

## SECTION 10A AQUA PRODUCTS AND THE AQUA TRADING MARKET

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## **SECTION 10A AQUA PRODUCTS AND THE AQUA TRADING MARKET**

Section 10A describes, and sets out specifications in respect of, AQUA Products and the trading of those products on ASX's market. AQUA Products are Managed Fund Products, ETF Securities or Structured Products as defined in Section 2.

### **10A.1 AQUA PRODUCT RULES**

#### **10A.1.1 AQUA Product Rules**

This section 10A applies to AQUA Products and the trading of AQUA Products. Section 10B applies to the AQUA Quote Display Board.

Introduced 15/09/08

#### **10A.1.2 No Guarantee of Viability**

The approval of an AQUA Product Issuer or admission of an AQUA Product Series to Trading Status or to the AQUA Quote Display Board does not imply any guarantee or warranty by ASX as to the viability of the AQUA Product Issuer.

Introduced 15/09/08

#### **10A.1.3 Obligations of AQUA Product Issuer**

- (a) The obligations of AQUA Product Issuers who have agreed to be bound by these Rules under Section 10A and Section 10B are owed to ASX.
- (b) If an AQUA Product Issuer is a Market Participant it will in addition, in that capacity, be bound by these Rules in accordance with Rule 1.2.2.

Introduced 15/09/08

### **10A.2 AQUA PRODUCT ISSUERS**

#### **10A.2.1 Approval of AQUA Product Issuer**

In order to be approved as an AQUA Product Issuer, an applicant for approval as an AQUA Product Issuer must:

- (1) hold all relevant licence authorisations under Chapter 7 of the Corporations Act for the purpose of the conduct of their business as an AQUA Product Issuer under Section 10A and 10B of the Rules, as applicable (but only to the extent that such licence authorisation is required by that Act);
- (2) confirm to ASX that it has facilities, expertise, procedures, personnel and financial resources which are adequate for the performance by the applicant of its obligations as an AQUA Product Issuer;

- (3) agree in writing to be bound by the Rules, and conditions imposed pursuant to the Rules; and
- (4) an AQUA Product Issuer which issues Issuer Market Risk Products must be one of the following:
  - (a) an entity, which is prudentially regulated as specified in the Procedures;
  - (b) a government;
  - (c) an entity which:
    - (i) holds an Australian Financial Services Licence or a licence in another jurisdiction which makes it subject to adequate supervision of capital standards;
    - (ii) has a long term debt rating of investment grade or its equivalent by a rating agency acceptable to ASX;
    - (iii) has net tangible assets which in the opinion of ASX are sufficient to support the proposed issue; and
    - (iv) is acceptable to ASX;
  - (d) an entity which has a Guarantor which meets the criteria in paragraph (4)(a), (4)(b) or 4(c); or
  - (e) any other person or entity accepted by ASX, whose decision will be final.
- (5) an AQUA Product Issuer which issues AQUA Products other than Issuer Market Risk Products must be one of the following:
  - (a) an entity which meets one of the criteria in paragraph (4) above;
  - (b) an entity which is a responsible entity of a managed investment scheme registered under the Corporations Act;
  - (c) an entity which is admitted to the Official List of ASX; or
  - (d) any other person or entity accepted by ASX, whose decision will be final.

Upon approval as an AQUA Product Issuer, an AQUA Product Issuer must continue to satisfy the above requirements while its approval as an AQUA Product Issuer remains in force. The suspension or cessation of an AQUA Product Issuer's approval for any reason does not affect any obligations of an AQUA Product Issuer arising while that approval was in force.

Introduced 15/09/08

## **10A.2.2 Guarantors**

All guarantees provided by a Guarantor pursuant to Rule 10A.2.1 must be unconditional and irrevocable and in favour of the AQUA Product Holder. Government guarantees will be acknowledged to ASX in writing by the Treasurer of that government.

