

## REMOVAL OF AQUA PRODUCTS FROM TRADING STATUS

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist AQUA product issuers and their advisers to understand ASX's policies and processes regarding the removal of AQUA products from trading status on ASX</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>The right of an issuer of AQUA products to request ASX to revoke the admission of an AQUA product to trading status on ASX and/or the issuer's approval as an AQUA product issuer</li> <li>How to make such a request</li> <li>What the issuer should announce to the market if it makes such a request</li> <li>How ASX is likely to respond to the request</li> <li>The conditions that ASX will typically require to be satisfied before it will act upon such a request</li> <li>The circumstances in which ASX may of its own instigation revoke the admission of an AQUA product to trading status on ASX and/or the issuer's approval as an AQUA product issuer</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 12 <i>Warrant and AQUA Product Liquidity Requirements</i></li> </ul>

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**Important notice:** ASX has published this Guidance Note to assist AQUA product issuers 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 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 AQUA product<sup>1</sup> issuers and their advisers to understand ASX's policies and processes regarding the removal of AQUA products from trading status on ASX.<sup>2</sup>

## 2. Revocation of trading status at the issuer's request

### 2.1. The right to apply for revocation

An AQUA product issuer may ask ASX at any time to revoke the admission of an AQUA product to trading status on ASX. It may do so:

- individually in respect of a single traded AQUA product or AQUA product series by requesting ASX to revoke the admission of that product or product series to trading status;<sup>3</sup> or
- collectively in respect of all of its traded AQUA products by requesting ASX to revoke its approval as an AQUA product issuer.<sup>4</sup>

ASX may require the issuer to establish the authority of the person making the request.<sup>5</sup>

ASX is not required to act on an AQUA product issuer's request to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer and may require conditions to be satisfied before it does so.<sup>6</sup>

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

<sup>2</sup> It is ASX's intention to update this Guidance Note in due course to also cover the removal of warrants from trading status on ASX. However, this first requires some amendments to the warrant rules in Schedule 10 of the ASX Operating Rules to make them consistent with the AQUA rules in Schedule 10A of the ASX Operating Rules.

<sup>3</sup> Rule 10A.3.1(g) (first sentence). References in this Guidance Note to an AQUA product series include a single AQUA product if there is only one product in the series.

<sup>4</sup> While not explicitly stated in the AQUA rules, ASX considers it implicit that an AQUA product issuer has the right to request the revocation of its approval as an AQUA product issuer through a combination of rules 10A.2.3(c) and 10A.3.1(g). ASX intends to amend the AQUA rules in due course to make this right explicit.

<sup>5</sup> Rule 10A.3.1(g) (second sentence). ASX reads this rule as also applying to a request to revoke the approval of an AQUA product issuer under rule 10A.2.3(d), since the effect of that request is to revoke the admission of all the issuer's AQUA products to trading status on ASX (rule 10A.3.1(d)). ASX intends to amend the AQUA rules in due course to make this point clearer.

<sup>6</sup> Rule 10A.3.1(g) (third sentence). Again, ASX reads this rule as also applying to a request to revoke the approval of an AQUA product issuer under rule 10A.2.3(d), since the effect of that request is to revoke the admission of all the issuer's AQUA products to trading status on ASX (rule 10A.3.1(d)). ASX intends to amend the AQUA rules in due course to make this point clearer.

If ASX's decision to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer is conditional, the revocation will take effect after the applicable conditions have been satisfied and on a date determined by ASX. If the decision is unconditional, it will take effect on the date notified in ASX's decision.

In practice, ASX's decision to act upon a request to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer is usually subject to the satisfaction of certain conditions directed to ensuring that AQUA product holders are appropriately notified about the request and its consequences and that trading in the affected AQUA products takes place in an orderly manner up to the date of the revocation.<sup>7</sup>

ASX's power not to act on an AQUA product issuer's request to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer exists to ensure that the revocation is being sought for acceptable reasons.

