



ASX

AUSTRALIAN SECURITIES EXCHANGE

# ASX Rules Framework



# ASX Rules Framework

Fundamental to ASX's role is its obligation to provide a fair, orderly and transparent trading environment for all who are active in the market, from the smallest investor to the largest of funds. The Rules frameworks ASX has established are integral to ensuring these obligations are met for the benefit of all.

In September 2008, ASX added to the Rules framework under which products are quoted on ASX. In addition to the ASX Listing Rules and the ASX Warrant Rules, there is now a new Rules framework, called the AQUA Rules, which are a subset of the Market Rules.

This document highlights some of the key aspects of this new Rules framework and makes comparisons to the other ASX Rules frameworks to assist in understanding the implications of this recent expansion of the ASX Rules framework.

LISTING RULES	MARKET RULES	
	WARRANT RULES Section 10	AQUA RULES (Sections 10A and 10B)
<p>These are disclosure-based rules which govern:</p> <ul style="list-style-type: none"> <li>• Admission of companies (and other entities) to the official list of ASX</li> <li>• Quotation of their securities</li> <li>• Suspension of securities from quotation</li> <li>• Removal of entities from the official list</li> <li>• Continuous and periodic disclosure and some aspects of a listed entity's conduct.</li> </ul> <p>They cover most of the key equity listings on the ASX market:</p> <ul style="list-style-type: none"> <li>• Shares</li> <li>• Units in Managed Investment Schemes</li> <li>• Real Estate Investment Trusts (REITs)</li> <li>• Infrastructure Funds</li> <li>• Listed Investment Companies.</li> </ul>	<p>The Warrant Rules are designed as a quotation mechanism for a very specific set of products.</p> <p>Warrants are instruments issued by banks and other financial institutions whose value is linked to underlying shares, indices, currencies, or commodities.</p> <p>Warrants Rules cover:</p> <ul style="list-style-type: none"> <li>• Approval of Warrant issuers</li> <li>• Admission of Warrant series to trading status</li> <li>• Transfer and registration of Warrants</li> <li>• Market making requirements.</li> </ul>	<p>The AQUA Rules have been designed to offer greater flexibility for issuers in designing products and having them quoted on ASX, which results in greater product choice for investors:</p> <p>The AQUA rules are based on the Warrants rules but are specifically designed for:</p> <ul style="list-style-type: none"> <li>• Managed Funds</li> <li>• Exchange Traded Funds (ETFs)</li> <li>• Structured Products</li> </ul> <p>that previously did not fit easily under the Listing Rules or the Warrant Rules.</p>

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## AQUA Rules: Fundamental Differences

The key distinction between products admitted under the Listing Rules and those quoted under the AQUA Rules (and Warrants) is the level of control and influence that the issuer has over the underlying instrument.

Under the Listing Rules...	Under the AQUA Rules...
<p><b>The Equity Issuer</b></p> <ul style="list-style-type: none"><li>• Controls the value of its own securities and the business it runs;</li><li>• The value of those securities is directly influenced by the equity issuer's performance and conduct.</li></ul> <p>eg: BHP management and Board generally control the fate of BHP's business and, therefore, have direct influence over BHP's share price.</p>	<p><b>The Product Issuer</b></p> <ul style="list-style-type: none"><li>• Does not control the value of the assets underlying its products but;</li><li>• Offers products that give investors exposure to the underlying assets – such as shares, indices, currencies or commodities.</li></ul> <p>The value (or price) of products quoted under the AQUA Rules is dependent upon the performance of the underlying assets rather than the financial performance of the issuer itself.</p> <p>eg: A managed fund issuer does not control the value of the shares it invests in.</p>

### Key Elements of the AQUA Rules

Those interested in a more detailed understanding of the AQUA Rules will find that they cover a range of key elements, including:

- Who can be an issuer of products quoted on ASX
- What products can be quoted on ASX
- The rules around admission of products on ASX
- The rules around product and issuer disclosure
- The rules around amending the terms of issue of products
- The rules around liquidity
- The rules for Trading Status versus the Quote Display Board.

### What products can be quoted under the AQUA Rules?

The only products that can be quoted under the AQUA Rules are those where the product has a capital value or distributions linked to liquid underlying instruments with robust and transparent pricing mechanisms, such as:

- Securities traded on an exchange which is a member of the World Federation of Exchanges;
- Commodities and currencies traded on a recognised market with post-trade transparency or for which there is a regulated derivatives market that controls price discovery; and
- Indices over the above underlying products.

