18 July 2023

Mr Rohan Cush
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Provided by email: rohan.cush@asx.com.au

Dear Rohan,

FSC Submission to ASX Consultation on Rule Amendments: AQUA Product Naming Conventions (consultation)

1. About the Financial Services Council (FSC)

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, investment platformsand 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 more than $3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange (ASX) and is one of the largest pools of managed funds in the world.

2. Introduction

The FSC welcomes the opportunity to provide feedback to the consultation to facilitate the implementation of ASIC's updated expectations regarding ETP naming conventions. To enable this to occur we understand the ASX needs to make amendments to the ASX Operating Rules (**ASXORs**) and ASX Settlement Operating Rules (**ASXORs**) which together are referred to as the rulebooks and associated Procedures.

Member feedback welcomes structural improvements that will re-arrange the flow of rules and requirements based on product type. This will assist with ease of reference.

Key points raised in the FSC's submission include the following:

- **Section 7(c) ETF Definition** - There are concerns that the inclusion of additional words proposed in the ETF definition in Section 7(c) creates ambiguity and potential additional complexity for multi-class ETFs (given the NAV on a whole of fund basis differs from the NAV calculated by reference to a single class of units only within a multi-class fund) and it is unclear that the NAV also includes the iNAV. For these reasons the submission does not support the additional wording and requests clarity be provided should the ASX retain the proposed words.
- **Section 7 (d) ETF Definition** - It is not clear whether the inclusion of "on a daily basis" in the ETF definition enables applications and redemptions to be suspended for specific or short time periods, as is currently the case. It is recommended that clarity be provided for the avoidance of doubt.

- **Total and Net Fund Flow Disclosure Proposal** - There are concerns that the "Total and Net Fund Flow Disclosure" proposal will impose unnecessary additional disclosure obligations on issuers without material consumer benefit when monthly flow trends are already available to consumers through the ASX Investments Products Monthly Update. The Total and Net Fund Flow Disclosure proposal is not supported by members for the reasons outlined in the submission.
- **Transition Arrangements** - Further clarity is sought on transitional arrangements and the practical implementation of funds admitted as an ETF Security instead of Managed Fund. We consider that the transition should be undertaken in the background and without any public announcements for "removal to trading status" and "admission to trading status" given the fund will continue to be admitted. Notification of this change via market announcement may cause confusion given this is not consistent with usual practice and understanding of what public announcements typically indicate (e.g. a product is removed or admitted to trading status). These funds will continue to be admitted albeit referred to as an ETF Security rather than Managed Fund.

Please see below for further information on the issues raised above as well as other points for consideration.

3. ETF Definition

The ETF definition in Section 7 in ASXORs includes the following additional wording:

> "(c) with power and approval to continuously issue and redeem and have quoted on ASX ETF Securities based on the net asset value of the ETF;
> (d) which allows applications for and redemptions of ETF Securities in the primary market, in-specie or in cash (or a combination of both) on a daily basis;"

ETF (c)

It is unclear what the rationale is for the additional wording, including the addition of 'based on the net asset value of the ETF.' We welcome further information for the rationale.

Feedback received considers that the additional wording in c) "based on the NAV of the ETF" is not needed. The addition of these words introduces ambiguity and, potentially, additional complexity for multi-class ETFs (given the NAV on a whole of fund basis differs from the NAV calculated by reference to a single class of units only within a multi-class fund). If the ASX chooses to proceed with the proposed addition however, we would welcome the potential for ambiguity be addressed in relation to the NAV for multi-class ETFs and confirmation that the meaning of NAV also includes the iNAV, given that the end investor comes in at the iNAV and it is the Authorised Participant that comes in at the NAV (for example "based on the net asset value <u>or the indicative net asset value</u> of the ETF").

If the iNAV is implied as meeting the requirements of NAV, this should be made explicit in a Note in the rulebook confirming the same.

