



FINANCIAL
SERVICES
COUNCIL

ASX Public Consultation on Proposed ASX rule amendments and CCIVs

FSC Submission

18 March 2022



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1. About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Issues for consultation

2.1. Introduction

The FSC welcomes the opportunity to provide feedback to the Australian Securities Exchange (**ASX**) on its Public Consultation paper dated 1 February 2022 *Proposed ASX rule amendments to facilitate the listing of CCIVs and certain other collective investment vehicles on the ASX market and the quotation of their products on the ASX AQUA market.*

We thank the ASX for the substantial work that that has been done to develop proposed amendments.

As an overall comment, the FSC supports the ASX's proposed rule amendments to both the ASX Listing Rules and the ASX Operating Rules.

The FSC is also in agreement with the ASX remarks that it would be advantageous to amend section 1222N of the Corporations Act to allow retail CCIVs with multiple sub-funds to be listed on a prescribed financial market operated in Australia. We agree that a CCIV should be able to operate a number of sub-funds, some of which could be listed on a prescribed financial market, some of which could be quoted on a market for investment products such as ASX's AQUA market, and some of which could be neither listed nor quoted on a market.

2.2. Specific feedback requested

We refer to page 9 of the Consultation and the bullet point items on which specific feedback has been requested.

- **generally, whether they agree or disagree with ASX's proposed rule changes and, if they disagree, the reasons why**

We generally agree with the proposed rule changes.

- **in particular, any concerns they may have with the proposed amendments mentioned in section 5 above to:**
 - o **the admission conditions in Listing Rules 1.1 (standard ASX listings), 1.8 (debt listings) and 1.11 (foreign exempt listings), and**
 - o **the directors' interest notification provisions in Listing Rules 3.19A and 3.19B**

We do not have any specific comments on the proposed amendments.

- **any issues or concerns they may have with ASX's proposed approach of admitting a CCIV sub-fund to the official list rather than the CCIV itself**

We agree that this is a sensible approach.

- **whether ASX should make allowance in the Listing Rules for a CCIV that only has, and only intends to have, one sub-fund, to be admitted to the official list in its corporate capacity rather than requiring the sub-fund to be admitted to the official list and, if so, the reasons why**

The FSC does not support this alternative proposal.

We consider that this proposal is contrary to the intent of the CCIV structure, which is in essence a non-operating umbrella vehicle. The value of the CCIV is the aggregate value of the sub-funds. Disclosure and financial reporting relates to individual sub-funds; the CCIV is responsible for ensuring that happens (analogous to the role of a licensed responsible entity for managed investment schemes). Our concern to this proposal also relates to page 2 paragraph 2 which states “The Government has indicated that it will consider the listing of CCIVs with multiple sub-funds after the initial establishment of the CCIV regime.”

The FSC does not see any benefit in accommodating the CCIV itself being listed, and in our view it should be adequate (and better understood) if each sub-fund is the listed “entity”.

If ASX accepts that the alternative proposal to allow a CCIV to be listed in its corporate capacity is not advisable, this would of course impact the drafting of the definitions. While we have not sought to identify all the potential changes, we note for example that the definition of “company” could be revised. Working through the definitions of +company, +Australian company and +governing body, we query whether it has been done this way to allow the alternative of listing of the CCIV itself. If this alternative is not pursued, we consider that the drafting could be made simpler and more readily understood if it’s just the sub-funds that can be listed entities.

The way it appears to work in the current draft is that if the CCIV is listed, it is the “company” that is the listed entity and responsible for compliance, but if it is a sub-fund that is listed, then the sub-fund is the listed entity but its corporate director is the +governing body responsible for compliance with the rules. As each-sub fund will have separate assets and separate investors, that is the logical “entity” to be listed.

- **whether stakeholders see a commercial case for allowing wholesale CCIVs to be admitted to the ASX official list as ASX Debt Listings so that they can issue wholesale debt securities in the ASX Wholesale Debt Securities Market⁹ – if stakeholders display sufficient interest in this possibility, ASX will liaise with Treasury to seek to have section 1222N10 amended in due course to allow such admissions**

We do not have any specific comments on this proposal.

- **whether New Zealand stakeholders have any issues or concerns with the approach ASX has taken to facilitate the listing of NZ NFPFs and recognised NZ schemes on ASX and the quotation of their financial products on the ASX AQUA market, and**

We do not have any specific comments on this proposal.

- **whether compliance with any of the amended rules might have any unforeseen consequences or give rise to undue compliance burdens for listed entities or approved AQUA product issuers.**

While we have not identified any major unforeseen consequences or undue compliance burdens, we wish to provide the following drafting comments set out below:

AQUA Rules – Rule 10A.2.1(5).

We query whether certain parts of Rule 10A.2.1(5) as amended are correct. Set out below are the relevant provisions (emphasis added).

Rule 10A.2.1(5) states that:

“an AQUA Product Issuer must...

(5) if it issues AQUA Products other than Issuer Market Risk Products, be one of the following:

(a) an entity which meets one of the criteria in paragraph (4) above;

(b) the responsible entity of a managed investment scheme registered under Part 5C.1 of the Corporations Act;

(ba) the responsible entity or other operator of a managed investment scheme that ASIC has exempted from the registration requirements in Part 5C.1 of the Corporations Act pursuant to Part 5C.11 of that Act;

(bb) the manager of a managed investment scheme registered under Part 4 Subpart 2 of the Financial Markets Conduct Act 2013 (NZ) that is not a Notified Foreign Passport Fund;

*(bc) a **CCIV Corporate Director**.....”*

Our query is whether the reference in (bc) to a CCIV Corporate Director as an entity which issues AQUA Products is correct, given that the CCIV Corporate Director would not in our view be the issuer, rather it would be the CCIV issuing shares which are referable to a particular sub-fund. Should the reference instead be to the CCIV itself as issuer? Alternatively, should it be a reference to a “CCIV Sub-fund”, which would appear to be the approach of the drafting in Rule 10A.2.1(4)(c)(i)?