



██████████, Senior Analyst, Market Infrastructure
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

By email: ██████████

3 March 2022

Dear ██████████,

Consultation Paper 356 Submission - ETFS Management (AUS) Limited and ETFS Metal Securities Australia Limited (“ETFS”)

ETFS appreciates the opportunity to comment on the proposals of ASIC in CP 356.

ETFS is the issuer of 20 exchange quoted ETPs operating in Australia since 2003 with over A\$4.7bn in assets under management. We have extensive experience in issuing innovative ETPs both in Australia and offshore, including our pioneering work in developing the market for physically backed commodity ETPs.

We are overall supportive of the initiative to implement a clear, concise and meaningful naming convention framework across the Australian ETP market and appreciate ASIC’s efforts to inform and protect Australian investors.

Based on the proposed framework, the following ETPs issued by ETFS appear to be in scope for renaming as follows;

Name	Ticker	ASIC Proposal		ETFS Proposal
		Primary Label	Secondary Label	
ETFS Physical Gold	GOLD	Structured Product	n/a	No change or ETC
ETFS Physical Silver	ETPMAG	Structured Product	n/a	
ETFS Physical Palladium	ETPMPD	Structured Product	n/a	
ETFS Physical Platinum	ETPMPT	Structured Product	n/a	
ETFS Physical PM Basket	ETPMPM	Structured Product	n/a	
ETFS Ultra Long Nasdaq 100 Hedge Fund	LNAS	ETF	Complex	Leveraged ETF or Geared ETF
ETFS Ultra Short Nasdaq 100 Hedge Fund	SNAS	ETF	Complex	Leveraged Inverse ETF or Leveraged Short ETF

We do not believe that labelling physically backed commodity ETPs as "Structured Products" is a meaningful or informative convention to adopt and strongly object to this part of the proposed framework. We see this label, which puts physically backed products in the same category as derivatives and credit-bearing instruments, as mis-leading and damaging.

The current naming of these products as "Physical" is informative and they are true to label. We therefore see no benefit in mandating changes across this category. We do, however, propose a more granular naming convention in response to the consultation questions that includes the potential to assign a primary label of "Exchange Traded Commodity" or "ETC" to products providing commodity exposure that do not meet the definition of an ETF. Secondary labels, including "Physical" may then be applied to differentiate between different types of commodity linked ETPs.

Regarding the short and leveraged products, we agree that the use of the use of the "Hedge Fund" label has caused some confusion amongst investors and are supportive of amendments to this naming convention. While "Complex" is a catch-all warning to investors, and we do not strongly oppose its adoption, we prefer a more descriptive approach tailored to specific key features of an ETP, which we have detailed in our response.

Please see our responses to the consultation items below and a summary of our proposals in the Appendices. Should you require any further information or wish to enter into any dialogue around our objection to the proposed "Structured Product" label, feel free to contact me on [REDACTED] or [REDACTED]

Yours sincerely,

[REDACTED]

[REDACTED]
Head of Product
ETF Management (AUS) Limited
ETF Metal Securities Australia Limited

B1Q1: What have been your experiences with the ETP naming conventions to date?

We understand that there is some confusion created by the current naming convention framework as set out in INFO 230. This primarily relates to the differences between the labels “ETF”, “Active ETF”, “Managed Fund” and “Hedge Fund” and the consistency of how these labels are applied to products. We believe that a simplified set of conventions is more likely to provide clarity to investors and market participants.

The current naming conventions aim to restrict usage of the term “ETF” to its historical domain of exchange traded index/benchmark tracking funds. This is at odds with common usage by investors, industry participants and media, who tend to use “ETF” as a blanket term applied to any type of exchange traded product that allows continuous creations and redemptions and aims to trade at close to its net asset value.

We also see the potential for confusion around terminology that differs from globally accepted norms. In a world with instantaneous information flow with large amounts of offshore content being consumed by Australian investors, we see merits in adopting naming convention principles that do not significantly differ from or contradict those adopted in major offshore markets.

B1Q2: Do you agree that naming conventions for ETPs are useful in alerting investors to important features and risks of ETPs? If not, why not? Please provide any evidence or research to support your views,

Yes, we agree that basic naming conventions and the consistency of ETP naming across the market are important features that play a role in alerting investors to the different types of ETPs on offer, and to some extent, to the features of the products and the investment risks involved.

