



**Consultation Paper 2/2020 on:**

- **The Proposed Amendment of Rules 14.24(e) and 14.25 on the Requirements for Amending the Terms of Issue of an Investment Product**

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Friday 21 August 2020

**Consultation Closes:** Friday 4 September 2020

**Chi-X Australia Pty Ltd**

ABN 47 129 584 667

## 1. Introduction

1.1.1 This Consultation Paper outlines proposed changes to the Chi-X Operating Rules (Rules) to clarify that the requirements relating to the amendments of the terms of issue of an investment product, relate only to warrants and TraCRs.



1.1.2 Proposed changes to the Rules are set out in **attachment one**. There are no proposed changes to the Operating Rules: Procedures.

1.1.3 Submissions will not be treated as confidential unless that is expressly requested in the submission.

1.1.4 Submissions and any queries concerning this CP should be directed to:

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## 2. Requirements for the Terms of Issue

2.1.1 Chi-X currently quotes and trades warrants, TraCRs and funds under section 14 of the Chi-X Operating Rules. The requirements for amending the terms of issue of a fund quoted on Chi-X are found in section 601GC of the Corporations Act, which also governs the amendment of the terms of issue of ETFs and Managed Funds that are quoted on the ASX's AQUA platform and funds that are traded off market. ASIC is the lead regulator of compliance with this provision and it is appropriate that a single coherent provision and framework applies to these three types of funds: OTC, Chi-X quoted and ASX quoted.

2.1.2 For reasons related to the circumstances in which the Chi-X Rules were initially drafted (see below), the requirements in rules 14.24(e) and 14.25 imposed obligations on the issuers of managed funds that were the same as those imposed on the issuers of warrants and TraCRs, and which were additional to the requirements imposed, as a matter of practice, on issuers of products quoted on the AQUA market (other than structured products). This was not intended and so it is appropriate to now amend these rules so that they clearly only apply to warrants and TRaCRs. It may be necessary to further amend the Rules in the event that

Chi-X quotes investment products that are structured products, but that will be revisited when that circumstance arises (see section 5 below).

### 3. Circumstances in Which the Chi-X Rules Were Initially Drafted

3.1.1 Section 14 of the Chi-X Rules covers all investment products traded on the Chi-X market and was initially drafted for the launch of the Chi-X warrants market and so focused on that product, with a goal of consolidating rules into a single set of requirements that applied across the range of investment products to be quoted by Chi-X. The consolidation of the investment product rules in one area has served the development of the Chi-X investment products market well, but it has resulted in this one area where there is a lack of clarity and, as a result, a more onerous outcome of Chi-X funds than those quoted on or traded in other markets. It is now appropriate to address this outcome.

3.1.2 The proposed amendments will also align the requirements imposed on the issuers of quoted funds, with this imposed under the ASX AQUA Rules. Rule 10A.5.3(b) of the ASX Operating Rules currently states:

*No other terms of issue [other than that specified in rule 10A.5.3(a)] can be amended except as permitted by Rules 10A.5.4 or 10A.5.5.*

3.1.3 On its face, ASX Operating Rule 10A.5.3(b) applies to all terms of issue that come within the definition of that term, which in turn applies to the terms of issue of all AQUA products (ie it includes all ETPs issued under the Schedule 10A rules)<sup>1</sup>. However rule 10A.5.3 is contained in section 10A.5 of Schedule 10A of the ASX Operating Rules, a section which is entitled *Structured Products*. Notwithstanding ASX Operating Rule 7030, which states that headings are for convenience only and do not affect the interpretation of the ASX Rules, Chi-X is of the view that rule 10A.5.3(b) should be interpreted as only applying to structured products.

### 4. Investor Protections and Consequences

4.1.1 Investors will continue to receive the protection of section 601GC of the Corporations Act in relation to the amendment of the terms of issue of funds quoted on the Chi-X market. This provision requires a copy of the amendment to be lodged with ASIC and so enables ASIC to take action if that is appropriate. As stated above, this aligns the requirements for Chi-X quoted funds with those applying to funds with similar features and that are traded over the counter or off market.