Introduced 15/09/08

## **10A.2.3 ASX has discretion regarding approval of AQUA Product Issuers**

The following requirements apply to the approval of AQUA Product Issuers:

- (a) ASX has absolute discretion as to whether to approve an AQUA Product Issuer;
- (b) approval may be granted on such conditions as ASX thinks appropriate and AQUA Product Issuers must comply with such conditions at all times;
- (c) ASX may suspend or revoke any such approval if in the absolute discretion of ASX, ASX is of the opinion or reasonably suspects that an AQUA Product Issuer may become unable or unwilling, or in any respect fails, to comply with Section 10A or Section 10B; and
- (d) ASX may grant, suspend or revoke approval without giving any reason including, without limiting the generality of the foregoing and subject to no less than one months notice being given, where an AQUA Product Issuer has no AQUA Product Series admitted to Trading Status or admitted to the AQUA Quote Display Board either currently or within the previous twelve months.

Introduced 15/09/08

## **10A.3 ADMISSION OF AQUA PRODUCTS**

### **10A.3.1 ASX's discretion regarding admission of AQUA Products**

The following provisions apply to the admission of AQUA Product Series to Trading Status or to the AQUA Quote Display Board:

- (a) an AQUA Product Issuer must indicate whether they seek admission of an AQUA Product to Trading Status or to the AQUA Quote Display Board;
- (b) an AQUA Product shall not be available for trading on ASX unless and until the relevant AQUA Product Series has been admitted to Trading Status by ASX;
- (c) an AQUA Product may not be advertised on the AQUA Quote Display Board unless and until the relevant AQUA Product Series has been admitted to the AQUA Quote Display Board by ASX;
- (d) without affecting the generality of sub-paragraph (e) an approved AQUA Product Issuer seeking the admission of an AQUA Product Series must satisfy ASX that it continues to satisfy the requirements of Rule 10A.2;
- (e) admission of AQUA Products is in ASX's absolute discretion. ASX may admit AQUA Products to Trading Status or to the AQUA Quote Display Board on any conditions it considers appropriate and the AQUA Product Issuer must comply

with such conditions. ASX may grant or refuse admission to Trading Status or to the AQUA Quote Display Board without giving any reasons; and

- (f) ASX may suspend or revoke any such admission if, in the absolute discretion of ASX, 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 this Section 10A or Section 10B.

Introduced 15/09/08

### 10A.3.2 Requirement for specific AQUA Product Series

Admission to Trading Status or to the AQUA Quote Display Board will be for a specific AQUA Product Series with a title and description sufficient to be distinguishable from other AQUA Product Series already admitted to Trading Status or to the AQUA Quote Display Board.

Introduced 15/09/08

### 10A.3.3 Requirements for admission

Admission to Trading Status or to the Quote Display Board will only be granted to AQUA Products if all the following requirements are satisfied:

- (a) the AQUA Product Issuer has completed and given to ASX a form of application for admission set out in the Procedures;
- (b) ASX has no objection to the Financial Product including the investment mandate or other constituent documents (in the case of Managed Fund Products and ETF Securities) or the Terms of Issue (in the case of Structured Products);
- (c) the capital value or distributions of the Financial Product must be linked to liquid Underlying Instruments which have a robust and transparent pricing mechanism being:
  - (i) securities traded on an exchange which is a member of the World Federation of Exchanges;
  - (ii) commodities and currencies traded on a recognised market with post trade transparency or for which there is a regulated derivatives market which controls price discovery; and
  - (iii) indices over the above Underlying Instruments.
- (d) the Financial Product is not:
  - (i) a security in a listed investment company;
  - (ii) a unit in a real estate investment trust (REIT) or similar fund;
  - (iii) a unit in an infrastructure trust or fund;
  - (iv) a unit in a non-portfolio strategic investment vehicle (such as a private equity fund);

- (v) a Financial Product where the issuer has a significant influence over the price or value of the Underlying Instrument(s);
  - (vi) a Financial Product 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);
  - (vii) a Financial Product 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 Instruments is not set by a transparent mechanism;
  - (viii) units in a Managed Fund Product for which the net asset value are not disclosed daily (in the case of admission Trading Status) or at least quarterly (in the case of admission to the AQUA Quote Display Board);
  - (ix) a Financial Product priced by reference to an index where the level of that index is not publicly available or reported on a regular basis;
  - (x) any other the Financial Products to which ASX considers the listing mechanism and continuous disclosure regime in the ASX Listing Rules should apply;
- (e) the AQUA Product Issuer is approved by ASX under Rule 10A.2;
  - (f) the AQUA Product Issuer has prepared and given to ASX a disclosure document that complies with the Corporations Act or evidence of an exemption from the disclosure requirements under the Corporations Act;
  - (g) in relation to Structured Products, the AQUA Product Series is within the issue limits set out in Rule 10A.5.1;
  - (h) the AQUA Product Issuer has satisfied any other conditions that ASX may impose in relation to disclosure.