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## Key differences between the Listing Rules and the AQUA Rules

To better understand the implications of the AQUA Rules it is useful to compare and contrast them with the Listing Rules.

The key distinction between products admitted under the Listing Rules and those quoted under the AQUA Rules (and Warrants) is, as highlighted above, the level of control and influence that the issuer has over the underlying instrument.

When an issuer controls the value of its securities, a wide range of disclosure, corporate governance, corporate control laws, regulations and rules should be applied to protect investor interests.

When an issuer has a product like an ETF (which simply tracks an index), then a great deal of disclosure, corporate governance and corporate control requirements become unnecessary, as the product tracks other shares. It's the issuers of those shares that must comply with a comprehensive set of Rules, such as the Listing Rules.

Essentially, all the products that will be quoted on ASX derive their value from listed securities, commodities or currencies traded on markets around the globe. It is these markets and products that ASX looks at when determining if appropriate disclosure, corporate governance and corporate control measures are in place.

The following information highlights the key differences between the provisions of the Listing and AQUA Rules, in light of these fundamental distinctions in control and influence over the underlying instruments.

### CONTINUOUS DISCLOSURE

#### Listing Rules:

Products under the Listing Rules are subject to the continuous disclosure requirements under Listing Rule 3.1 and section 674 of the Corporations Act.

#### AQUA Rules

Issuers of products quoted under the AQUA Rules are not subject to the continuous disclosure requirements under Listing Rule 3.1 and section 674 of the Corporations Act.

#### AQUA Rules *continued*

This is not required under the AQUA Rules because the underlying instrument is either subject to:

- The continuous disclosure requirements (in the case of issuers of shares) or
- Another robust and transparent price discovery mechanism (in the case of a currency, commodity or index).

There is still a requirement under the AQUA Rules that an issuer of a product quoted under the AQUA Rules provide ASX with information that the non-disclosure of which may lead to the establishment of a false market in its products or would materially affect the price of its products.

#### What obligations do apply under the AQUA Rules?

There is an obligation on issuers of Managed Funds and Exchange Traded Funds (ETFs) to disclose information about the net tangible assets (NTA) or the net asset value (NAV) of the funds.

Issuers of Managed Funds are required to disclose the NAV of the underlying instrument:

- Daily if the fund is admitted to Trading Status
- Quarterly if the fund is quoted on the Quote Display Board.

There is, however, no requirement for issuers of ETFs to disclose NAV of its underlying instrument daily because the value of the underlying instruments - such as a basket of listed securities or an index - is easily ascertainable elsewhere. Some issuers of ETFs will disclose their NAV daily, while others will disclose NAV less frequently. Investors are advised to refer to each ETF's Product Disclosure Statement (PDS) for specific NAV disclosure frequency and timing.

Issuers of Managed Funds must also disclose information about net monthly redemptions to give investors a sense of whether the fund is growing or shrinking. This information must be disclosed on the fund's website on a monthly basis.

Issuers of Managed Funds and ETFs must also disclose information about dividends, distributions and other disbursements. This information must be disclosed to ASX via the Company Announcements Platform (CAP). Any other information that is required to be disclosed to ASIC under section 675 of the Corporations Act must be disclosed to ASX via CAP at the same time it is disclosed to ASIC.

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## PERIODIC DISCLOSURE

### Listing Rules

Products under the Listing Rules are required to disclose half yearly and annual financial information or annual reports under Chapter 4 of the Listing Rules

#### AQUA Rules

Issuers of products quoted under the AQUA Rules are not required to disclose half yearly and annual financial information or annual reports under the Rules.

This is because the value of a product quoted under the AQUA Rules is determined by the value of the underlying instrument and not by the financial performance of the issuer.

Issuers of products quoted under the AQUA Rules will be subject to ASX's capital requirements which ensure that issuers have sufficient levels of available capital for its operations. Responsible Entities of AQUA Products that are ETFs and Managed Funds are still required to lodge with ASIC financial reports required under Chapter 2M of the Corporations Act.

ASX intends to introduce a requirement that issuers of products quoted under the AQUA Rules give ASX general disclosure documents, such as financial reports, at the same time they are sent to product holders.

