



# AQUA

A New Market for Investment Products and  
Managed Funds has arrived

Consultation Paper & Request for Comment

## Contents

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Heidi Gaussen  
Regulatory and Public Policy  
ASX Ltd  
Level 7, 20 Bridge Street  
Sydney NSW 2001

Telephone: +61 2 9227 0844  
E-mail: Heidi.Gaussen@asx.com.au

### Due date for submissions

Submissions in response to the Market Consultation Paper should be received no later than **Friday 10 September 2010**.

## What is AQUA?

During September 2008, ASX introduced a new Rule and Market framework called the AQUA Market to allow quotation of structured products and managed funds on the ASX market. The rules are chapters 10A and 10B of the ASX Market Rules and the focus was quoting financial products that don't fit neatly into the main ASX equity Listing Rules or the established product set for Warrants.

Some AQUA style products were already traded on ASX. They were either listed under the equity Listing Rules or quoted under the warrant Market Rules (chapter 10). But neither framework was designed with AQUA products in mind and so the outcome was considered sub-optimal. The ASX Market Rules were restructured and renamed as the ASX Operating Rules on 1 August 2010, with the above chapters 10A and 10B now contained in Rules 2121 and 4600 – 4621 and Schedule 10A. However, given that most users would be more familiar with the pre-1 August AQUA rule references, such references are retained in this paper.

## What are AQUA Products?

AQUA Products are generally one of two types of product: i. structured products that are unsecured contractual obligations of the Issuer that have been designed to meet the financial goals of investors; and ii. managed funds, that are pooled investments in the underlying assets by way of a registered managed investment scheme.

Essentially though, AQUA can be any financial product that meets the requirements of the AQUA rules.

AQUA Products have two distinctive elements. First, as stated in the AQUA product definition, AQUA products are third-party issued products that give investors exposure to an underlying asset or set of assets – but where the value of the assets is not under the control of the Issuer of the AQUA product. AQUA products are derivative in an economic sense. The value of the product is linked to the performance of one or more underlying assets and not the financial performance of the Issuer itself. Secondly, the AQUA rules require AQUA Product underlying assets to have a robust and transparent pricing mechanism.

## What is the purpose of this Paper?

When ASX introduced the AQUA market, it provided an undertaking to ASIC that it would review the market operation and rules after a twelve month period. That time has now elapsed. The purpose of this paper is therefore to provide market users with information about the AQUA market, including proposed enhancements, to assist ASX with its review.

The paper contains several proposals for rule amendment put forward by ASIC. ASX invites submissions on these proposed amendments. This paper is also used to notify the market of several AQUA rule changes that ASX is progressing with ASIC.

## B. AQUA Market Structure

### Overview

The AQUA rules introduced a new market type, the Quote Display Board, as well as a new trading market. The two new 'Integrated Trading System' (ITS) markets introduced were:

1. the AQUA Trading Market; and
2. the AQUA Quote Display Board.

The term 'market' in this context means an ITS '*market*' that appears as a separate 'tab' on an ITS Trader Workstation.

### AQUA Trading Market

This new market is covered by Section 10A of the ASX Market Rules and provides a trading platform for AQUA products on ITS. The Trading Market operates the same way as securities 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 are placed by a broker in ITS. If there is a match, the trade is automatically executed and settlement occurs on the third day after trade (T+3).

An Issuer of a product in an AQUA Trading Market is obligated to provide market making unless the product has, and continues to have, a spread of at least 1,000 product holders with a net asset value of at least \$10 million.

The following products have been admitted to Trading Status on the AQUA Trading Market:

Code	Product	Definition
VAS	Vanguard Australian Shares Index ETF	ETF
VEU	Vanguard All-World Ex-US Shares Index ETF	ETF
VTS	Vanguard US Total Market Shares Index ETF	ETF
RDV	Russell High Dividend Australian Shares ETF	ETF
FIN	Aii S&P/ASX 200 Financials	ETF
FIX	Aii S&P/ASX 200 Financials x-A-REIT	ETF
RSR	Aii S&P/ASX 200 Resources	ETF
IDD	Aii S&P/ASX 200 Industrials	ETF
ENY	Aii S&P/ASX 200 Energy	ETF
MAM	Aii S&P/ASX 200 Metals and Mining	ETF
GOLD	ETFS Physical Gold	Structured Product
ETPMAG	ETFS Physical Silver	Structured Product
ETPMPD	ETFS Physical Palladium	Structured Product
ETPMPT	ETFS Physical Platinum	Structured Product
ETPMPM	ETFS Physical Basket	Structured Product

### AQUA Quote Display Board

The new type of market is called the Quote Display Board and is offered under a new chapter of the ASX Market Rules, chapter 10B.