Where a draft disclosure document is given under paragraph (f) trading of AQUA Products or advertising of prices on the AQUA Quote Display Board must not commence until the final disclosure document has been given to ASX.

Introduced 15/09/08

#### **10A.3.4 Additional requirements for admission to Trading Status**

In the case of Managed Fund Products, Trading Status will only be granted if:

- (a) the Managed Fund is an open ended scheme, being a scheme which continuously issues and redeems Financial Products based on the net asset value of the Managed Fund; and
- (b) the constitution of the Managed Fund provides that off market redemption facilities will operate daily.

This rule does not apply to products admitted only to the AQUA Quote Display Board.

Introduced 15/09/08

### 10A.3.5 Authorisation to use index

Unless otherwise determined by ASX, in the case of AQUA Products for which the underlying investment is an index which is subject to ownership held by a party other than the AQUA Product Issuer, the AQUA Product Issuer must submit with its application, written authorisation from the owner to use that index for the purposes of that issue of AQUA Products.

Introduced 15/09/08

### 10A.3.6 Market making requirement

There are no initial spread or market making requirements for AQUA Products admitted only to the AQUA Quote Display Board.

An AQUA Product Issuer must with respect to each AQUA Product or AQUA Product Series admitted to Trading Status either:

- (a) on an ongoing basis ensure a reasonable Bid and volume is maintained in the market for each AQUA Product Series for the period set out in the Procedures except in Permitted Circumstances; 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 Series.

However, the requirements above will cease to apply if the AQUA Product has, and continues to have, a spread of at least 1000 AQUA Product Holders and a net asset value of at least the amount specified in the Procedures.

In this Rule **Permitted Circumstances** means where:

- (c) the Underlying Instrument or the underlying hedge instrument of an AQUA Product Series (where relevant) is placed in Pre-Open Session State or is subject to a suspension or trading halt or is otherwise unavailable for trading;
- (d) the AQUA Product Series is subject to a suspension or trading halt or is placed in Pre-Open Session State or is otherwise unavailable for trading;
- (e) the theoretical value of the AQUA Product Series is below the relevant minimum price step of the Trading Platform (e.g. \$0.001);
- (f) the AQUA Product Issuer has advised the market that it (or its AQUA Product Market Making Agent) would breach laws, regulatory rules or similar constraints either in Australia or a relevant foreign jurisdiction by fulfilling its market making obligations, provided that:
  - (i) where appropriate, it will endeavour to obtain any necessary regulatory relief that will enable it to continue to make a market in that AQUA Product Series; and
  - (ii) it will advise the market upon being able to continue to make a market in that AQUA Product Series;



- (g) the AQUA Product Issuer has advised the market by such time as set out in the Procedures that it (or its appointed AQUA Product Market Making Agent) continues to experience an interruption to its normal operating environment that substantially prevents the timely and accurate entry of market making orders into the Trading Platform;
- (h) any other circumstances set out in the Procedures and notified to the Commission.

Introduced 15/09/08

#### **10A.3.7 Fees**

The AQUA Product Issuer must pay to ASX fees in connection with the admission to Trading Status or Quote Display Board as determined by ASX from time to time.

Introduced 15/09/08

### **10A.4 MANAGED FUND PRODUCTS AND ETF SECURITIES**

#### **10A.4.1 Investment mandate**

Managed Funds and ETFs are required to have an investment mandate or similar document in relation to each AQUA Product Series which sets out the investment approach of the AQUA Product Issuer. The investment mandate or similar document must meet the requirements of ASX as set out in the Procedures.

Introduced 15/09/08

#### **10A.4.2 Disclosure requirements for Managed Fund Products**

An AQUA Product Issuer that issues Managed Fund Products must disclose:

- (a) information about the net asset value of the Underlying Instruments for the Managed Fund daily (in the case of Managed Fund Products admitted to Trading Status) or at least quarterly (in the case of Managed Fund Products admitted to the AQUA Quote Display Board);
- (b) information about redemptions from the Managed Fund;
- (c) information about dividends or distributions paid in relation to the Managed Fund;
- (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 were admitted under the ASX Listing Rules;

in the time and manner specified in the Procedures.

