

# ASX Investment Products ETP Update

## December 2020

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### ETP Update

#### 1. Updated Market Making Guidance Note

On 9 December 2020, ASX released an update to [ASX Operating Rule Guidance Note 12 Warrant and Aqua Product Liquidity Requirements](#) to better articulate the main liquidity arrangements used by ETFs and Managed Funds, as well as reflect changes made earlier in the year to ASIC's guidance in [ASIC Information Sheet IS 230](#).

A mark-up showing the amendments to the Guidance Note is available at:

<http://www2.asx.com.au/content/dam/asx/documents/unlinked-docs/regulatory-policy/asxor-guidance-note-12-mark-up-09-12-20.pdf>.

#### 2. Introduction of the Dual Structure for Exchange Traded Products (on and off market application and redemption mechanisms).

ASX recently admitted three exchange traded products which allow units to be bought and sold directly with the issuer, or on-market through the exchange.

Funds which adopt this dual structure differ to other exchange traded products in so far as they allow all investors to apply to create, or redeem units with the issuer, rather than fund's market making agent only.

There are several issues ASX requires managers to consider if they are seeking to admit a product which utilises this feature. Below is a non-exhaustive list of issues which must be addressed:

##### Registry Capacity

A key element of this feature is the ability of the fund's registry provider to manage applications and redemptions made off-market, with all accompanying KYC, AML, FATCA & CRS checks, and the ability to satisfy all transfers, registration and settlement requirements of the ASX rules for quoted products (both AQUA and Settlement Operating Rules). This is because ASX considers the entire fund to be admitted to ASX, not only the units which are held on the CHESS sub-register.

ASX is happy to work with all registry providers wishing to provide this service for their clients and encourages registries to reach out to ASX early in the process if funds are considering this feature.

##### Equal Treatment Assessment

The capacity of issuers who offer this feature to treat all members equally was a significant component of the consideration of this feature. Due to the nature of on-market trading, which allows Trading Participants to buy or sell one unit at a time, and the convention off-market to require minimum application amounts, the initial applications determined that while minimum initial application amounts could be applied to new investors, there must be a payment method by which no subsequent minimum investment amounts are charged. It was acknowledged that certain payment methods, for example cheque, could impose a minimum subsequent application amount.

Many of the equal treatment concerns raised are addressed by the PDS disclosures outlined below (under “PDS Disclosure”), but it is also important that issuers carefully consider whether they can manage their fiduciary obligations in offering a fund with this feature. ASX acknowledges that certain investment mandates may not be suitable for this structure due to difficulties in accurately pricing the underlying asset class throughout the ASX Trading Day, or difficulties in complying with the mandatory portfolio disclosures required if the fund implements a short investment strategy for example.

As such, ASX will require an attestation relating to the appropriateness of the AQUA Product issuer’s policies, procedures and personnel in support of the Issuers ability to adequately discharge all of its duties as a result of offering the same unit class directly to investors (“Off-Market”) or throughout the ASX Trading Day on ASX (“On-Market”).

Given the novel nature of this structure, monitoring data relating to the experience of both on and off market investors when entering and exiting a fund may be required to be shared with regulators.

#### PDS Disclosure

The PDS of any prospective fund using this feature must adequately disclose all additional risks associated with this feature, including but not limited to:

- prominent disclosure that investors may pay (or receive) different prices for the fund depending on whether they acquire (or dispose of) units On Market or Off Market;
- clear disclosure of the similarities and differences between buying and selling units on ASX (on-market) versus directly acquiring or disposing units with the issuer (off-market);
- treatment of fractional units should an off-market investor elect to convert and transfer units off CHESS to a CHESS sponsored account;
- possible differential treatment of fractional unit entitlements under any distribution repurchase plan; and
- having a payment method which allows no minimum additional investment amounts for existing off-market investors in the fund.

#### Fees

In order to acknowledge that a significant amount of funds under management may have been accumulated prior to seeking admission to ASX, ASX is offering a haircut on the annual fee for these funds. The annual FUM Fee payable for funds using this feature is calculated on a pro-rata basis at 100% of schedule rate for units held on CHESS and 25% for units held outside CHESS.

The full fee schedule for these funds can be found here:

<https://www2.asx.com.au/markets/market-resources/asx-schedule-of-fees/aqua-and-mfund-fee-schedules>

### **3. Updated AQUA Product Application Forms and Checklist for exchange traded funds (ETFs), exchange traded managed fund (ETMFs) and structured products**

ASX has updated the following application forms and checklists for each new AQUA Product that is applying to be admitted to Trading Status for the purposes of ASX Operating Rule Schedule 10A.3.3(a).



- AQUA Admission Application and Agreement
- ETF Checklist
- Exchange Traded Managed Fund Checklist
- Structured Product Checklist

The updated forms are available on the [ASX Compliance Downloads page](#) on the ASX website under the heading “AQUA Products (mFund and Traded Market)”. The updated forms all have an effective date of 1 September 2020.

If you have any queries, please contact the Investment Product Specialist team.