4.1.2 The requirements on amending the terms of issue, that are contained in rules 14.24(e) and 14.25, will continue to apply to investors in warrants and TraCRs. Warrants and TraCRs can operate very differently to quoted funds in terms of the entitlement of an investor to the underlying assets and in the way they provide economic exposure to the underlying asset

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<sup>1</sup> *Terms of issue* is defined under the ASX Operating Rules to mean the 'rights, conditions and obligations of the AQUA Product Issuer and the AQUA Product Holder as documented by the AQUA Product Issuer and not objected to by ASX'.

of a single TraCR or warrant, which will be a single underlying asset for TraCRs and often will be for warrants. In these circumstances, it is appropriate that the holders of those products continue to receive the protection of the requirements in rules 14.24(e) and 14.25 in relation to the terms that govern the products they acquire on the Chi-X market.

## 5. Structured Products

5.1.1 Chi-X does not currently uniquely quote and trade structured products and so it is not appropriate at this time to impose the requirements in rules 14.24(e) and 14.25 on Chi-X structured products. Chi-X has considered anticipating this event and making it clear at this stage that the requirements in rules 14.24(e) and 14.25 do apply to these products. However this seems premature as other rule amendments may be required to quote and trade structured products, meaning it would be appropriate to consider all required rule and procedure amendments, relating to the quotation of structure products, at that time.

## 6. Proposed Changes

6.1.1 The proposed amendments are outlined immediately below, with underlined text indicating the only text to be inserted, in a way that highlights the minimal word count:

### 14.24 Investment Products – Eligibility Criteria – Terms Of Issue – Required Content

The **terms of issue** for an **investment product** must:

...

- (e) in the case of an investment product that is a TraCR or warrant, state that the **terms of issue** will only be amended in a way that is consistent with **rule 14.25**.

### 14.25 Investment Products – Eligibility Criteria – Amending the Terms of Issue

To be eligible for quotation, the **terms of issue** of an investment product that is a TraCR or warrant, must not be capable of amendment other than as follows:

...

6.1.2 The complete context of the amendments is provided in **attachment one**, which contains complete versions of the relevant rules and definitions.

**Consultation Question – Proposed Changes to rules 14.24(e) and 14.25 of the Operating Rules**

- (a) Do you agree with the proposed change so that rules 14.24(e) and 14.25 only apply to investment products that are warrants and TraCRs?
- (b) Should Chi-X anticipate the quotation of structured products and also apply rules 14.24(e) and 14.25 to those products?
- (c) Do you agree that section 601GC of the Corporations Act provides sufficient protection to investors in relation to the amendment of the terms of issue of an investment product traded on Chi-X that is not a warrant or a TraCR? If not, why not?
- (d) What, if any additional requirements to those contained in section 601GC of the Corporations Act, do you think should be imposed on the issuers of quoted funds, as that term is defined in the Chi-X Rules, in relation to the amendment of the terms of issue?

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## ATTACHMENT ONE - CHANGES TO THE CHI-X OPERATING RULES TO ENABLE HYBRID SECURITIES TO BE TRADED ON THE CHI-X MARKET

In the text in this attachment, single underlining indicates text to be inserted and ~~strikethrough~~ indicates text to be deleted. **Red text indicates relevant terms, text or rules directly impacted by the proposed amendments.** The definitions are provided in black text at the end of the proposed rule amendments, to assist in prioritising reference to the rule amendments.