## CORPORATE CONTROL

### Listing Rules

Requirements in the Corporations Act and the Listing Rules in relation to matters such as takeover bids, share buy-backs, change of capital, new issues, restricted securities, disclosure of directors' interests and substantial shareholdings apply to companies and listed schemes.

#### AQUA Rules

Products quoted under the AQUA Rules will not be shares in companies even though an underlying instrument may be a share and the issues will not be listed schemes. Therefore, certain requirements in the Corporations Act and the Listing Rules in relation to matters such as takeover bids, buy-backs, change of capital, new issues, restricted securities, disclosure of directors' interests and substantial shareholdings that apply to companies and listed schemes do not apply to products quoted under the AQUA Rules.

#### AQUA Rules *continued*

Issuers of products quoted under the AQUA Rules are subject to the general requirement (referred to above) to provide ASX with information concerning itself that may lead to the establishment of a false market or materially affect the price of its products.

Section 601FM of the Corporations Act will continue to apply in relation to the removal of a Responsible Entity of a registered Managed Investment Scheme by members. Under section 601FM members may remove a Responsible Entity of a registered Managed Investment Scheme by the passing of an ordinary resolution once a members' meeting has been properly convened. The Responsible Entity of a listed scheme may vote on the resolution. If the registered Managed Investment Scheme is not listed the resolution must be an extraordinary resolution. That is, the resolution must be passed by at least 50% of the votes that may be cast by the members entitled to vote. The Responsible Entity and its associates are not entitled to vote on this resolution. Investors should refer to the PDS of the product quoted under the AQUA Rules for more information.

## RELATED PARTY TRANSACTIONS

### Listing Rules

Chapter 10 of the Listing Rules, which relates to transactions between an entity and persons in a position to influence the entity, specifies controls over related party transactions.

#### AQUA Rules

Chapter 10 of the Listing Rules does not apply to AQUA Products.

Products quoted under the AQUA Rules which are registered Managed Investment Schemes remain subject to the related party requirements in Part 5C.7 and Chapter 2E of the Corporations Act.

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## AUDITOR ROTATION OBLIGATIONS

### Listing Rules

There are specific requirements in relation to auditor rotation under Part 2M.4 Division 5 of the Corporations Act.

### AQUA Rules

Issuers of products quoted under the AQUA Rules are not subject to the requirements under Part 2M.4 Division 5 of the Corporations Act.

Responsible entities of registered Managed Investment Schemes will continue to be required to undertake an independent audit of its compliance with the scheme's compliance plan in accordance with section 601HG of the Corporations Act and the auditor must not be the auditor of the scheme's financial statements (though they may be from the same firm).

## PRODUCT DISCLOSURE

### Listing Rules

Entities admitted under the Listing Rules are subject to the requirements of the Corporations Act in relation to the issue of a Prospectus or PDS.

The Corporations Act requires the Prospectus or PDS to include information on the risks associated with an investment in a product, which would be expected to cover risks arising from the trading strategies of the Issuer and the gearing employed.

### AQUA Rules

Products quoted under the AQUA Rules will also be subject to these requirements of the Corporations Act.

Investors should read the PDS carefully before investing in an AQUA Product to fully understand the risks involved in investing in these types of products.

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## AQUA Rules – Products Excluded

There are certain types of products that can not be admitted under the AQUA Rules frameworks. This is most commonly because other Rules frameworks are more appropriately applied or the products lack the required level of transparency in pricing or valuation of the underlying instruments to be included under the AQUA Rules.

Specific examples of products that **can not be admitted** under the AQUA Rules framework are the following:

Products	Applicable Rule Framework
Security in a listed investment company	Listing Rules
Units in a real estate investment trust (REIT) or similar fund;	Listing Rules
Units in an infrastructure fund or trust	Listing Rules
Units in a non-portfolio strategic investment vehicle (such as a private equity fund);	Listing Rules
<b>Financial products:</b>	
1 Where the issuer has a significant influence over the price or value of the underlying instrument(s);	Listing Rules
2 For which, in ASX's opinion, there is insufficient information available to the market on an ongoing basis regarding the price or value of the underlying instrument(s)	Usually not quoted
3 Where the underlying instruments are shares in an unlisted company, artworks or other collectibles, wine or other assets where the price or value of the underlying instrument; is not set by a transparent mechanism	Usually not quoted
4 Priced by reference to an index where the level of that index is not publicly available or reported on a regular basis.	Usually not quoted
Units in a managed fund product for which the net asset value is not disclosed daily (in the case of admission to Trading Status) or at least quarterly (in the case of admission to the Quote Display Board);	Usually not quoted
Any other financial product for which ASX considers the listing mechanism and continuous disclosure regime in the ASX Listing Rules should apply.	Listing Rules