This market will provide a quotation/advertising (*i.e.*, non-trading) facility for AQUA products. It suits an Issuer that doesn't need on-market trading of their product – but where CHESSE settlement of off-market transactions may be attractive for commercial or operational reasons.

Prices displayed by the Issuer are indicative or rather, an advertisement. 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 Issuer) and enter into an agreement to buy or sell an interest in the product. Both parties then report the transaction on ITS by way of a trade report with the condition code 'QB' and where this occurs, ITS will route the transaction to CHES for settlement. Settlement occurs on the third day after the transaction is reported.

No market making obligations exist for product quoted on the Quote Display Board. No product has currently been admitted to the Quote Display Board.

## C: AQUA Framework

This section highlights some key aspects of the new AQUA rule framework and makes comparison with other rule frameworks to assist in understanding it.

### What Underlying Assets are Appropriate Under the AQUA rules?

Products that may be quoted under the AQUA Rules are those whose capital value or distributions are 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.

Currently the underlying assets allowed do not include debt securities (that are not quoted on a WFE Exchange). However, AQUA rule changes are proposed to include as underlying assets certain unquoted debt securities for which a robust and transparent pricing mechanism is available (see proposed AQUA rule amendments in section E).

### What Can't be Quoted Under the AQUA rules?

There are a wide range of products that can't be admitted under the AQUA rules framework. This is most commonly because other rule frameworks are more appropriately applied, in terms of either the need for different disclosure or corporate control mechanisms, or the products lack the required level of transparency in pricing or valuation of the underlying instruments, for them to be included under the AQUA rules.

#### Products

Security in a listed investment company.

Units in a real estate investment trust (REIT) or similar fund.

Unit in an infrastructure fund or trust.

Units in a non-portfolio strategic investment vehicle (private equity)

Financial Products:

- (a) where the Issuer has a significant influence over the price or value of the underlying instrument(s);
- (b) for which, in ASX's opinion, there is insufficient information available to the market on an ongoing basis regarding price or value of the underlying instrument(s);
- (c) 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;
- (d) priced by reference to an index where the level of the index is not publicly available or reported on a regular basis.

#### Applicable Rule Framework

Listing Rules

Listing Rules

Listing Rules

Listing Rules

Listing Rules

Usually not quoted on exchange markets

Usually not quoted on exchange markets

Usually not quoted on exchange markets

**Products**

Any other financial product for which ASX considers the listing mechanism and continuous disclosure regime in the ASX Listing Rules should apply.

**Applicable Rule Framework**

Listing Rules

## D: Comparison to ASX Listing Rules

### Continuous Disclosure

Issuers of products quoted under the AQUA Rules are not subject to the same disclosure regime as listed companies, including the continuous disclosure requirements under Listing Rule 3.1 and section 674 of the Corporations Act.

This is not required under the AQUA Rules because the underlying instrument that determines the value of the product is either subject to:

- the continuous disclosure requirements of a WFE exchange (in the case of underlying assets that are shares); or
- another robust and transparent price discovery mechanism (in the case of a currency, commodity or index).

There is a requirement under the AQUA Rules that an Issuer of a product quoted under the AQUA Rules provide ASX with any information concerning itself or any of its subsidiaries or any proposed action or omission to act which it is aware of that may lead to the establishment of a false market in its products or that would materially affect the price of its products.

A number of other obligations 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
- and between daily and quarterly if the fund is quoted on the Quote Display Board (depending on the nature of the fund).

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 and other distributions. 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 also be disclosed to ASX via CAP at the same time as it is disclosed to ASIC.

### Periodic Disclosure

Issuers of products quoted under the AQUA Rules are not required to disclose half yearly and annual financial information 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 AQUA Products that are ETFs and managed funds are still required, as Responsible Entities, to lodge with ASIC financial reports required under Chapter 2M of the Corporations Act.