Introduced 15/09/08

### 10A.4.3 Additional disclosure requirements for actively managed Managed Fund Products

If a Managed Fund Product is actively managed and the AQUA Product Issuer's management activities cause the last reported net asset value to move by more than ten percent, the AQUA Product Issuer must immediately disclose its net asset value to ASX.

Introduced 15/09/08

### 10A.4.4 Disclosure requirements for ETFs

An AQUA Product Issuer that issues ETFs must disclose:

- (a) information about the net asset value of the Underlying Instruments for the ETF;
- (b) information about dividends or distributions paid in relation to the ETF;
- (c) any other information which is required to be disclosed to ASIC under section 675 of the Corporations Act; and
- (d) any other information that would be required to be disclosed to ASX under section 323DA of the Corporations Act if the ETF were admitted under the ASX Listing Rules;

in the time and manner specified in the Procedures.

Introduced 15/09/08

## 10A.5 STRUCTURED PRODUCTS

### 10A.5.1 Issue limits

This Rule 10A.5.1 relates to AQUA Products which are Structured Products and in relation to which the settlement obligations under the Terms of Issue are in the first instance completed by the transfer of Cash Market Products of an ASX Listed Entity to the AQUA Product Holders. A proposed issue of such AQUA Products will not be admitted to Trading Status or to the AQUA Quote Display Board, where, at the time of the proposed issue of the AQUA Products, either or both of the following apply:

- (a) the number of Equity Securities which may be acquired or be required to be acquired pursuant to the exercise of AQUA Products at any time prior to and inclusive of the expiry date of the proposed issue of AQUA Products, whether under the proposed issue or any existing issue of AQUA Products or Warrants, would exceed 50% of the class of Cash Market Product, or such lesser percentage set by ASX; and
- (b) the number of Equity Securities which may be acquired or be required to be acquired pursuant to the exercise of AQUA Products or Warrants that expire during the 14 day period immediately before or after the expiry date of the proposed issue of AQUA Products, would exceed 20% of the class of Cash Market Product or such lesser percentage set by ASX.

These tests will be applied separately to put AQUA Products and Warrants and call AQUA Products and Warrants.

Introduced 15/09/08

### 10A.5.2 Terms of Issue

AQUA Products which are Structured Products are required to have Terms of Issue unless ASX specifies otherwise. The Terms of Issue must:

- (a) include appropriate provisions for the adjustment of the exercise rights of the Structured Products in appropriate circumstances, including, without limitation:
  - (i) where the Structured Products are linked to Cash Market Products of a Listed Entity, adjustments for reductions in capital, bonus issues, rights issues and capital restructurings; and
  - (ii) where the Structured Products are linked to an index, the modification and discontinuance of the index; and
- (b) meet any other requirements specified in the Procedures or otherwise specified by ASX.

Introduced 15/09/08

### 10A.5.3 Amendment of expiry date, prohibition on amendment to Terms of Issue, ASX's consent

- (a) The expiry date of a Structured Product can be amended:
  - (i) if the Terms of Issue state that the expiry date can be amended in the event of an extraordinary event, and such an event occurs; or
  - (ii) if the expiry date is extended with the consent of ASX and this does not materially prejudice the interests of AQUA Product Holders;but cannot be amended in any other circumstances.
- (b) No other Terms of Issue can be amended except as permitted by Rules 10A.5.4 or 10A.5.5.
- (c) Where Terms of Issue entitle an AQUA Product Issuer to act or refrain from acting with the consent of ASX, ASX may grant or refuse to grant consent in its absolute discretion.