### 14.24 Investment Products – Eligibility Criteria – Terms Of Issue – Required Content

The **terms of issue** for an **investment product** must:

- (a) make provision for the adjustment of exercise rights where the **investment product** is linked to an **underlying asset** that may be subject to corporate or other events impacting on the nature of that **underlying asset** (for example a reduction in capital, bonus/rights issues and capital restructurings of an underlying cash equity market product or the modification/discontinuance of an underlying index);
- (b) state the way in which the intrinsic value of the **investment product** will be calculated;
- (c) in the case of cash settled **investment products**, require the **product issuer** to pay the **holder** an amount equivalent to the intrinsic value at the expiry date within 10 business days of the expiry;
- (d) in the case of deliverable **investment products**:
  - (i) require the **product issuer** to comply with its delivery obligations within the 20 business days following receipt of an effective notice of exercise;
  - (ii) outline the way in which an assessed value payment, and any costs, will be calculated in the event a **holder** fails to give an effective notice of exercise within the time limits contained in the **terms of issue**;
  - (iii) ensure that the assessed value payment is at least equal to the intrinsic value less reasonable costs;
  - (iv) provide for the calculation of the assessed value payment to be paid to the holder where the holder does not provide a notice of exercise within the time prescribed in the **terms of issue** and the **investment product** has an intrinsic value equal to or greater than 5% of the exercise price of the **investment product**.
- (e) in the case of an investment product that is a TraCR or warrant, state that the **terms of issue** will only be amended in a way that is consistent with **rule 14.25**.

\*A **TraCR** is not a cash settled or deliverable **investment product** under this **rule 14.24**.

### 14.25 Investment Products – Eligibility Criteria – Amending the Terms of Issue

To be eligible for quotation, the **terms of issue** of an investment product that is a TraCR or warrant, must not be capable of amendment other than as follows:

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- (a) the expiry date may be amended in the case of an extraordinary event defined in the **terms of issue**;
  - (b) the **terms of issue** of an **investment product** that is a **warrant**, may be amended at a meeting convened by the **product issuer** in compliance with **rule 14.32(d)**, if the amendment is approved by 75% of the **holders**, excluding the **product issuer** and/or its associates from the denominator in the calculation of that percentage and votes being cast on a one for one basis;
  - (c) with the consent of **Chi-X** for the purpose of:
    - (i) complying with a legal requirement
    - (ii) a direction issued by **Chi-X**;
    - (iii) rectifying any manifest error or ambiguity in the **terms of issue** in a manner that does not materially prejudice the interests of **holders**;
    - (iv) to permit transfers;
    - (v) an adjustment pursuant to a change in an **underlying asset** that involves a reduction or restructuring of capital, a bonus or rights issue or the discontinuance or modification of an index;
    - (vi) any other amendment that does not materially prejudice the interests of **holders**.
  - (d) the amendment(s) must comply with any ongoing requirements specified in these **rules**.

## INTERPRETATION AND APPLICATION OF RULES

### 1.1 Definitions

In these rules, the following words have the following meanings, unless the context requires otherwise.

Active Continuous Trading	<p>The aggregate time in which the <b>Chi-X market</b> is in continuous trading for the <b>investment product</b> but excluding:</p> <ul style="list-style-type: none"><li>(a) the period during which no firm price is available for at least 10% by value of the underlying assets of the <b>investment product</b>;</li><li>(b) the first fifteen minutes of the continuous trading phase on the <b>Chi-X market</b>;</li><li>(c) the last thirteen minutes of the continuous trading phase on the <b>Chi-X market</b>;</li><li>(d) the time during which the theoretical value of the <b>investment product</b> is less than the minimum price step allowed for orders submitted to the <b>Chi-X market</b>;</li><li>(e) the time during which a <b>product issuer</b>, or a <b>market maker</b> with which it has entered an arrangement under rule 14.16, has experienced an operational disruption or is subject to a regulatory requirement, that has prevented the <b>product issuer</b> and/or the <b>market maker</b> from submitting <b>orders</b> to the <b>Chi-X market</b>.</li></ul>
Actively managed fund	A <b>QMF</b> managed by a person that has day to day discretion in the investment strategy and/or selection of <b>underlying assets</b> , for the fund.
Cash settled warrant	A <b>warrant</b> in relation to which the settlement obligations under the <b>terms of issue</b> are satisfied by payment of a cash amount.
Chi-X	Chi-X Australia Pty Limited ACN 129 584 667.
Chi-X market	The market for specified classes of <b>financial products</b> operated by <b>Chi-X</b> .
Corporations Act	The <i>Corporations Act 2001</i> (Cth), as amended from time to time, including any regulations made thereunder.
Covered warrant	<p>A deliverable or cash settled <b>warrant</b> issued by a product issuer that has a <b>trust arrangement</b> in place for a sufficient number of the <b>underlying assets</b> or equivalent <b>financial products</b> to be available to meet:</p> <ul style="list-style-type: none"><li>(a) the exercise of all outstanding deliverable <b>warrants</b>; or</li><li>(b) the obligations of a product issuer on all outstanding cash settled <b>warrants</b>.</li></ul>
Custodian	The person who holds the <b>underlying assets</b> of a <b>TraCR</b> on behalf of the <b>product issuer</b> and on trust for the <b>holder</b> .