Some common and generally acceptable reasons why an AQUA product issuer might ask ASX to revoke the admission of an AQUA product to trading status include:

- the issuer has determined that the AQUA product is no longer economically viable and therefore intends to terminate the AQUA product;
- as a result of a takeover, scheme of arrangement or other control transaction involving the AQUA product, there is only one or a small number of remaining AQUA product holders and so its continued admission to trading status can no longer be justified; or
- the issuer has determined for some other proper reason that it is no longer in the interests of the issuer and the AQUA product holders for the AQUA product to continue trading on ASX.

Some common and generally acceptable reasons why an AQUA product issuer might ask ASX to revoke the issuer's approval as an AQUA product issuer include:

- the issuer no longer has any AQUA products admitted to trading status on ASX and no longer wishes to retain its status as an approved AQUA product issuer;
- the issuer intends to terminate all of its remaining AQUA products admitted to trading status on ASX and upon that happening wishes to relinquish its status as an approved AQUA product issuer; or
- the issuer no longer satisfies, or anticipates circumstances or events occurring that will mean it no longer satisfies, the requirements in the AQUA rules to be an approved AQUA product issuer.

An unacceptable reason why an AQUA product issuer might ask ASX to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer includes if it is doing so solely or primarily to avoid the application of an AQUA rule requiring the approval of ASX or AQUA product holders to a particular transaction.<sup>8</sup>

## 2.2. Preliminary discussions with ASX

Before an AQUA product issuer submits a formal request to ASX to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer, ASX recommends that the AQUA product issuer first discuss the matter with ASX Listings Compliance at the earliest opportunity. ASX Listings Compliance will be able to provide general guidance on the revocation process and a preliminary view on the chances of ASX agreeing to the request, the likely timeframe for a decision on the request and the likely conditions that ASX will impose.

<sup>7</sup> See '2.6 The usual conditions ASX imposes' on page 6.

<sup>8</sup> For example, the requirement in rule 10A.5.4 that, if so provided for in the terms of issue of a structured product, the terms of issue can be amended with the approval of 75% of votes cast by those AQUA product holders who vote on the proposed resolution (disregarding votes cast by the AQUA product issuer and its associates).

In most cases, ASX Listings Compliance will recommend that an issuer apply for in-principle advice on whether ASX is likely to agree to the revocation request and the conditions that ASX is likely to require to be satisfied before it will act on the request. By doing this, the issuer can have a high degree of certainty about ASX's position on these matters and can reflect that position in the announcement that ASX will expect it to make when it lodges its formal request for revocation (see section 2.4 below).

An application for in-principle advice must be in writing and submitted by the applicant or a professional adviser or representative acting on behalf of the applicant. It should be addressed to the Manager Investment Products Compliance and clearly marked "Not for public release".

The application should set out in detail:

- the name and ASX code of the affected AQUA products;
- information about the number of holders of the AQUA products and the size of their holdings;
- the issuer's reasons for seeking the revocation of the admission of the AQUA products to trading status or its approval as an AQUA product issuer;
- if the issuer is intending to terminate the affected AQUA products, a description of:
  - the process to be followed under the issuer's constitution or the terms of issue of the AQUA product and applicable legislation to achieve that result; and
  - who will bear the costs associated with winding up the AQUA products;
- the proposed timetable for the removal from trading status; and
- what, if any, arrangements will be in place to enable the AQUA product holders to dispose of their AQUA products in the lead up to, and after the revocation,

and attach a draft of the announcement referred to in section 2.4 below that the issuer proposes to make in relation to its request for revocation.

Any in-principle advice given by ASX will be expressed as a non-binding statement of ASX's intent based on the facts known at the time. It may be given subject to conditions and will usually be expressed to apply for a limited time only (typically 3 months). It is treated by ASX as a confidential communication and is not released by ASX to the market.<sup>9</sup>

ASX Operating Rules Guidance Note 4 *Waivers and In-Principle Advice* has further guidance on applying for in-principle advice.