B1Q3: Do you agree that ASIC should continue to outline ETP naming conventions for licensed exchanges and product issuers? If not, why not?

Yes, we understand the role of ETP naming conventions and see this as falling within the scope of ASIC’s mandate.

B1Q4: Do you agree with ASIC’s assessment that the current naming conventions require updating? Please provide examples and assessment to support your response.

Yes, we are supportive of updating the naming convention framework to make it more relevant to a quickly evolving industry.

As the issuer of a range of physically backed precious metals ETPs, which fall into the proposed “Structured Product” category, we do not believe that any updating to naming conventions is required. These products are labelled as “Physical” and are true to label and informative to investors. The primary label proposed by ASIC is likely to cause more, rather than less, confusion from investors.

As issuer of ETFS Ultra Long Nasdaq 100 Hedge Fund (ASX: LNAS) and ETFS Ultra Short Nasdaq 100 Hedge Fund (ASX: SNAS), we often field questions relating to the “Hedge Fund” designation. These products do not correspond to the standard definition of a hedge fund outside the context of

Australian ETPs and this causes some misunderstanding from investors from time-to-time. We are supportive of a more descriptive naming convention to alert investors to the key features and/or risks associated with this type of product.

B1Q5: Do you agree with the proposed two-level naming convention approach? If not, why not?

Yes, we agree that naming conventions can achieve the dual objectives of alerting investors to the type of products on offer and to any significant features of those products to the extent that they can be adequately categorised in a coherent and simple manner.

B1Q6: Are there any gaps or areas of inconsistency between ASIC's guidance on ETP naming conventions and the application of design and distribution obligations to ETPs that would benefit from additional clarification?

No

B1Q7: Do you foresee any difficulties or unintended consequences resulting from the introduction of the design and distribution obligations and ASIC revising its guidance on ETP naming conventions?

We do not see DDO and naming conventions as being overly related. Both have the objective of investor protection, but they are quite separate in their approach.

B1Q8: Do you have any other feedback or comments for ASIC to consider on how to support or encourage investor education on different ETP product features?

We are firmly of the view that ASIC should align its naming conventions with globally accepted practices given the amount of offshore ETP news and content readily available to Australian investors. Consistent terminology will eliminate a potential source of confusion and aid the understanding of Australian investors who are able to trade offshore ETFs via the growing number of trading platforms offering offshore access.

B2Q1: Do you agree with the proposed distinction between these product types? If not, why not?

We are supportive of the application of the "ETF" label for products that are managed investment schemes (or CCIVs) that hold assets on trust for the benefit of unit holders, offer continuous creations/redemptions and aim to trade at close to net asset value.

However, we strongly object to the proposed "Structured Product" label being applied to all open-ended products that are structured as derivatives, redeemable preference shares or debt securities.

As the issuer of shares in five commodity-backed ETPs that fall into this category, we see this terminology as being mis-leading, having the ability to concern investors unnecessarily and having the potential to meaningfully damage a pioneering business that has operated without incident since 2003.

The precious metals products issued by ETFS Metals Securities Australia Limited are in the form of redeemable preference shares that have a nominal par value and include a stapled entitlement to physical, fully allocated bullion. This bullion is held in individual bear trusts for each holder and the holders can directly access the bullion by way of a physical redemption.

This structure effectively gives holders direct ownership of physical bullion and is in no way similar to other forms of “Structured Product” that derive their value from derivatives contracts or rely on the credit quality of the issuer. Further, we believe that the term “Structured Product” has negative connotations and is widely associated with highly complex and exotic financial products.

We do not believe that a single label can adequately describe the entire range of non-ETF exchange traded products in a way that meaningfully conveys information to investors about the risks being assumed. We further note that redeemable preference shares have not previously been included in the definition of Structured Product as per INFO 230.

While we do not see the need to relabel these products, we suggest that non-ETF products that provide exposure to commodities could assume the globally accepted “Exchange Traded Commodity” or “ETC” label. Secondary labels could also be applied to differentiate between ETPs that are physically backed and those that use derivatives.

We further suggest that products offering exposure to an underlying asset via a debt security can be more accurately described by the globally accepted “Exchange Traded Note” or “ETN” label. Other ETPs that are structured as derivatives or have features that are not captured by the ETF, ETC or ETN classification may be labelled as “Structured Products”.