## Governance

Products quoted under the AQUA Rules are not admitted under the Listing Rules. 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, related party transactions, disclosure of directors' interests and substantial shareholdings that apply to listed companies and listed schemes do not apply to products quoted under the AQUA Rules.

This difference is explained because an AQUA product Issuer does not control the assets that comprise the AQUA product. Transactions in relation to the AQUA Issuer do not therefore impact the value of the underlying assets, which are controlled by a third-party.

Equity investors in the main listing market are part owners of the companies, AREITs and infrastructure funds in that market, and can reasonably expect to have the rights associated with ownership. In addition to the Corporate Governance regime, which in part provides checks and balances for owners, the listing rules contain a wide range of other protections that relate specifically to the rights of equity shareholders as the part owners of the equity issuer (e.g., rules that determine to whom the issuer can issue new shares, and limitations on dealings with related parties).

The core AQUA definition - that all AQUA products must meet, sets AQUA products apart from equity products listed under the ASX listing rules. The AQUA Issuer cannot control the value of the underlying asset(s) and therefore the value of the AQUA product itself. The investor is not taking a direct equity ownership interest in the underlying and so cannot expect to receive the same rights in respect of the underlying. Moreover, an AQUA product Issuer is not in a position to provide the same rights – for example, an issuer of an ETF which has BHP as a constituent share, is not in a position to provide investors in the ETF with a vote at BHP's AGM.

AQUA product investors are also not investing in the equity of the Issuer or promoter. For example, a BHP warrant issued by a bank is not an equity ownership investment in the bank – it's a financial product issued by the bank creating an exposure to the value of other things. Similarly, an investment in a managed fund managed by AMP gives investors no rights in the management of AMP.

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. 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 would not be entitled to vote on this resolution.

## Auditor Rotation Obligations

Issuers of products quoted under the AQUA Rules are not subject to the requirements under Part 2M.4 Division 5 of the Corporations Act relating to auditor rotation for listed companies or listed registered schemes. 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). This is because, as noted above, the internal governance arrangements of the AQUA Issuer do not influence the value of the underlying assets in an AQUA product.

## E: Proposed AQUA Rule Amendments

ASX, in consultation with ASIC, has reviewed the AQUA rule framework. As a result of ASX's review, it has identified several opportunities to enhance the AQUA rule framework, and to address some more minor issues that have been identified over the past 12 months. ASX invites comments on the rule amendment proposals set out below.

### Exchange Traded Funds (ETFs)

#### 1. ETF Definition

ASX proposes to expand the definition of ETF so that it also captures equivalent international schemes or vehicles operated by a foreign entity. The current definition refers to registered managed investment schemes, or collective investment schemes exempted under ASIC instruments from being registered in Australia – i.e. those from the USA, New Zealand, Jersey, Singapore and Hong Kong. ASX proposes to amend the definition to enable quotation of units in ETFs from jurisdictions which have the attributes of collective investments irrespective of whether they fall within the definition of a Managed Investment Scheme under the Corporations Act. The rule change will achieve this objective by removing references to a registered Managed Investment Scheme or ASIC exempted scheme, from the ETF definition.

The new definition of ETF will set out the attributes of collective investments, being a vehicle where (i) investors contribute money or money's worth to acquire rights to benefits produced by the entity; (ii) contributions of investors are pooled, or used in a common enterprise, to produce financial benefits or benefits consisting of rights or interests in property for investors holding a unit or share in the scheme or vehicle; and (iii) investors in the scheme or vehicle do not have any day to day control over the operation of the foreign entity.

This rule change is consistent with the rule waivers that have been granted to date to enable some ETFs to list on ASX.

#### 2. Expand the definition of ETF to capture actively managed ETFs

It is implicit in the current definition that an ETF is a passive index tracking product. It is proposed to expand this definition to cover actively managed ETFs so that these products can also be quoted under the AQUA framework.

The new definition of ETF will look at the key goal of ETFs that sets the asset class apart from listed investment companies (LICs) and unlisted managed funds, which is that ETF secondary market prices accurately track the ETF's underlying Index or net asset value (NAV).

The new ETF definition will mandate the mechanism that must be in place to achieve this:

- (a) The ETF must disclose its index basket constituents, or NAV on a daily basis.
- (b) In addition to secondary trading on ASX, the ETF must allow for applications and redemptions in the primary market on a daily basis, either in-specie, or in cash (to allow for the arbitrage that keeps the ETF share price in line with its index or NAV).