ETF (d)

We note the addition of a "on a daily basis" to the requirements for applications and redemptions. We are concerned this would prevent the closure of the primary market in any circumstance. This could prove to have an adverse impact to a fund and its unitholders where there is currently an ability to close the primary market for specific and/or short time periods, such as around distribution ex-dates or where there are circumstances or factors that prevent accurate calculation of unit prices e.g. a market disruption or closure (especially for funds with international exposures). Also, the reference to "on a daily basis" is ambiguous and potentially includes non-business and/or non-trading days.

It would be helpful to clarify the meaning of "on a daily basis" as well as providing confirmation, for the avoidance of doubt, that applications and redemptions can be suspended on a short-term basis is required.

4. Total and Net Fund Flow Disclosure Proposal

The proposed changes include changing current ETMF redemption disclosure requirements with enhanced requirements to include total fund inflows, outflows and net flows (which is reflected in proposed Operating Rule 10A.4.1(f) and Procedure 10A.4.1(b)-(d)).

While investors can point towards reactions to investment performance, it must be remembered that ETFs were historically created for use by institutional investors, and while they have been enthusiastically adopted by retail investors in Australia, are still used by institutional investors for short term portfolio management. This means that the incidence of large flows into or out of an ETF is not an uncommon event and does not necessarily indicate, or provide insights into, fund activity and performance. It can simply mean a short-term use of the fund by a large investor is commencing or has been achieved.

We question what the net consumer benefit is from the provision of this additional information given the additional costs (including resources) associated with making the proposed disclosures.

This proposal seems to duplicate existing practices with investors already able to see monthly flow trends through the ASX investments products monthly update. We question the rationale for extending the level of data to be provided under the proposed changes. Further, there are concerns that this increased level of disclosure creates more unnecessary noise for investors without added benefit.

For these reasons we do not support the "Total and net fund flow disclosure" proposal.

5. Transitional Arrangements

The ASXORs include a new section 10A.11 Transitional Arrangements. The consultation paper notes that transitional rules are being introduced to;

- facilitate the transition to the new naming convention, including rules to treat existing Managed Fund Products that are admitted to Trading Status as though they were admitted as ETF Securities for the purposes of ASXORs; and
- provide a 12 month transition period from the commencement of Stage 2 for existing ETFs to update PDS and marketing materials for new ETP naming conventions as required.

The intention is to for the proposed rule amendments to become effective at Stage 2 for all AQUA Products which ASX currently expects to occur in mid-April 2024 (transition date).
Member feedback has raised questions on how the transition of existing ETPs will be practically managed by the ASX including;

- will the ASX send out market announcements, notices or circulars effecting the changes and if so, to whom will these be targeted for?
- will the change from 'suspension of admission to trading status as a Managed Fund' and consequently the 'admission to trading status as an ETF Security' be undertaken by the ASX in the background (i.e. invisible to the public domain via the announcements platform)?

We consider that the transition should be undertaken in the background and without any public announcements for "removal to trading status" and "admission to trading status". Communicating the transition with issuers individually, for example via an ASX letter to the issuer and the usual market participants notices is sufficient, to notify of the technical change from trading status as Managed Fund to ETF Security makes sense however notifying this via market announcement is not in our view needed and may cause some confusion as making such an announcement is inconsistent with the understanding of what public announcements typically indicate (eg a product is removed or admitted to trading status). These funds will continue to be admitted albeit referred to as an ETF Security rather than Managed Fund.

ETF Naming Convention expectations for new products issued before the transition date?

Given that the proposal is for the rule amendments to become effective in Stage 2, currently envisaged to commence mid-April 2024, what is the expectation on ETF naming conventions for any new ETPs launched between now and the transition date? For example, would issuers be expected to continue to comply with existing naming conventions and include "(Managed Fund)" in the fund name?

Managing implications for third party vendors arising from changes to trading codes

It is unclear what the implications are for third party vendors, for example with data feeds, that may arise from the technical aspects of the transition and changes to back end trading codes. For example, will platforms need to make system changes to accommodate ETF naming changes from the ASX sides.

We have had some discussion previously with the ASX on the above matter, with some options raised by the ASX but no conclusion on what the implications will be for data vendors on the issue.

Yours sincerely,

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