### 2.3. The formal request for revocation

Unless the affected AQUA products are already in a trading halt or suspension, an issuer intending to make a formal request to ASX to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer should request an immediate trading halt in the affected AQUA products, with the reason stated for the halt being that it is proposing to make an announcement concerning an application to revoke the admission of the affected AQUA products to trading status or the issuer's approval as an AQUA product issuer.

As soon as practicable thereafter, the issuer should lodge its formal request in writing for ASX to revoke the admission of the relevant AQUA products to trading status or the issuer's approval as an AQUA product issuer (as applicable). The request should be on its letterhead, addressed to the Manager Investment Products Compliance, clearly marked "Not for public release" and sent to ASX Listings Compliance at the Sydney office of ASX. The request should be executed under the issuer's common seal (if it has one) or else signed by its chairman of directors

<sup>9</sup> Noting that if it appears to ASX that information about the request has ceased to be confidential (as evidenced by media speculation, market rumours or an unexplained material movement in the price or traded volumes of the AQUA products), ASX may require the issuer to disclose information about the application (and, where applicable, ASX's response) under rules 10A.6.1 and/or 10A.6.3.

or its chief executive officer. If it is signed by anyone else, ASX may require the issuer to provide evidence that the person has the authority to request something as serious as the revocation of the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer.

Unless this information has already been provided to ASX in an application for in-principle advice (in which case, the formal request can simply reference the application for in-principle advice), the formal request for revocation should set out in detail:

- the name and ASX code of the affected AQUA products;
- information about the number of holders of the AQUA products and the size of their holdings;
- the issuer's reasons for seeking the revocation of the admission of the AQUA products to trading status or its approval as an AQUA product issuer;
- if the issuer is intending to terminate the affected AQUA products, a description of:
  - the process to be followed under the issuer's constitution or the terms of issue of the AQUA product and applicable legislation to achieve that result; and
  - who will bear the costs associated with the termination;
- the proposed timetable for the removal from trading status; and
- what, if any, arrangements will be in place to enable the AQUA product holders to dispose their AQUA products in the lead up to, and after, the revocation.

Accompanying the formal request should be a draft of the announcement the issuer proposes to make regarding the request under section 2.4. The issuer should not release the announcement to the market unless and until it has been approved by ASX Listings Compliance.

#### **2.4. Market announcement expected regarding lodgement of formal request for revocation**

As soon as practicable after making its formal request for ASX to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer, the issuer should make an announcement to the market that has been approved by ASX Listings Compliance and that sets out the following information:<sup>10</sup>

- the fact that it has applied to ASX for the revocation;
- its reasons for seeking the revocation;
- the consequences for the issuer and the AQUA product holders if the requested revocation is granted;
- if the issuer is intending to terminate the affected AQUA products, a description of:
  - the process to be followed under the issuer's constitution or the terms of issue of the AQUA product and applicable legislation to achieve that result; and
  - who will bear the costs associated with the termination;
- the proposed timetable for the removal from trading status; and
- what, if any, arrangements will be in place to enable holders to dispose of their AQUA products in the lead up to, and after, the revocation;
- if the issuer has received in-principle advice from ASX that it will agree to the request unconditionally, that fact and the proposed date for the revocation to take effect;

<sup>10</sup> Such an announcement will generally be required under rules 10A.6.1 and/or 10A.6.3.

- if the issuer has received in-principle advice from ASX that it will agree to the request on conditions:
  - details of those conditions; and
  - the proposed timetable for satisfying those conditions and, if they are met, the expected date for the revocation of the admission of the affected AQUA products to trading status or the issuer's approval as an AQUA product issuer; and
- if the issuer has not received in-principle advice from ASX that it will agree to the request, a statement to the effect that:
  - ASX is not required to act on the issuer's request and may require conditions to be satisfied before it will act on the request; and
  - the issuer will make a further announcement to the market once it is advised by ASX whether or not it will agree to the request and of any conditions that ASX requires to be satisfied before it will act on the request.

The issuer should not release an announcement about the revocation request unless and until it has been approved by ASX Listings Compliance.

