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Australia: ASIC Is Remaking Exchange Traded Funds Class Order Relief

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The Australia Securities and Investment Commission (ASIC) have released **Consultation Paper 374** proposing to remake Class Order [CO 13/721] *Relief to facilitate quotation of exchange traded funds on the AQUA Market* (Class Order) which is due to expire on 1 April 2024.

The Class Order is an important instrument relied on by exchange traded fund (ETF) issuers to provide necessary relief from certain obligations and requirements under the Corporations Act 2001. In particular, the Class Order provides:

- [illegible]

A notable limitation of the existing Class Order is that with the exception of ongoing disclosure, the relief only applies to ETFs that are passively managed and track an index. With the significant growth of actively managed ETFs in recent years this has meant that many issuers are still required to seek individual relief from ASIC on substantially the same terms as the Class Order. This typically forms part of the launch process due to these ETFs falling outside of the Class Order relief. The requirement to apply for this relief not only adds time to the launch process but also requires the payment of costly ASIC relief application fees.

Issuers of active ETFs will be pleased to hear that in remaking the Class Order, ASIC is proposing to extend the relief to all types of quoted ETFs, not limited to those that are passively managed and

track an index. Furthermore, this change will more accurately reflect the updated naming conventions for ETFs in **ASIC INFO 230**. Importantly, ASIC is proposing to still exclude from the relief in the Class Order those ETFs that use internal market making.

ASIC is seeking feedback from the investment management sector on the proposal to remake the Class Order and include these modifications. ASIC is proposing that the new legislative instrument will have a term of five years with an expiry date of 1 April 2029.

We welcome this proposed expansion of the relief and we will be making a submission in support of these changes.

We also think this is a good opportunity for ASIC to consider what additional relief is appropriate for ETF issuers in what is a fast growing industry in Australia. For example, further relief to allow for ETF issuers to treat authorised participants differently in the process and timing for accepting and redeeming interests in dual access ETFs and also expanding the information that issuers may provide authorised participants under the equal treatment relief are some of the additional matters that could be included in the Class Order that we think might better assist in the market making process for ETFs.

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