



# **Register of ASX Operating Warrant and AQUA Rule Waivers**

**16 to 31 October 2011**

**The purpose of this register is to record when ASX has exercised its discretion and granted a waiver from the ASX Operating Warrant and AQUA rules. Waivers are published bi-monthly and include information such as:**

- Organisation**
- Rule Number**
- Decision Details**
- Basis for Decision**

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<b>Rule Number</b>	7100 ETF
<b>Date</b>	26/10/2011
<b>Participant</b>	Participants (All)
<b>Waiver Number</b>	WPA110034-001
<b>Decision</b>	<p>ASX has considered BetaShares' request for relief from the definition of "ETF" under ASX Operating Rule 7100 to allow the Proposed ETFs to each be an "ETF" and therefore an "ETF Security" for the purpose of the definition of an AQUA Product. The Proposed ETFs are:</p> <p>BetaShares Crude Oil Index ETF - Currency Hedged (Synthetic)  BetaShares Commodities Basket ETF - Currency Hedged (Synthetic)  BetaShares Agriculture ETF - Currency Hedged (Synthetic)  BetaShares Copper Index ETF - Currency Hedged (Synthetic)</p> <p>In reviewing BetaShares' application for relief ASX has only considered the application of ASX Operating Rule 7100 in relation to the definitions of AQUA Product, ETF and ETF Security to allow for the issue of new securities in return for the subscriber transferring cash into the scheme instead of a portfolio of Securities.</p> <p>Based solely on the information provided, and subject to the qualifications below, ASX grants a waiver pursuant to ASX Operating Rule 6030 as follows:</p> <p>ASX grants relief from the definition of "ETF" under ASX Operating Rule 7100 to allow the Proposed ETFs to each be an "ETF" and therefore an "ETF Security" for the purpose of the definition of AQUA Products. Noting that this is in spite of the fact that the Proposed ETFs do not meet the requirement under the definition by providing for the issue of new Equity Securities in return for the subscriber transferring to the scheme a portfolio of Securities.</p> <p>The waiver applies to all Market Participants. The effect of the relief is that for the purposes of the ASX Operating Rules:</p> <p>*The Proposed ETFs are ETFs and ETF Securities for the purpose of Schedule 10A; and  *ASX Operating Rules 3310 and Procedure 3310 will apply to the reporting of Special Trades of the Proposed ETFs.</p> <p>ASX's decision is solely related to its consideration of the application of ASX Operating Rule 7100, specifically the definitions of AQUA Product, ETF and ETF Security.</p>
<b>Basis For Decision</b>	<p>Underlying Policy</p> <p>ASX will list ETFs that satisfy the definition of an ETF which is currently defined in the ASX Operating Rules as:  a registered managed investment scheme or a scheme which ASIC has exempted from the registration requirements:  (i) listed on ASX or admitted under Rule [2121];  (ii) with power and approval to continuously issue and have quoted</p>

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on ASX Equity Securities in the scheme;  
(iii) which provides for the issue of new Equity Securities in return for the subscriber transferring to the scheme a portfolio of Securities; and  
(iv) for which the price of the Underlying Instrument is continuously disclosed or can be immediately ascertained.  
Where it can be shown that an ETF substantially satisfies the current definition except for matters that may be unnecessarily restrictive, minor or inconsequential then ASX will assess the impact of these in the light of current market trends both in Australia and overseas. Many of the products currently being developed, while still an ETF under all other requirements of the rules, are not made up of underlying securities (eg Foreign Exchange or gold bullion) and thus provide for the issue of new Equity Securities in return for the subscriber transferring cash to the scheme rather than a portfolio of Securities as required by limb (iii).

## Present Application

The Proposed ETFs are designed to track the price of commodities, hedged into Australian dollars from US dollars. This will be achieved by entering into a swap agreement linked to a commodity index produced by S&P, tracking the copper, crude oil, an agricultural basket or broad commodities prices. The investment return is provided by the swap and the ETF holds cash as collateral for more than 90% of the value of each ETF.

It is also relevant to this waiver request to note that in August 2010, ASX released an AQUA Post-Implementation Consultation Paper and Request for Comment ("the Consultation Paper"). The Consultation Paper proposed an amendment to the definition of ETFs to allow for applications and redemptions in the primary market on a daily basis, either in-specie, or in cash. This proposal is presently being progressed.