

11 March 2020

Australian Securities and Investments Commission  
Product Regulation  
Strategic Policy  
GPO Box 9827  
Brisbane QLD  
4001

Dear Sir/Madam

### **ASIC CP 325 - Product Design and Distribution Obligations (“DDO”)**

Platinum Investment Management Limited (AFSL 221935, “**Platinum**”) is a Sydney-based investment management firm specialising in international equities. Platinum was established in 1994 and has approximately \$24 billion in funds under management (as at 29 February 2020).

Amongst other things, Platinum is the responsible entity of two open-ended actively managed quoted funds (“**active ETFs**”), namely Platinum Asia Fund (Quoted Managed Hedge Fund) (“**PAXX**”) and Platinum International Fund (Quoted Managed Hedge Fund) (“**PIXX**”), which are ASIC registered managed investment schemes whose units are traded on the Australian Securities Exchange (“**ASX**”) under the ASX AQUA Rules. As the responsible entity of these funds, Platinum is responsible for the internal market making function in respect of PIXX and PAXX.

This submission focuses specifically on the treatment of active ETFs vis a vis other listed investment vehicles, under the new DDO regime. As currently drafted, we are concerned that the proposed regulatory guide may give rise to unintended consequences such that the daily on market trading activities of active ETFs (which, given their open-ended nature, issue and redeem units daily) are treated differently to the daily on market trading activities of other closed ended listed investment vehicles, namely listed investment companies and listed investment trusts. We set forth our rationale below.

In the context of exchange traded products, the draft regulatory guide currently infers that the DDO applies to primary issuance and “regulated sales” (being effectively off market sales of exchange traded products by the issuer, and issuing to a person without a disclosure document for the purpose of that person then on-selling the product). In other words, the DDO is intended to exclude secondary sales other than secondary sales that circumvent the requirement to give a disclosure document. This statement is effectively included at RG 000.17 of the draft regulatory guide.

However, units in active ETFs can be traded on the ASX using both primary issuance (i.e. through the use of a market maker) and secondary sales (as between investors). Generally speaking, in relation to issuers of active ETFs, it is such that:

- each active ETF is an open-ended registered managed investment scheme in respect of which there is a responsible entity (“**RE**”);
- units in the active ETF (“**Units**”) are quoted on ASX under the AQUA Rules;

- the RE (in its capacity as responsible entity of the active ETF) performs an internal market making function for the active ETF. It does this by appointing a market participant as its agent (“**Agent**”) to, during the course of the trading day: publish prices (in accordance with the RE’s predefined instructions) at which the RE is prepared to buy and sell Units to investors on the ASX; and execute trades (on behalf of the RE) in Units on the ASX with investors (“**primary market trading**”). At the end of each trading day, one net trade is processed by the RE (either an issuance of Units or a redemption of Units) at the fund’s net asset value, having regard to the total number of buys and sells executed by the Agent on that day. All gains and losses arising from the market making activities go to the active ETF; and
- during the course of the trading day, Units are also traded on the ASX in the secondary market.

On the other hand, shares and units in listed investment companies and listed investment trusts, are generally bought and sold on the ASX via the secondary market i.e. unlike for active ETFs, there is no daily primary market trading on the ASX in these products due to their closed ended nature.

As a result, we are concerned that, technically, in the absence of further clarification from ASIC, the DDO may be taken to apply to normal on-market trading by active ETFs, even though on-market trading by listed investment companies and listed investment trusts are clearly outside the scope of the DDO regime. In our view, this would give rise to an unlevel playing field.

We assume that this is a potential technical oversight since, if the DDO was intended to apply to the primary market trading activities of an active ETF (as defined above), it would not be practical to restrict distribution to target markets and otherwise comply with DDO due to buyers coming in through the ASX.

Accordingly, we request that ASIC provide further clarification in its regulatory guide to make it clear that all on market trading activities of an active ETFs are excluded from the DDO. We note that where an RE of an active ETF engages in an IPO style fund launch, this activity should still be subject to DDO, consistent with how the draft regulatory guide contemplates treating IPOs of listed investment companies and listed investment trusts.

Yours faithfully

Joanne Jefferies  
General Counsel/Company Secretary  
Platinum Investment Management Limited