#### 3. Requirements for AQUA Structured Products with managed fund or ETF characteristics

The AQUA rules are less prescriptive for structured products than they are for managed funds and ETFs. For example, there are no rule-based requirements for disclosure akin to the obligations that apply to ETFs and managed funds including the release of a NAV. Complex products can be admitted as structured products, subject to satisfying ASX that there is a robust and transparent underlying pricing mechanism, and that investors can therefore value the product with a degree of certainty.

ASIC has asked ASX to consider introducing additional disclosure requirements in relation to structured products: specifically, extending the application of AQUA rules 10A.4.2 (d) and (e) and 10A.4.4(c) and (d) which currently apply to managed funds and ETFs. These rules require disclosure of the following:



- (d) any other information which is required to be disclosed to ASIC under section 675 of the Corporations Act; and
- (e) any other information that would be required to be disclosed to ASX under section 323DA of the Corporations Act if the Managed Fund Product or ETF were admitted under the ASX Listing Rules

The effect of these sections is that the Issuer must disclose information captured by the continuous disclosure laws and/or information required to be disclosed because it has been filed with the SEC, NYSE or other designated financial market.

To date, ASX has imposed conditions for the disclosure of additional information in relation to structured products on a case-by-case basis after taking into account product features. For example, if an investor would need the NAV to price a structured product with multiple underlying securities (i.e. a structured product that looked like a managed fund), then ASX will impose a condition on the Issuer to make this disclosure. In considering this proposed rule change, ASX is particularly interested in understanding whether there are any benefits or unintended consequences of extending the structured product rules to include the disclosure requirements set out in (d) and (e) above, as compared with ASX's current approach of considering products on a case-by-case basis.

## Quotation of AQUA products over Debt Securities and Their Derivatives

### 4. Enable quotation of AQUA products over unquoted debt securities of listed companies and government, and their derivatives

The original drafting of the AQUA rules was equity focused and did not specifically deal with AQUA products over debt securities. ASX now proposes to address this issue by permitting AQUA products over certain unquoted corporate and government debt securities, and over the derivatives of unquoted debt securities.

These proposals do not seek to change the core AQUA principle noted earlier in this paper – that all AQUA products must have underlying assets that have a robust and transparent pricing mechanism. The proposal is to broaden what constitutes a price discovery process for debt securities beyond the limitation of the security being traded on a WFE exchange. Most debt securities are not quoted on WFE exchanges and yet deep and liquid markets exist in some debt securities. WFE listing should not be the only measure of the price discovery process for debt securities. As is the case with ASX interest rate futures, the derivative markets for many debt instruments are often more liquid than the underlying instrument itself (government bonds and their SFE futures being the obvious example).

ASX proposes to broaden the scope of AQUA to allow debt-based AQUA products to be quoted, which are based on unquoted debentures or bonds for which there is a robust and transparent pricing mechanism, being where the unquoted debentures or bonds are traded on a market and:

- are included in an index specified by ASX: or
- are issued by a government or by an entity which is itself listed and has its ordinary securities traded on a WFE Exchange; or
- where in ASX's opinion there is otherwise a robust and transparent pricing mechanism available.

ASX will also enable the quotation of AQUA products over derivatives of the unquoted debt securities referred to above. Examples of products that could be accommodated under this change are ETFs or managed funds over indices of derivatives over the bonds of top-20 ASX listed companies. The underlying debt instruments must be traded on a market and ASX must be satisfied that there is a robust and transparent pricing mechanism available for that debt instrument (e.g., post trade transparency of significant trading volumes and trade prices).

## Disclosure

### 5. Threshold Issuer requirements in AQUA rule 10A.2.1

ASIC has asked ASX to review rule 10A.2.1 "Approval of Aqua Product Issuer", including specifically rule 10A.2.5(c) which states that an entity which is admitted to the Official List of ASX may be approved as an AQUA Product Issuer for Products other than Issuer Market Risk Products. ASIC has also asked ASX to review the breadth of ASX's discretion to approve AQUA Product Issuers, under AQUA rules 10A.2.1(4)(e), 10A.2.1(5)(d), and 10A.2.3. ASX requests any feedback in relation to these rules.