Introduced 15/09/08

### 10A.5.4 Amendment of Terms of Issue by approval

If provided for in the Terms of Issue, the Terms of Issue can be amended with the approval of 75% of votes cast by those AQUA Product Holders who vote on a proposed resolution. Votes cast by the AQUA Product Issuer or its associates must be disregarded. Voting must be in accordance with the following:

- (a) voting rights in respect of Structured Products will be on a one for one basis;
- (b) an AQUA Product Holder will be entitled to vote on any proposed resolution; and
- (c) in circumstances where an AQUA Product Issuer proposes to hold a meeting, it must provide each AQUA Product Holder, by the time set out in the Procedures:

- (i) written notice of the meeting; and
- (ii) proxy forms by which an AQUA Product Holder can appoint a person to attend the meeting and vote on its behalf. Such proxy forms must be blank so far as the person primarily to be appointed as proxy is concerned.

Introduced 15/09/08

#### **10A.5.5 Amendment of Terms of Issue with ASX's consent**

If provided for in the Terms of Issue, the Terms of Issue can be amended, with the consent of ASX:

- (a) if the amendment is necessary in the opinion of the AQUA Product Issuer to comply with any statutory or other requirements of law or any requirement of ASX;
- (b) to rectify any defect, manifest error or ambiguity in the Terms of Issue where the amendment does not materially prejudice the interests of AQUA Product Holders;
- (c) to permit transfers by a method other than as set out in the Terms of Issue;
- (d) in the case of an adjustment or an extraordinary event, as defined in the Terms of Issue; or
- (e) where, in the reasonable opinion of the AQUA Product Issuer, the amendment does not materially prejudice the interests of AQUA Product Holders.

Introduced 15/09/08

#### **10A.5.6 Underlying Instrument is Approved Short Sale Product**

Where the Underlying Instrument the subject of the issue is a security which is an Approved Short Sale Product and the issue is not fully covered, a sale of the Underlying Instrument is deemed to be a sale within the meaning of sub-paragraph 1020B(4)(e)(ii) of the Corporations Act.

Introduced 15/09/08

### **10A.6 AQUA PRODUCT ISSUER REPORTS**

#### **10A.6.1 Information concerning AQUA Product Issuers and Guarantors**

An AQUA Product Issuer and any Guarantor must upon request by ASX provide forthwith to ASX any explanations and/or information concerning itself or any of its subsidiaries or of any proposed action or omission to act the lack of disclosure of which may lead to the establishment of a false market in AQUA Products issued by the relevant AQUA Product Issuer or which would be likely to materially affect the price of those AQUA Products.

Introduced 15/09/08

## **10A.6.2 Information in relation to AQUA Products in a specified AQUA Product Series**

If requested by ASX, an AQUA Product Issuer must provide any information in relation to AQUA Products in a specified AQUA Product Series as required by ASX. This information must be provided in a form acceptable to ASX and must be provided within the time set out in the Procedures.

Introduced 15/09/08

## **10A.6.3 False market in AQUA Products**

An AQUA Product Issuer and any Guarantor must notify ASX immediately of any information concerning itself or of any of its subsidiaries or any proposed action or omission to act, the non-disclosure of which may lead to the establishment of a false market in AQUA Products issued by the relevant AQUA Product Issuer or which would be likely to materially affect the price of those AQUA Products.

Introduced 15/09/08

## **10A.6.4 Documentation forwarded to ASX**

All documentation forwarded to ASX by or on behalf of an AQUA Product Issuer, and Guarantor (if applicable), whether provided in support of an application or in compliance with the Rules for the time being or otherwise, will become and remain the property of ASX which may, in its absolute discretion, copy any or all of such documentation and forward such copies to the public, the media, or any other interested party. Private correspondence, including draft documents lodged with ASX for approval, and marked "not for public release" will only be released to the public, the media, or any other interested party where ASX has formed the opinion that the information should be released and has given notice to the AQUA Product Issuer to that effect.

Introduced 15/09/08

## **10A.6.5 Amended, supplementary and replacement disclosure documents**

Where an AQUA Product Issuer has given to ASX a disclosure document in respect of an AQUA Product under Rule 10A.3.3(f), the AQUA Product Issuer must promptly give to ASX any amended, supplementary or replacement disclosure document which it prepares and proposes to issue in respect of those AQUA Products.

Introduced 15/09/08

# **10A.7 TRANSFERS AND REGISTERS**

## **10A.7.1 Transfer of AQUA Products**

The transfer of an AQUA Product must comply with Part 7.11 of the Corporations Act and, if the AQUA Product is a CS Approved Product, be effected in accordance with the Clearing Rules and the Settlement Rules.