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Deliverable warrant	A <b>warrant</b> in relation to which the settlement obligations under the <b>terms of issue</b> are satisfied by transfer of the <b>underlying assets</b> .
Disclosure document	The document(s), including any <b>supplementary disclosure documents</b> , that a <b>product issuer</b> is: <ul style="list-style-type: none"><li>(a) required to provide under the <b>Corporations Act</b> in connection with the issue or <b>quotation</b> of an <b>investment product</b>, including without limitation a prospectus or product disclosure statement and information required to be disclosed under a <b>product issuer's</b> continuous or periodic disclosure obligations; or</li><li>(b) required to provide in connection with the issue or <b>quotation</b> of an <b>investment product</b> under:<ul style="list-style-type: none"><li>(i) an exemption from or modification of requirements in the <b>Corporations Act</b>; or</li><li>(ii) any disclosure requirements imposed under applicable offshore requirements to those in (a) or (b)(i) and that apply to a <b>product issuer</b>.</li></ul></li></ul>
Eligibility criteria for investment products	The criteria contained in <b>rules</b> 14.11 to 14.26.
ETF financial product	A <b>financial product</b> issued by or provided pursuant to an <b>ETF</b> .
Exchange Traded Fund (ETF)	A collective investment scheme: <ul style="list-style-type: none"><li>(a) that is either<ul style="list-style-type: none"><li>(i) a managed investment scheme under the <b>Corporations Act</b> that complies with the applicable registration requirements; or</li><li>(ii) a type of <b>foreign company</b> specified in the <b>procedures</b> which has the economic features of a managed investment scheme including:<ul style="list-style-type: none"><li>A. the pooling or use of contributions in a common enterprise with respect to property of any description, including money, that enables those taking part through the contribution of money or otherwise, to receive profits or income arising from that property; and</li><li>B. those taking part do not have day to day control over the operation of the property; and</li></ul></li></ul></li><li>(b) is granted <b>quotation</b> as an exchange traded fund; and</li><li>(c) for which the price of the <b>underlying asset</b> is continuously disclosed and immediately ascertainable; and</li><li>(d) that can continuously issue new <b>ETF financial products</b> in the scheme that are <b>quoted</b>; and</li></ul>