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## AQUA Rules: Two Quoting Mechanisms

Under the AQUA Rules, products may be quoted on either:

1. Trading Market or
2. Quote Display Board (QDB).

**The Trading Market** provides a trading platform for products quoted under the AQUA Rules through the Integrated Trading System (ITS). The Trading Market operates the same way securities are traded on the equity trading market. That is, there is continuous matching of bids and offers and an opening and closing auction. Bids and offers and interest in a product quoted under the AQUA Rules are placed by a broker in ITS. If there is a match, the trade will be automatically executed. Settlement of the trade will occur on the third day after the trade (T+3). The price of the Product may generally be expected to depend on the performance of the underlying security, commodity, currency or index. However, there is no guarantee it will be at NAV at any given time.

Alternatively an AQUA Product issuer may quote a product on the new **Quote Display Board (QDB)**. The **Quote Display Board** provides a facility whereby ASX Market Participants (including brokers and financial institutions) may post indicative prices for products quoted under the AQUA Rules on behalf of issuers.

The Quote Display Board will be used for products quoted under the AQUA Rules where:

- The product is not suited to on-market trading. For example, forward priced products (some managed funds) may not be suitable to be 'traded' in a live secondary market. In this case, indicative application and redemption prices for products can be quoted on the Quote Display Board); or
- The issuer does not need or want on-market trading as a means of product distribution but is attracted to CHESSE settlement of the product for commercial or operational reasons.

If an investor wishes to enter into a transaction they (through a broker) will need to contact the ASX Market Participant that posted the indicative price (on behalf of the relevant issuer) and enter into an agreement to buy or sell an interest in the product.

There are some important differences between the Trading Market and Quote Display Board under the AQUA Rules, including the following:

- **Market Making:**
  - Trading Status: There are market making requirements unless the the product has, and continues to have, a spread of 1,000 Product Holders and a net asset value of at least \$10 million;.
  - Quote Display Board: No market making requirements.
- **Requirements for admission of Managed Funds to the Trading Market:** Trading status will only be granted to Managed Funds if the fund is an open-ended scheme (being a scheme which continuously issues and redeems financial products based on the NAV of the fund) and the constitution of the fund provides that off-market redemption facilities will operate daily.
- **Disclosure of Net Asset Value for Managed Funds:**
  - Trading Status: As referred to above, information about the NAV of a Managed Fund's underlying instruments must be disclosed daily for a Managed Fund;
  - Quote Display Board: Information about the NAV of a Managed Fund's underlying instruments must be disclosed quarterly.



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## Can products convert from Listing Rules to the AQUA Rules framework?

The Listing Rules framework and the AQUA Rules framework are completely separate. Therefore, there is no established mechanism under the Rules for issuers to move their products from one rule framework to another.

Product issuers listed under the Listing Rules and wishing to become admitted under the AQUA Rules will need to arrange for the product to be removed from the Official List and apply for admission under the AQUA Rules, with ASX recommending that they seek their own legal advice and consider all related issues before embarking on such a process.

## We are interested in your views

In September 2009, at the first anniversary of the launch of the AQUA Rules framework, ASX will be seeking feedback on the new Rules framework from:

- AQUA Product issuers
- the general public and users of ASX's markets, and
- other stakeholders.

This is part of an ongoing process of monitoring the operation and application of the AQUA Rules. Closer to the review time period, ASX will provide further information on the Review and invite feedback from key groups.

### Further Information:

Key related links are:

ASX Listing Rules: [www.asx.com.au/supervision/rules\\_guidance/listing\\_rules.htm](http://www.asx.com.au/supervision/rules_guidance/listing_rules.htm)

ASX Market Rules: [www.asx.com.au/supervision/rules\\_guidance/market\\_rules.htm](http://www.asx.com.au/supervision/rules_guidance/market_rules.htm)

ASX Customer Service: **131 279**

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