Introduced 15/09/08

#### **10A.7.2 Comply with Clearing Rules and Settlement Rules**

If AQUA Products are CS Approved Products, the AQUA Product Issuer must, in respect of the AQUA Products, comply with the Clearing Rules and the Settlement Rules to the extent they apply to AQUA Products

Introduced 15/09/08

#### **10A.7.3 Issuer Sponsored Subregister**

If the AQUA Product Issuer establishes an “Issuer Sponsored Subregister” (as that term is defined in the Settlement Rules) in respect of an AQUA Product Series, the AQUA Product Issuer must comply with the relevant Listing Rules (Chapter 8) in relation to “Issuer Sponsored Subregisters”, as if the AQUA Product Issuer were a company referred to in those Listing Rules.

Introduced 15/09/08

#### **10A.7.4 Register of AQUA Product Holders**

The AQUA Product Issuer must arrange for the establishment and maintenance of a Register of AQUA Product Holders which complies with the Corporations Act requirements for shares or units in a registered scheme.

Introduced 15/09/08

#### **10A.7.5 Comply with the Listing Rules**

The AQUA Product Issuer must comply with the Listing Rules in relation to the issue and despatch of holding statements, the transfer and transmission of AQUA Products, and the establishment and maintenance of a Register of AQUA Product Holders as if the AQUA Products were shares in a listed entity.

Introduced 15/09/08

#### **10A.7.6 Transfer between Australian Registers**

An AQUA Product Issuer must permit AQUA Products to be transferred from one Australian Register of AQUA Product Holders to another without restriction or payment of fee.

Introduced 15/09/08

#### **10A.7.7 Transfer between Australian Register and Register maintained outside Australia**

Where AQUA Products are transferred from:

- (a) an Australian Register of AQUA Product Holders to a Register of AQUA Product Holders maintained outside Australia; or
- (b) a Register of AQUA Product Holders maintained outside Australia to an Australian Register of AQUA Product Holders;

the AQUA Product Issuer registry or its agent with which the transfers are lodged by the lodging agent must forward to the lodging agent within the time set out in the Procedures, a serially numbered transmission receipt which must include:

- (c) date of issue;
- (d) name and address of AQUA Product Holder;
- (e) number of AQUA Products;
- (f) description of AQUA Products;
- (g) location of Register of AQUA Product Holders to which AQUA Products have been transferred;
- (h) date of transfer;
- (j) inter-register reference number (if any);
- (k) name of lodging agent; and
- (l) date and/or reference number of lodging agent's registration and/or transfer instruction.

Introduced 15/09/08

#### **10A.7.8 Offices open on week days**

An AQUA Product Issuer must ensure that offices at which transfers of AQUA Products are to be lodged for registration are open on all week days other than gazetted bank holidays or public holidays in the State or Territory in which the office is located and any other day which ASX will declare and publish as not a Business Day.

Introduced 15/09/08

### **10A.8 SUSPENSION OF TRADING BY ASX**

#### **10A.8.1 Suspension of trading by ASX**

ASX reserves the right to halt or suspend trading of any AQUA Product whenever ASX deems such action appropriate having regard to Rule 1.13 or if the AQUA Product Issuer or Guarantor has failed to comply with their obligations under Section 10A or 10B or the constituent documents (in the case of Managed Fund Products or ETFs) or Terms of Issue (in the case of Structured Products).

Introduced 15/09/08

### **10A.9 INDEMNITY**

#### **10A.9.1 Indemnity**

An AQUA Product Issuer and Guarantor indemnifies ASX against any claim arising from, or in relation to, an AQUA Product issued by that AQUA Product Issuer.

Introduced 15/09/08

## **10A.10 COMPLIANCE WITH MARKET MAKING REQUIREMENTS**

### **10A.10.1 Definitions**

“AQUA Products Committee” means an AQUA Products Committee established under this Rule 10A.10.

“AQUA Products Panel” means an AQUA Products Panel constituted under this Rule 10A.10.

“AQUA Products Market Maker” means an AQUA Product Issuer performing an AQUA Product Market Making function under Section 10A of the Rules.

“AQUA Product Market Maker Bid” means a Bid and/or volume made for the purposes of Rule 10A.3.6.