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	(e) which allows applications for and redemptions of <b>ETF financial products</b> in the scheme in the primary market, in specie, in cash or a combination of in specie and in cash.
Fixed income security (eligible portfolio)	A <b>security</b> that is or is proposed to be a constituent of a portfolio in a <b>QMF</b> where either: <ul style="list-style-type: none"><li>(a) the <b>QMF</b> is or will be issued by a <b>product issuer</b> that has proven systems and controls; or</li><li>(b) the portfolio in which the security is held is a <b>minority portfolio</b>.</li></ul>
Investment product	A <b>warrant, quoted fund</b> or <b>transferable custody receipt</b> issued by the <b>product issuer</b> pursuant to the <b>terms of issue</b> and, depending on the context, either: <ul style="list-style-type: none"><li>(a) the subject of an application to <b>Chi-X</b> to be admitted to <b>quotation</b>; or</li><li>(b) admitted to <b>quotation</b> by <b>Chi-X</b> as an <b>investment product</b>.</li></ul>
Product issuer	In relation to an <b>investment product</b> , the entity which issues the <b>investment product</b> .
Quotation	Admitted to quotation by <b>Chi-X</b> pursuant to <b>rule 14.9</b> .
Quoted financial product	A <b>financial product</b> issued by a <b>product issuer</b> and traded on the <b>Chi-X market</b> pursuant to the <b>quotation</b> of an <b>investment product</b> .
Quoted fund	An <b>investment product</b> that is an <b>Exchange Traded Fund (ETF)</b> or a <b>Quoted Managed Fund</b> <sup>2</sup> .
Quoted Managed Fund (QMF)	An open ended collective investment scheme that is either: <ul style="list-style-type: none"><li>(a) a managed investment scheme under the <b>Corporations Act</b> that complies with the applicable registration requirements; or</li><li>(b) a type of <b>foreign company</b> specified in the <b>procedures</b> which has the economic features of a managed investment scheme, including:<ul style="list-style-type: none"><li>(i) the pooling or use of contributions in a common enterprise with respect to property of any description, including money, that enables those taking part through the contribution of money or otherwise, to receive profits or income arising from that property; and</li><li>(ii) those taking part do not have day to day control over the operation of the property.</li></ul></li></ul>
QMF financial product	A <b>financial product</b> issued or provided pursuant to a <b>QMF</b> .

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<sup>2</sup> Note that while the only quoted funds at present are exchange traded funds and quoted managed funds, the term '**quoted funds**' will be a drafting aid in facilitating the streamlined addition of other fund types to the rules as the Chi-X quoted fund market develops.

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Quoted investment product	An <b>investment product</b> that has been admitted to quotation by <b>Chi-X</b> pursuant to <b>rule 14.9</b> .
Rules	These <b>rules</b> .
Security	As defined in the <b>Corporations Act</b> .
Settlement Rules	The operating rules of ASX Settlement Pty Ltd (ABN 49 008 504 532).
Supplementary Disclosure Document	A document which replaces, updates, adds to or otherwise amends the information contained in a previously published <b>disclosure document</b> .
Terms of issue	The terms of issue of an <b>investment product</b> and which sets out the contractual arrangements between <b>products issuers</b> and <b>holders</b> , including the rights, obligations and conditions associated with the investment product.
Transferable Custody Receipt (TraCR)	An <b>investment product</b> that: <ul style="list-style-type: none"><li>(a) is issued by a registered <b>product issuer</b>;</li><li>(b) has an <b>underlying asset</b> that is held by a <b>custodian</b> on behalf of the <b>product issuer</b> and, ultimately, the <b>holder</b> of the <b>TraCR</b>;</li><li>(c) is priced by reference to the Australian dollar value of the <b>share</b> that is the <b>underlying asset</b>;</li><li>(d) satisfies the <b>eligibility criteria</b> that is specifically related to <b>TraCRs</b>.</li></ul>
Underlying asset	(a) The <b>financial product(s)</b> or other asset(s) by reference to which an <b>investment product</b> is valued and, in the case of a <b>TraCR</b> , must consist solely of the <b>security</b> which is beneficially owned by the <b>TraCR holder</b> .
Warrant	A <b>financial product</b> issued by a <b>product issuer</b> pursuant to the <b>terms of issue</b> , which is granted <b>quotation</b> as a warrant, and satisfies the definition of 'warrant' contained in the <b>Corporations Act</b> , as modified by any instruments or class order made thereunder.