

To the Financial Advice and Investment Management unit,

Thank you for the opportunity to comment on ASIC's proposed renewal and updates to ASIC Class Order [CO 13/721] ("**CO 13/721**"). We have reviewed CP 374 and its related attachment ("**Draft Instrument**"). ASX supports the renewal of the class order and ASIC's proposal to expressly extend the relevant relief to actively managed ETFs.

We have two drafting clarifications:

1. **(Relevant interest relief for active ETFs)** We would be grateful to clarify if ASIC considers that paragraph 8(1)(10A)(a) in the Draft Instrument has been sufficiently amended to extend the 'relevant interest' relief to actively managed exchange traded funds: Proposal B1(a) in CP 374.

It appears that the existing wording in paragraph 11(19A)(b) of CO 13/721, which refers to "*the value of an interest or share (as applicable) in the ETF changing in proportion to the value of a **published index of securities***" (emphasis added) has not been amended in paragraph 8(1)(10A)(a) of the Draft Instrument. Consequently, it appears that the revised relief will remain confined to index tracking ETFs. We wanted to clarify whether ASIC considers that the Draft Instrument achieves the stated policy intent in another way, or if this is just a drafting oversight.

2. **(ETF definition)** We identified a minor typographical error in paragraph numbering for the definition of 'ETF' in the Draft Instrument – it appears that the numbering of subparagraph (e) has not been updated after the removal of subparagraph (d) from that definition in CO 13/721.

For completeness, we are mindful that subparagraph (d) of that definition in CO 13/721 currently reads:

*"(d) the price or value of any financial product, index, currency, commodity or other thing that the scheme invests in or tracks is continuously disclosed or can be immediately ascertained;"*

It appears that this definition is closely related to the corresponding definition of “ETF” under the ASX Operating Rules, which also contemplates the price or value of underlying instruments being continuously disclosed or immediately ascertained: see paragraph (e) of the definition of “ETF” in [ASX Operating Rule \[7100\]](#).

We assume that the proposed removal of subparagraph (d) is intended to broaden the scope of “ETF” under the Draft Instrument so that it covers “non-transparent” ETF structures (which are common among active ETFs). ASX recently considered how to achieve this outcome in response to ASIC’s naming convention updates to INFO 230. ASX determined to retain the wording in paragraph (e) of ASX Operating Rules definition, and added an interpretative note to specify how an active ETF may satisfy that limb (see extracted below):

From a practical perspective, ASX considers proposed deletion of subparagraph (d) is consistent with the expansion of relief to active ETFs. However, to the extent that ASIC intends alignment between the ETF definitions under the relief instruments and market operating rules, it may not be necessary to delete subparagraph (d) in the Draft Instrument. Of course, we would be happy to discuss this further if ASIC would find that helpful.

Kind regards

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20 Bridge Street, Sydney NSW 2000  
[www.asx.com.au](http://www.asx.com.au)