The requirements for Issuer admission in AQUA rule 10A.2.1 include key suitability and financial standards. At this stage, there is not a corresponding ongoing requirement to advise ASX immediately should an Issuer no longer comply with those requirements. ASIC has asked ASX to consider introducing an ongoing requirement to this effect. ASX requests comment on the introduction of an ongoing obligation on an AQUA Product Issuer to immediately advise ASX should the Issuer no longer comply with the applicable standards in AQUA rules 10A.2.1(1) – (5).

### 6. AQUA quoted product status as "Disclosing Entities"

The AQUA rules presume that AQUA product Issuers will be unlisted disclosing entities i.e. for the purposes of s675 of the Corporations Act 2001 and compliance with AQUA rules 10A.4.2(d) and 10A.4.4(c). However, certain AQUA products may be admitted where the Issuer is not an unlisted disclosing entity. For instance, the issue may arise for ETFs, which are registered managed investment schemes and have been established for the purpose of quoting on AQUA and have not previously issued a PDS. ASIC has asked ASX to consider rule amendments which would have the following effect:

- (a) require fund raising disclosure documents to contain a representation that the Issuer of the product will comply with the Act as if it were an unlisted disclosing entity; and
- (b) that admission will only be granted:
  - a. to a product which is issued by an unlisted disclosing entity; or
  - b. where the Issuer of the product agrees to comply with s675 of the Act and the AQUA rules as if they were an unlisted disclosing entity under the Act (taking into account ASIC Regulatory Guide 198: Unlisted Disclosing Entities: Continuous Disclosure Obligations).

The objective of these amendments would be to ensure that all AQUA Issuers are subject to the same disclosure regime. In considering this rule change, ASX is particularly interested in understanding the consequences for affected Issuers, including any unintended consequences of the change.

### 7. Requirements in relation to the use of indices for index-derived products

ASIC has formed a preliminary view that investors should be able to access information about an index that underpins an AQUA product, to contribute to the robustness and transparency of the pricing mechanism. ASX is accordingly considering specifying minimum levels of information disclosure in relation to indices which form the basis of an index derived product, including ETFs. Such information may include the following:

- (a) Description of eligibility criteria
- (b) Description of methodology used to construct the index
- (c) Description of methodology used to maintain the index including but not limited to timing of calculations
- (d) Overview of index governance arrangements

In considering this rule change, ASX is particularly interested in understanding how this information would be used by investors (i.e. how useful would it be) and whether the proposal would create difficulties for Issuers or index providers because it may require them to disclose proprietary information.

ASX understands that some AQUA ETF Issuers may intend to use in-house indices for the purposes of formulating ETF products, rather than using an index formulated by a third-party index provider such as Standard & Poor's. ASX accepts that there is nothing problematic per se with an Issuer creating a product over its own index - provided the Issuer does not control the value of the underlying index constituents, and there is appropriate transparency as to the four areas listed above at (a) – (d) and to the fact that the index will be formulated in-house.

A passive (index-tracking) ETF, where the index is controlled by the ETF Issuer, takes the ETF product range a step closer to Active ETFs and quoted managed funds. A managed fund Issuer controls the constituents of its portfolio (without controlling their individual value) by setting the fund mandate, and selecting stocks accordingly. The value of the portfolio is reflected in the daily NAV of the fund. ASX is proposing to allow Active ETFs to quote under the AQUA rules via a change to the definition of ETF (see previous section). There will be no conceptual or technical distinction between a quoted managed fund that discloses NAV daily and provides for daily application and redemption and an Active ETF.

ASX invites comments on whether a combination of transparency as to methodology and notification of changes to methodology overcome any issues that may arise if there is not an arms-length index provider.

## Miscellaneous AQUA rule changes

ASX also intends to implement the following miscellaneous changes:

- (a) ASX will introduce a rule stating that a pre-condition of quoting products on the AQUA Trading market is the release of a fund raising disclosure document (i.e. ASX will not quote wholesale products on the AQUA Trading market). Note this does not apply to products quoted on the Quote Display Board.
- (b) ASX will amend the rules so that AQUA product fund raising disclosure documents contain information about the regulatory differences for products that are listed under the listing rules and products that are quoted under the AQUA rules. This will mean that holders can fully understand the implications of investing in AQUA quoted products (including structured products). This disclosure will be required in any initial or subsequent fund raising document.
- (c) ASX will require AQUA product Issuers to disclose to the market via CAP or the Issuer's web site as specified in the PDS, any general disclosure documents (e.g half-yearly and annual financial reports) that are made available or provided to members of the product.
- (d) ASX will prescribe a frequency for the disclosure of NAV calculations for ETFs. ASX will specify that disclosure must be made daily via CAP or the Issuer's web site (as specified in the PDS). Note that ASX will continue to extend this obligation to structured products in the nature of ETCs by way of condition. ASX may also impose a condition on any other structured products for disclosure of daily NAV calculations, and any other managed funds rules that in ASX's opinion ought to apply, where the structured product exhibits the features of a managed fund (e.g. underlying basket of products).
- (e) A listed entity that intends to delist from ASX in order to change the quotation status of its securities from listing rules to AQUA rules will be required to obtain the approval of its security holders before ASX will consent to the securities being quoted under the AQUA rules. This requirement may be dealt with by way of condition of admission imposed by ASX, or pursuant to a new AQUA rule.
- (f) The procedures to the AQUA rules currently say that the investment mandate of a managed fund can only change with the approval of 75% of holders. This procedure was established in the original drafting of the rules when it was envisaged that AQUA would enable quotation in the trading market of units in closed ended funds – to give investors locked into a closed end fund the additional right. ASX is proposing to remove the 75% approval in the procedures given closed end funds are specifically not permitted in the trading market. At a practical level, most domestic and international funds do not have this term in their constitutions, so it has become a practical problem as well as a redundant rule.

- (g) A new concept of a "Fully Covered AQUA Product" will be introduced as an additional basis for approval of an AQUA Product Issuer – meaning an AQUA Product where the AQUA Product Issuer has arranged for a number of the Underlying Instruments or equivalent Financial Products, sufficient to meet the exercise of all outstanding AQUA Products in the AQUA Product Series, to be subject to a Cover Arrangement as per the market rules. This is the same as the existing concept of a Fully Covered Warrant. This was an omission from the original drafting of the AQUA rules.
- (h) The role of ASX providing its consent for changes to the Terms of Issue of a product will be removed from the AQUA and Warrant rules. Under both the AQUA rules and the Warrant rules certain actions an Issuer takes in relation to structured products can only be taken with ASX consent. This approval was needed for ASX to coordinate corporate action adjustments. ASX will remove the requirement to obtain ASX's consent but retain a requirement to notify ASX. Adjustments will still be subject to the requirements in the Terms of Issue (and at law).
- (i) ASX will reduce the spread requirement in AQUA rule 10A.3.6 from 1000 product holders to 400 product holders. This change is intended to reflect more realistically the average size of actively managed funds. ASX is interested in market views on the appropriate number of shareholders for open-ended managed investment schemes with daily redemption facilities quoted on ASX.

## ASX AQUA FRAMEWORK – Request for Comment

Your views on the AQUA market are important in setting how the AQUA framework develops. Please answer the questions below in as much detail as possible. In particular, we request any feedback you may have in relation to the proposed AQUA enhancements.

Responses are requested by Friday 10 September 2010. If you have any queries, please contact Heidi Gausson at [Heidi.Gausson@asx.com.au](mailto:Heidi.Gausson@asx.com.au) or (02) 9227 0844.

### General Comments

- 1) Could the effectiveness of the AQUA rule framework be improved in any way?

If so, please advise details.

- 2) As the rules stand now, does AQUA provide the right range of products?

If not, please advise details.

- 3) Are the requirements for an underlying instrument for an AQUA product appropriate?

If not, please advise details, including whether they are too restrictive or permissive.

- 4) Do you have any additional suggestions for AQUA market enhancements?

If so, please advise details.

## Comments on Proposed AQUA Rule Changes

- 1) Do you have any comments in relation to the proposed changes to the ETF definition or the requirements for funds with ETF-characteristics?

If so, please advise details.

- 2) Do you have any comments in relation to the proposed quotation of AQUA products comprising debt securities and their derivatives?

If so, please advise details.

- 3) Do you have any comments in relation to the proposed amendments to AQUA quoted product status as "Disclosing Entities", to the proposed amendments to threshold Issuer requirements in AQUA rule 10A.2.1, or the requirements in relation to the use of indices for index-derived products?

If so, please advise details.

- 4) Do you have any comments in relation to the proposed miscellaneous rule changes?

If so, please advise details.