B2Q2: Do you agree that issuers of listed investment products (LICs and LITs) should be unable to use the term ‘Exchange Traded Fund’ or ‘ETF’? If not, why not?

Yes, we are firmly of the view that LICs and LITs are not Exchange Traded Funds, because they do not have continuous creations and redemptions available, are not designed to trade at close to their net asset value in the secondary market and are not supported by some form of market making.

B2Q3: Should the updated guidance include a standard abbreviation for Structured Products (similar to ‘ETF’ for Exchange Traded Funds)? If yes, please indicate your preferred abbreviation for Structured Products and provide reasons for your response.

As per our response to B2Q1, we are not supportive of the blanket description of “Structured Product” for non-ETF products and therefore do not have a view on an appropriate abbreviation other than to say that we support the adoption of “ETC” to designate products that offer exposure to commodities.

B2Q4: Do you agree with the position that sub-funds of CCIVs, should be considered within the same conventions as managed investment schemes, subject to any explicit requirements in the final law passed in relation to the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021? If not, why not?

Yes, we agree that sub-funds of CCIVs offer substantially the same investment framework and regulatory / tax regime as managed investment trusts and we therefore do not contest the proposal to use the same naming conventions as applied to managed investment schemes.

B2Q5: Do you have any further suggestions to increase clarity between product types, particularly when comparing quoted managed investment schemes and quoted CCIVs to LICs, LITs and other listed investment products (including listed CCIVs)? Please provide reasons and any available evidence to support your answer.

No.

B3Q1: Do you agree with ASIC continuing to provide good practice guidance on specific risk-based or strategy-based labels for ETPs to alert investors to the presence of additional risks where this is appropriate? If not, why not?

Yes, we agree that clear and well-understood product labels can aid investor protection and help investors identify important features of some products.

B3Q2: Do you support the two secondary labels that we have proposed for ETPs? Please provide reasons for your response.

We support the use of the “Active” label to clearly differentiate exchange traded products that rely on discretionary / active management from those that follow a passive or benchmark-tracking strategy.

We understand the need for products using strategies other than unleveraged, long-only investments to be differentiated from those using more complicated arrangements. We do not object to the choice of the term “Complex”, however, we question whether a range of more descriptive labels better achieves the objective of alerting investors to potential risks.

B3Q3: Do you support the updated definition for the ‘Active’ label? If not, why not, and what alternative definition would you suggest?

Yes, we are supportive of the updated definition of “Active” in the context of product labelling.

B3Q4: In relation to the proposed ‘Complex’ label:

(a) do you agree that a single label can effectively alert investors to the presence of a range of important risks? If not, why not?

We agree that the term “Complex” can alert investors to the presence of additional risk factors that they may need to consider, but do not see it as being informative as to what those risks are in any meaningful way.

(b) if the ‘Complex’ label is adopted, do you agree that only derivatives used for exchange rate hedging purposes are able to be excluded? If not, do you have any suggestions for how to revise the consideration of derivatives in the ‘Complex’ label?

We broadly agree that products that use derivatives for the purposes for exchange rate hedging or for achieving immaterial (< 5%) amounts of investment exposure should not be subject to the Complex label. We suggest adding other hedging activities, such as interest rate hedging, that do not form part of the primary investment objective of the ETP as additional exemptions from this label.

(c) do you have any suggested amendments to the proposed definition, or examples of specific product strategies or risks that should be captured by the 'Complex' label but are not currently included in the definition?

We note that, as per clause 42 of CP 356, the "Complex" label is "intended to differentiate products that have higher risks than plain vanilla ETFs". We would suggest amending this element of the definition to cover products that aim to use derivatives or more complicated arrangements for the purposes of risk reduction. For example, an ETF that buys put options to reduce downside risk for holders may, arguably, not have higher risks than a plain vanilla ETF. It may, however, be more complex and may have a different range of risk factors that investors need to consider.

(d) we are open to alternatives to the word 'Complex' to describe this category of ETPs. Please let us know if you have any one-word or two-word suggestions.

We do not strongly object to the use of the term "Complex", but also see merit in a more informative approach, which can include prescribed terms such as "Leveraged", "Short", "Inverse", "Synthetic", "Futures", "Options", etc.