“AQUA Product Market Making” means the provisions of market making in accordance with Rule 10A.3.6.

“AQUA Product Market Making Agent” means a Trading Participant appointed by an AQUA Product Issuer to perform AQUA Product Market Making as agent of the AQUA Product Issuer and registered for that purpose with ASX.

Introduced 15/09/08

### **10A.10.2 AQUA Products Panel**

The following provisions apply to the constitution of an AQUA Products Panel:

- (a) ASX may appoint persons to an AQUA Products Panel for the purpose of allowing the constitution by selected members of the AQUA Products Panel of an AQUA Products Committee as required from time to time.
- (b) Subject to this Rule 10A.10 more than one AQUA Products Committee may be constituted from the AQUA Products Panel at any one time whether or not constituted by some or all of the same members of another AQUA Products Committee.
- (c) Persons appointed to the AQUA Products Panel may include directors or employees of ASX, or a Related Body Corporate of ASX, directors or employees of AQUA Product Issuers or Market Participants and such other persons as ASX thinks fit.

Introduced 15/09/08

### **10A.10.3 Maintenance of Reasonable Bid and Volume and AQUA Products Committee**

The following provisions apply in relation to the obligation of AQUA Product Issuers to maintain a Bid and volume under Rule 10A.3.6 (where applicable):

- (a) When requested by ASX, an AQUA Product Issuer must within the time set out in the Procedures or such further period as ASX may allow, provide details of how it determined the Bid value and volume for the purpose of Rule 10A.3.6.



- (b) Where ASX receives the details referred to in paragraph (a) or had not received such details within the required time it may (or may not) in its absolute discretion:
- (i) form a view that an AQUA Product Market Maker Bid is contrary to Rule 10A.3.6; or
  - (ii) refer an AQUA Product Market Maker Bid to an AQUA Products Committee if ASX considers that the AQUA Product Market Maker Bid may be contrary to Rule 10A.3.6.
- (c) For the purposes of paragraph (b) ASX may constitute an AQUA Product Committee for the purposes of advising ASX on the reasonableness of a AQUA Product Market Maker Bid for the purposes of Rule 10A.3.6.
- (d) In considering an AQUA Product Market Maker Bid, the AQUA Products Committee may:
- (i) make any enquiries which it considers relevant to the AQUA Product Market Maker Bid;
  - (ii) seek information (orally or in writing) from the AQUA Product Issuer;
  - (iii) determine the manner in which the AQUA Product Market Maker Bid will be considered.
- (e) The AQUA Products Committee may make any recommendation to ASX it considers appropriate in relation to the reasonableness of the AQUA Product Market Maker Bid.
- (f) The AQUA Products Committee must use reasonable endeavours to make its recommendations under the Rules as quickly as possible and, if practicable, on the Trading Day on which the AQUA Product Market Maker Bid was referred to it under the Rules.
- (g) In relation to an AQUA Product Market Maker Bid, after the AQUA Products Committee gives ASX its advice, or where ASX forms its own view that an AQUA Product Market Maker Bid is contrary to Rule 10A.3.6, ASX may or may not, in its discretion, take any action (or refrain from taking action) and give any directions it considers appropriate having regard to Rule 1.13 including, without limitation, doing any or all of the following:
- (i) release an announcement to the market to the effect that the AQUA Product Issuer failed to maintain an AQUA Product Market Maker Bid in accordance with Rule 10A.3.6;
  - (ii) issue a warning letter to the AQUA Product Issuer;
  - (iii) notify the AQUA Product Issuer that ASX will take the AQUA Product Issuer's failure to maintain an AQUA Product Market Making Bid in accordance with Rule 10A.3.6 into account when considering future applications for admission of new AQUA Product Series to Trading Status;

- (iv) suspend trading in the AQUA Product Series; or
  - (v) determine that future AQUA Product Series issued by that AQUA Product Issuer may not be admitted to Trading Status for a specified period of time not exceeding 12 months.
- (h) Subject to paragraph (k) before making a decision under 10A.10.3(g) ASX must give an AQUA Product Issuer an opportunity to make submissions to ASX orally or in writing with respect to any proposed action by ASX.
- (i) Subject to the right of appeal to an Appeal Tribunal in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook the exercise by ASX of its powers under this Rule is final and binding on the AQUA Product Issuer involved.
- (j) Subject to paragraph (k) ASX must not take any action to implement any decision under Rule 10A.10.3(g) until the period for making an appeal has expired, or where there is an appeal, the appeal has been determined.
- (k) ASX may implement and announce a decision to suspend trading in an AQUA Product Series pursuant to Rule 10A.10.3(g) before giving the AQUA Product Issuer an opportunity to make submissions, before the expiry of the period for making an appeal, or before an appeal is determined, if ASX considers it appropriate having regard to Rule 1.13 to do so.
- (l) Nothing in this Rule 10A.10 affects, or derogates from, the exercise by ASX of any other power in these Rules.

Introduced 15/09/08

#### **10A.10.4 Appeals**

An AQUA Product Issuer may appeal to an Appeal Tribunal in accordance with the provisions of the Australian Securities Exchange Disciplinary processes and Appeals Rulebook a decision by ASX under Rule 10A.10.3(g).

Introduced 15/09/08

#### **10A.10.5 General provisions relating to AQUA Products Committees**

AQUA Products Committees (referred to in this Rule 10A.10.5 as a committee) are to be constituted as set out below:

- (a) ASX may constitute such committees by appointing at least 3 members (or such higher odd number as it sees fit) of the AQUA Products Panel to such committee.
- (b) At least one member of any such committee must be an agent or employee of ASX or a Related Body Corporate of ASX.
- (c) No person who has an interest in the matter being considered by a committee may be appointed to, or take part in the deliberations of a committee. The fact a member or proposed member of a committee is an employee or agent of ASX, or a Related Body Corporate of ASX, will not be regarded as an interest.

- (d) Committee members may be appointed on such terms as ASX considers appropriate.
- (e) A committee may at any meeting appoint a chairperson for the purposes of the meeting.
- (f) A committee may hold meetings in such a manner as it sees fit.
- (g) The decision of a committee will be determined by simple majority vote of the committee members. Each member has and must exercise a deliberative vote. The chairperson has a deliberative but not a casting vote.
- (h) A committee may conduct proceedings without all members of the committee involved in the proceedings being in the physical presence of each other, provided that all members involved in the proceedings are able to participate in discussion.

Introduced 15/09/08

#### **10A.10.6 Limitation of liability and indemnity**

ASX indemnifies each member of an AQUA Products Committee and each officer of ASX and each person acting for or on behalf of ASX against any liability arising in or in connection with the determination of an AQUA Products Committee or AQUA Products Appeal Committee, other than any liability that by law would attach to the member, officer or person in respect of any negligence, default, breach of duty or breach of trust of which the member, officer or person may be guilty in relation to ASX.

Introduced 15/09/08

#### **10A.10.7 Indemnity for certain legal proceedings**

Notwithstanding anything contained in Rule 10A.10.6 ASX indemnifies each member of an AQUA Products Committee and each officer of ASX and each person acting for or on behalf of ASX against any liability incurred by the member, officer or person in defending any proceedings whether civil or criminal, in which judgement is given in favour of the member, officer or person or in which the member, officer or person is acquitted or in connection with any application in relation to any such proceedings in which relief is granted under the Corporations Act to the member, officer or person by any court of competent jurisdiction.

Introduced 15/09/08

#### **10A.10.8 Appointment of AQUA Product Market Making Agents**

The following provisions apply in relation to an AQUA Product Issuer that has appointed a Trading Participant to perform AQUA Product Market Making functions.

- (a) Where an AQUA Product Issuer is not a Trading Participant or does not wish to directly make a market in all or some AQUA Product Series it must appoint a Trading Participant or Trading Participants as its AQUA Product Market Making Agent(s).

- (b) A Trading Participant appointed by an AQUA Product Issuer as its AQUA Product Market Making Agent must be registered with ASX as the Market Making Agent of the AQUA Product Issuer in accordance with the Procedures.
- (c) Notwithstanding the appointment of a Trading Participant as its AQUA Product Market Making Agent an AQUA Product Issuer is at all times responsible for the performance of its AQUA Product Market Making obligations for the relevant AQUA Product Series.

Introduced 15/09/08

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