### 2.5. The revocation decision

Decisions on whether or not to revoke the admission of an AQUA product to trading status or an issuer's approval as an AQUA product issuer and the conditions that must be satisfied before the revocation takes effect are generally made on behalf of ASX by ASX Listings Compliance. ASX's decision on these matters will be reduced to writing and communicated to the issuer by ASX Listings Compliance, usually via an emailed letter.

As mentioned previously, in practice, ASX's decision to act upon a request to revoke the admission of an AQUA product to trading status or an issuer's approval as an AQUA product issuer is usually subject to the satisfaction of certain conditions. These conditions are set out in section 2.6.

### 2.6. The usual conditions ASX imposes

ASX will usually require the following conditions to be satisfied before it will act on a request from an issuer to revoke the admission of an AQUA product to trading status or the issuer's approval as an AQUA product issuer:

- the issuer send a written or electronic communication to all AQUA product holders, in form and substance satisfactory to ASX, setting out:
  - the nominated time and date<sup>11</sup> at which the affected AQUA products will have their admission to trading status revoked and that:
    - if they wish to sell their AQUA products on ASX, they will need to do so before then; and
    - if they don't, thereafter they will only be able to redeem their AQUA products off-market;
  - if the AQUA products are traded on ASX in the form of CHESS Depository Interests (CDIs):
    - the steps holders must take to convert their CDIs to the underlying financial products before they are able to redeem them; and
    - the steps that will be taken by the CHESS Depository Nominee<sup>12</sup> if holders do not convert their CDIs to the underlying financial products by a nominated date;<sup>13</sup> and

<sup>11</sup> This time and date is to be ascertained by discussions between the issuer and ASX Listing Compliance.

<sup>12</sup> See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

<sup>13</sup> This date is to be ascertained by discussions between the issuer and ASX Settlement.

- the revocation of the trading status of the affected AQUA products not take place any earlier than one month after the above-mentioned communication has been sent to AQUA product holders, so that holders have at least that period to sell their AQUA products on ASX should they wish to do so.

ASX reserves the right to impose any other conditions it considers appropriate.

### 3. Revocation of trading status at the instigation of ASX

#### 3.1. ASX's power to revoke

ASX may revoke:

- the admission of an AQUA product to trading status on ASX;<sup>14</sup> or
- the approval of an AQUA product issuer,<sup>15</sup>

at any time if, in its absolute discretion, ASX is of the opinion or reasonably suspects that the AQUA product issuer may become unable or unwilling, or in any respect fails, to comply with the AQUA rules.

ASX may also revoke the approval of an AQUA product issuer if it does not currently have, and has not for the preceding 12 months had, any AQUA products admitted to trading status, to the AQUA Quote Display Board or for settlement through the Managed Fund Settlement Service. In this particular case, however, ASX must give no less than one month's notice to the issuer of its intention to revoke the issuer's approval as an AQUA product issuer.<sup>16</sup>

#### 3.2. Market announcement about revocation

If ASX exercises its power to revoke the admission of an AQUA product to trading status or the approval of an AQUA product issuer, ASX will expect the issuer to make an announcement to the market immediately upon being notified of ASX's decision stating:

- ASX has revoked the admission of the AQUA product to trading status or the approval of an AQUA product issuer (as applicable) and the reasons given by ASX for doing so;
- the effective date of the revocation; and
- the impact this will have on the holders of affected AQUA products (which generally will be that they will cease to be able to buy or sell the AQUA products on ASX and in the future will have to apply for or redeem their AQUA products in accordance with the constitution or terms of issue governing those products or otherwise find a buyer or seller willing to deal with them off-market).

If the issuer does not make such an announcement, ASX will generally make one of its own volition covering the matters in the first two bullet points above and directing AQUA product holders to contact the issuer for further information.

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<sup>14</sup> Rule 10A.3.1(f).

<sup>15</sup> Rule 10A.2.3(c). In this case, ASX is not required to give any reason for the revocation (rule 10A.2.3(d)), although in practice it generally will.

<sup>16</sup> Rule 10A.2.3(d).