B3Q5: As an alternative to the 'Complex' label, would you prefer that the current distinction between 'Synthetic' funds, 'Hedge funds' and other 'higher risk' ETFs be preserved but updated to address overlap and confusion? If so, do you have any suggestions for how those definitions could be revised?

We believe the current product labelling is unclear and inconsistently applied and therefore do not support its retention. We do not object to a blanket term to alert investors to the presence of additional risk factors. We are supportive of clear and descriptive product names for such products, but conscious that a static set of labels may not keep pace with product innovation over time.

B3Q6: Are there any other risk-based or strategy-based naming conventions that you think should be included in ASIC's guidance on ETP naming conventions? If yes, please outline why, including why other forms of disclosure (e.g., PDSs) or consideration (e.g., within being true to label) are not sufficient for the risk or strategy.

As per our response to B2Q1, we strongly support the introduction of the "Exchange Traded Commodity" or "ETC" label into the naming convention framework. This provides clear and meaningful information to investors in relation to products that provide direct exposure to commodities. We also support the adoption of secondary labels in this case to differentiate between physically backed products and those that gain their exposure from derivatives or other arrangements.

B3Q7: Do you agree that for products that apply the Structured Product label there is no need to outline secondary labels? If not, why not?

As per our response to B2Q1, we do not agree with the blanket "Structured Product" term being applied to the range of products that include fully physically backed commodities alongside other types of products that provide exposure via derivatives and/or credit bearing instruments. We believe this is misleading and does not convey any useful information to investors concerning the specifics of the risks they are assuming.

We believe that alternative naming conventions such as the globally recognised ETC, ETN, etc better achieve the objective of informing investors than secondary labels under the Structured Product label.

Under the ETC category we are proposing, we are supportive of the use of secondary labels to differentiate between products that are physically backed and those that gain their exposure from derivatives or other arrangements.

B3Q8: Are there likely to be any unforeseen consequences related to ASIC's proposed updates to the INFO 230 naming conventions? If yes, please elaborate.

We do have some concerns around consistency of naming conventions between ETPs and the unlisted funds market. With the growth in traditional active managers bringing ETPs to market in recent years, there is now much more cross-over in the distribution channels for ETPs and unlisted investments. Common conventions in relation to some of the secondary labels should be considered, where appropriate.

B3Q9: Do you have any other ideas for future development or improvement of ETP naming conventions to promote confident and informed investment in Australian ETPs?

As per our above responses, we fully support the adoption of the globally accepted label of "Exchange Traded Commodity" or "ETC" for products that entitle investors to direct ownership of physical commodities.

C1Q1: Do you agree with our proposed conventions concerning the appearance of any naming convention labels applied? If not, please provide reasons.

We support a consistent approach to the application of the naming conventions. Proposal C1 (b) suggest that either 'Name of Fund (Active) ETF' or 'Name of Fund ETF (Active)' would be acceptable. We would further support a standard location for the secondary labels, either before or after the primary labels.

C1Q2: Are there alternative conventions for the display or appearance of labels that you would recommend in addition to or as an alternative to this proposal? If yes, please explain what and why.

No.

C2Q1: Do you agree with our proposal for licensed exchanges to implement consistent rules concerning ETP naming at the time of admission? If not, why not?

Yes.

C3Q1: Do you agree that ETP name changes at any time after admission should also require the approval of the licensed exchange? If not, why not?

Yes.

C3Q2: Do you agree with licensed exchanges having an explicit power to require product issuers to change the name of a product? If not, why not?

Yes. If a naming convention framework is adopted, it should be applied industry wide.

C3Q3: Are there any other rules or initiatives of licensed exchanges that would help to give effect to the aim or purpose of ASIC's guidance on ETP naming conventions?

No.

C4Q1: Do you support a transition to updated primary labels being made mandatory (for all ETPs or classes or subsets of ETPs) to promote consistency across the industry and reduce investor confusion? Please provide reasons for your response.

Yes. We are supportive of mandatory amendments to the naming of existing products within a reasonable timeframe.

C4Q2: Please outline your understanding of what would be required from you to implement the new naming conventions, including:

(a) an estimate of costs;

Primary costs to be incurred and associated with ASIC lodgement fees. Some additional legal fees may also be incurred.

