately in writing if it does not comply with any of the requirements set out above or if any of the representations given to ASX in the issuer's admission application about its market making arrangements cease to apply.

## 6. Enforcement action and appeals

ASX regularly monitors the market activity in warrants and AQUA products bids to assess whether the issuers of those products are complying with their liquidity obligations.

If ASX has any concerns in that regard, it may request the issuer to provide details of how it has determined the value and volume of the bids and offers it has been making for the purposes of complying with its liquidity obligations.<sup>46</sup> The issuer must respond to that request within one trading day, or such other period as ASX may specify.<sup>47</sup>

If ASX considers that an issuer has not complied with its liquidity obligations, ASX may initiate enforcement action against the issuer for breaching the ASX Operating Rules. Alternatively, it may convene a Warrants Committee or AQUA Products Committee (as the case may be) for the purposes of advising it on the reasonableness of the issuer's bids.<sup>48</sup>

If ASX does find an issuer has breached its liquidity obligations (whether of its own accord or with the advice of a Warrants Committee or AQUA Products Committee), ASX may take any action and give any directions it considers appropriate including (but not limited to):

- releasing an announcement to the market to the effect that the issuer has failed to comply with its liquidity obligations under warrant rules or AQUA rules (as applicable);
- issuing a warning letter to the issuer;
- notifying the issuer that ASX will take the issuer's failure to comply with its liquidity obligations into account when considering future applications for admission of new warrant series or AQUA products to trading status;
- suspending trading in the relevant warrant series or the AQUA product;
- determining that future warrant series or AQUA product issued by the issuer may not be admitted to trading status for a specified period of time not exceeding 12 months;<sup>49</sup>
- suspending or revoking the admission of the warrant series or the AQUA product to trading status;<sup>50</sup> or

<sup>46</sup> Rules 10.14.3(a) and 10A.10.3(a) (reasonable bid obligations) and 10A.3.6(b) (sufficient liquidity obligations).

<sup>47</sup> Procedures 10.14.3 and 10A.10.3.

<sup>48</sup> Rules 10.14.3(b)(ii) and 10A.10.3(b)(ii). For more information about the role, powers and constitution of a Warrants Committee and AQUA Products Committee, see rules 10.14.3(c)-(f) and 10.10A.3(c)-(f) respectively.

<sup>49</sup> Rules 10.14.3(g) and 10A.10.3(g). If the issuer is a participant of the ASX market, ASX may also take enforcement action against the participant for breaching its obligations under the ASX Operating Rules: see ASX Operating Rule 5100 and rules 10.14.3(l) and 10A.10.3(l).

<sup>50</sup> Rules 10.3.1(d) and 10A.3.1(f). While the power to suspend or revoke the admission of a warrant series or an AQUA product to trading status is not mentioned in the list of sanctions ASX may exercise under rules 10.14.3(g) or 10A.10.3(g), that list is specifically expressed to be non-exhaustive.



- terminating the issuer's approval to issue warrants or AQUA products.<sup>51</sup>

Before taking any such enforcement action, ASX is required to give the issuer an opportunity to make submissions with respect to the proposed action.<sup>52</sup>

An issuer may appeal a decision by ASX to take any such enforcement action to the ASX Appeal Tribunal, in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.<sup>53</sup> If it wishes to appeal, the issuer must pay an appeal fee of \$5,000 (exclusive of GST) to, and lodge written notice of the appeal with, the ASX Appeals Tribunal no later than one trading day after receipt of the reasons for ASX's decision.<sup>54</sup>

ASX generally will not implement a decision to take enforcement action against an issuer for breaching its reasonable bid obligations until the appeal period has expired or, where there is an appeal, the appeal has been determined.<sup>55</sup>

Further information about the appeal process can be found in ASX Enforcement and Appeals Rulebook Guidance Note 1 *Enforcement Action and Appeals from Enforcement Decisions*.

## 7. ETP Market Maker Incentive Scheme

ASX provides an incentive for external market makers who satisfy the minimum market making specifications known as the ETP Market Making Incentive Scheme. This scheme is a commercial arrangement between ASX and professional third party market makers to further promote tighter spreads and more liquidity in ETPs. It operates independently of the liquidity arrangements required of AQUA product issuers under the AQUA rules.

Further details of the ETP Market Making Incentive Scheme, including the minimum quoting schedules that market makers must meet to qualify for an incentive under the scheme, are available on the ASX website at <https://www2.asx.com.au/markets/market-resources/market-maker-arrangements/etps---market-maker-arrangements->.

ASX considers that it would be inappropriate for the ETP Market Making Incentive Scheme to extend to internal market making arrangements, given the conflicts of interest involved. AQUA products with internal market making arrangements are indicated on the web page mentioned above by the entry "N/A" appearing in the cell next to the ETP code for the product.

<sup>51</sup> Rules 10.2.3(c) and 10A.2.3(c). Again, while the power to terminate an issuer's approval to issue warrants or AQUA products is not mentioned in the list of sanctions ASX may exercise under rules 10.14.3(g) or 10A.10.3(g), that list is specifically expressed to be non-exhaustive.

<sup>52</sup> Rules 10.14.3(h) and 10A.10.3(h) (although see also note 55 below).

<sup>53</sup> Rules 3.1.1(c) and (d) of the ASX Enforcement and Appeals Rulebook. Subject to that right of appeal, the exercise by ASX of its enforcement powers under rules 10.14.3(g) or 10A.10.3(g) is final and binding on the issuer: rules 10.14.3(i) and 10A.10.3(i).

<sup>54</sup> Rule 3.1.1 of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.

<sup>55</sup> Rules 10.14.3(j) and 10A.10.3(j) – although ASX can implement and announce a decision to suspend trading in a warrant series or AQUA product before giving the issuer an opportunity to make submissions, before the expiry of the appeal period or before the determination of any appeal if ASX considers it appropriate to do so: see rules 10.14.3(k) and 10A.10.3(k).