(b) what you would consider a reasonable timeframe if adoption was to be mandated for all or any class of products; and

Six months from the date of adoption of the new framework would be a reasonable timeframe for amendments to be made to existing products.

(c) any relief or other assistance from ASIC that you consider may be needed to facilitate a transition for existing products.

Where name changes are required for existing products a waiver of fees for lodgements of name change applications and PDSs would reduce costs and facilitate a quick and orderly transition.

C4Q3: For product issuers, it would greatly assist our consideration of these issues if you were able to provide a preliminary indication of your appetite to adopt updated naming conventions of the type described at proposals B2 and B3 for any or all of your existing ETPs.

We agree with elements of the proposed naming conventions as outlined in the above responses. We are willing to consider the "(Complex) ETF" label for our existing "Hedge Fund" products (ASX: LNAS and SNAS). We would also be more than happy to add the "ETC" label to the products issued by ETFS Metals Securities Australia Limited (ASX: GOLD, ETPMAG, ETPMPD, ETPMPM and ETPMPT). We would, however, have no appetite at all to re-label these as "Structured Products" as explained above.

C4Q4: Are there any other matters related to transition that ASIC should consider in connection with making revisions to INFO 230 guidance on ETP naming conventions?

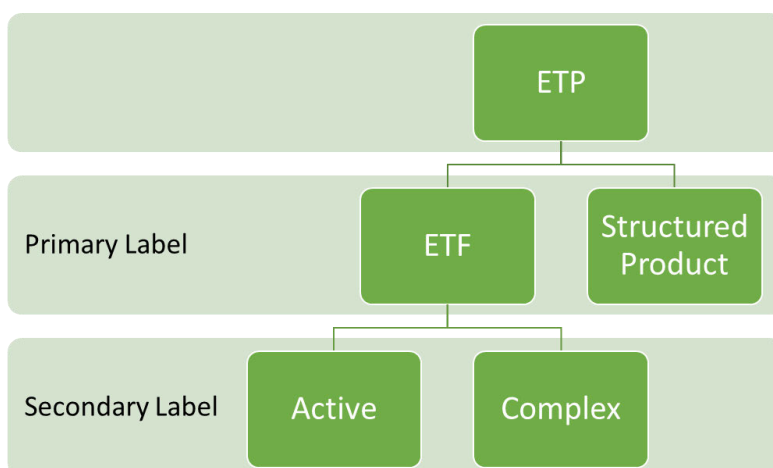
No

Appendix I – Table of Naming Conventions

	ASIC Proposal	ETFS Proposal	US Convention	European Convention
Primary Label				
...an ETP that is a collective investment vehicle (MIS/CCIV)	Exchange Traded Fund / ETF	Exchange Traded Fund / ETF	Exchange Traded Fund / ETF	Exchange Traded Fund / ETF
...an ETP that is a (non-debt) security that gives direct exposure to an underlying asset that is a commodity	Structured Product / SP	Exchange Traded Commodity / ETC	Exchange Traded Fund / ETF or none	Exchange Traded Commodity / ETC
...an ETP that is a debt security that gives exposure to an underlying asset	Structured Product / SP	Exchange Traded Note / ETN	Exchange Traded Note / ETN	Exchange Traded Note / ETN
...an ETP that is structured as a derivative or and ETP that does not fit any of the above categories	Structured Product / SP	Structured Product / SP	n/a	Exchange Traded Instrument / ETI
Secondary Label				
...an ETP that does not seek to track an index or benchmark	Active for ETFs, n/a otherwise	Active	n/a	n/a
...an ETP that aims to provide leveraged exposure	Complex for ETFs, n/a otherwise	Leveraged / Geared	n/a	n/a
...an ETP that aims to provide short or inverse exposure	Complex for ETFs, n/a otherwise	Short / Inverse	n/a	n/a
...an ETP that uses derivatives as the primary source of its underlying exposure	Complex for ETFs, n/a otherwise	Synthetic / Futures / Options / etc	n/a	n/a
...an ETP that is physically backed by an underlying commodity	n/a	Physical	n/a	n/a
...an ETP that otherwise meets the definition of a hedge fund in RG 240	Complex for ETFs, n/a otherwise	Hedge Fund	n/a	n/a

Appendix II – Hierarchy of Naming Conventions

ASIC Proposed ETP Naming Convention Framework:



ETF Securities Proposed ETP Naming Convention Framework:

