

3 March 2022

**Att:** [REDACTED]  
**Market Infrastructure**  
**Australian Securities and Investments Commission**

**By email:** [REDACTED]

Dear CP 356 Team,

**CP 356 Submission—Cboe Australia**

Cboe Australia (CXA) is grateful for the opportunity of providing a submission on ASIC Consultation Paper 356: *ETP naming conventions* ('the CP').

The submission is segmented into this covering letter, **Attachment One** (which consists of a table listing the proposals and questions asked in the CP and provides a CXA response to each) and **Attachment Two**, (which outlines CXA's suggestions for other risk-based and strategy-based naming conventions for consideration by ASIC).

CXA notes a primary purpose of the CP is to simplify the naming conventions and promote flexibility for the next phase of ETP market development, and supports ASIC, market operators and product issuers working together to deliver clear and appropriate guidelines in this area to enhance the standards that apply to exchange traded products on Australia's markets.

The main concern of CXA, outlined in further detail in **Attachments One** and **Two**, is the risk of an ASIC mandated naming convention creating a problematic and possibly misleading impression for some investors, especially the increasing number of investors comparing Australian ETFs to other investment products that are available locally and globally. The use of the label 'complex' is particularly problematic, and **Attachment Two** outlines some naming convention options that in our view address some of these issues.

Please do not hesitate to contact [REDACTED] or [REDACTED] if you have any queries.

Yours faithfully

[REDACTED]

[REDACTED]  
General Counsel  
Cboe Australia Pty Ltd



**Attachment One – CXA Answers to CP 356 Proposals and Questions**

Proposal No.	Proposal	Q No.	Consultation Question	CXA Response
B1	<p>We propose to continue to outline product naming conventions in INFO 230 as good practice guidelines for the admission of ETPs. Subject to the feedback we receive, we intend to revise the existing naming conventions by dividing them into two levels of labelling:</p> <p>(a) primary labels—to distinguish between types of financial products that are ETPs; and</p> <p>(b) secondary labels—signifying the risks and strategies of the products.</p> <p>Note: We have set out our draft guidance on the naming conventions in the attachment to this consultation paper.</p>	1	What have been your experiences with the ETP naming conventions to date?	In CXA’s experience as a market operator, the naming conventions have been applied consistently by product issuers, with most understanding and correctly applying the guidelines.
		2	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.	CXA’s view is that the naming conventions are useful in distinguishing between the different <i>types</i> of ETFs but not necessarily in highlighting all of the features and risks, which can be difficult to capture in just two labels. The Product Disclosure Statement and TMD for the product is a more effective way of doing this and whilst common naming terminology is helpful to distinguish between different types of funds it should be these documents that are relied on as the primary method of explaining the risks of a product to investors.
		3	Do you agree that ASIC should continue to outline ETP naming conventions for licensed exchanges and product issuers? If not, why not?	CXA agrees that having ASIC outline a naming framework across ETPs helps reduce investor confusion and ensures that product issuers adopt a consistent approach that can be reviewed by the Exchange as part of the admission process.
		4	Do you agree with ASIC’s assessment that the current naming conventions require updating? Please provide examples and assessment to support your response.	CXA agrees that there have been a number of developments in the ETP market as it has grown, including the development of unique and novel features that warrant a review of the naming conventions to ensure that they remain fit for purpose.

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		5	Do you agree with the proposed two-level naming convention approach? If not, why not?	Yes, CXA agrees with this approach.
		6	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?	CXA does not wish to express a view on this proposal.
		7	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?	CXA does not wish to express a view on this proposal.
		8	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?	Similar to the guidance outlined by ASIC in IS 230 in relation to internal market making, CXA is of the view that it is appropriate for licensed exchanges to provide investor education about the differences between the different types of ETPs quoted on their markets eg on their websites. We suggest including this in the updates to IS 230.
B2	We propose to set minimum standards for labelling the product type for ETPs. This primary label	1	Do you agree with the proposed distinction between these product types? If not, why not?	CXA supports this proposal and notes that removing the distinction between ETF and Quoted Managed Fund would align Australia with the international approach.

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	<p>will differentiate between ETPs that are:</p> <p>(a) collective investment vehicles (e.g. managed investment schemes, including those that hold a single asset on trust until maturity, and Corporate Collective Investment Vehicles (CCIVs)—which are labelled as ‘Exchange Traded Funds’ or ‘ETFs’; and</p> <p>(b) structured products (e.g. products that are open-ended and structured as derivatives, redeemable preference shares or debt securities)—labelled as ‘Structured Products’.</p>	2	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?	CXA supports this proposal as there is a fundamental difference in the nature of these products. A LIC/LIT is closed ended, listed on an Exchange pursuant to Listing Rules and subject to additional periodic and continuous disclosure obligations, as opposed to an ETF which is open ended and quoted on an Exchange pursuant to Operating Rules. To allow LICs and LITs to use the term ETF would undoubtedly result in investor confusion.
		3	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.	CXA does not wish to express a view on this proposal.
		4	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?	CXA does not wish to express a view on this proposal.



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		5	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.	CXA has received comments from multiple product issuers that the removal of the “managed fund” label and exclusive use of “ETF” for all collective investment schemes is not well suited to funds that are dual access and offer on-market and off-market access to investors. In particular there are concerns that it could confuse investors that invested in the unlisted fund prior to its quotation and remain on the unlisted register after the fund is quoted.
B3	We propose to continue to provide good practice guidance for licensed exchanges in applying risk-based and strategy-based labels for ETPs. We propose to provide guidance on two secondary labels for ETFs: (a) Active—ETFs that: (i) buy and sell investments based on an active investment strategy; or (ii) disclose their full portfolio holdings on a delayed basis under internal market making or material portfolio information disclosure models. (b) Complex—ETFs that: (i) have leveraged or inverse exposures; (ii)	1	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.
		2	Do you support the two secondary labels that we have proposed for ETPs? Please provide reasons for your response.	Please see our comments below in response to B3Q4.
		3	Do you support the updated definition for the ‘Active’ label? If not, why not, and what alternative definition would you suggest?	Yes.

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	<p>employ short selling; (iii) use derivatives (other than for exchange rate hedging purposes); and/or Note: See the attachment to this consultation paper for our draft changes to the guidance in INFO 230 on the consideration of derivatives under the 'Complex' label. (iv) otherwise meet the definition of a hedge fund in Regulatory Guide 240 Hedge funds: Improving disclosure (RG 240). Where a product applies the Complex label, it would not have to apply the Active label.</p>	4	<p>In relation to the proposed 'Complex' label:</p> <p>(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?</p> <p>(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?</p> <p>(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?</p>	<p>(a) CXA disagrees with this proposal. Our view is that a single label is not suitable and is likely to hinder, not help, investors. There are many different types of investment strategies used by an actively managed fund and grouping them all together under the same descriptor does not recognise that the level of complexity can vary significantly.</p> <p>(b) CXA disagrees with this proposal. Our view is that the proposed grouping of derivative use under the "Complex" label is too simplistic and disregards how the fund is using derivatives, the impact upon the fund's performance and the different levels of risk and complexity that may be associated with that use. The label is being applied very broadly and we think it is likely to cause confusion amongst investors.</p> <p>(c) CXA does not think that the "Complex" label is suitable. Please see our comments below on B3Q4(d).</p> <p>(d) CXA suggests using the word "Specialised" rather than "Complex" to describe this category of ETPs. We note that the SEC has previously used this term to refer to leveraged and inverse ETFs<sup>1</sup> and consider this an appropriate way to alert investors to the differences with these types of</p>

<sup>1</sup> <https://www.sec.gov/investor/pubs/leveragedetfs-alert.htm>

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			(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.	products that use specialised investment strategies to achieve their objective.
		5	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?	Our view is that the "Synthetic" and "Hedge fund" labels should be retained in addition to "Active" and "Specialised" as the Secondary labels. Please refer to <b>Attachment 2</b> for suggested definitions for each of these labels and practical examples of how these could be applied to the funds currently quoted on CXA.
		6	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.	Please see our comments above on B3Q5 and refer to Attachment 2.
		7	Do you agree that for products that apply the Structured Product label	CXA does not wish to express a view on this proposal.

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			there is no need to outline secondary labels? If not, why not?	
		8	Are there likely to be any unforeseen consequences related to ASIC's proposed updates to the INFO 230 naming conventions? If yes, please elaborate.	Please see our comments above on B3Q4(b).
		9	Do you have any other ideas for future development or improvement of ETP naming conventions to promote confident and informed investment in Australian ETPs?	Please see our comments above on B3Q5.
C1	We propose to update INFO 230 to include general conventions that: (a) labels should appear at the end of the product name; (b) any relevant secondary labels should appear in brackets—for example, 'Name of Fund (Active) ETF' or 'Name of Fund ETF (Active)'; and (c) issuers or licensed exchanges should take steps to ensure that relevant naming conventions appear in all instances where a product name is used.	1	Do you agree with our proposed conventions concerning the appearance of any naming convention labels applied? If not, please provide reasons.	CXA agrees with this proposal.
		2	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.	Not applicable.





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C2	We propose to work with licensed exchanges authorised to admit ETPs to quotation to increase certainty (for both licensed exchanges and product issuers) through the implementation of a more consistent, market-wide approach to ETP naming conventions at the time of admission and on an ongoing basis.	1	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?	CXA agrees with this proposal. However we note that CXA already has a market operating rule requiring issuers to ensure that the fund has a name that is clear and not misleading and that it complies with ASIC guidance on naming convention requirements. The proposed rule changes would therefore only formalise the checks that CXA currently undertakes as part of the admission process. CXA suggests that any changes to ASIC guidance in relation to new rules should be principles based, not prescriptive, and allow for flexibility in application as the ETP market continues to evolve.
C3	Specifically, we propose that relevant licensed exchanges should have rules to the effect that: (a) the name of any ETP admitted to quotation must, in the opinion of the licensed exchange: (i) not be capable of misleading retail investors as to the nature, features or risks of the product; and	1	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?	CXA's view is that this should be a notification requirement. CXA already has principles based rules which require a product issuer to ensure that an ETP continues to meet the eligibility criteria after it is admitted to quotation, and a Condition on Quotation that a product issuer must inform Cboe of any material changes to their application for quotation. For a product issuer to comply with these requirements they would therefore need to inform Cboe and ensure that any proposed name change complies with the naming requirement in Rule 14.12(b). In addition we note that an application for a proposed change of name of a managed scheme is ultimately approved by ASIC and not the Exchange. Please also see our comments above on C2Q1.

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	<p>(ii) be consistent with ASIC guidance on naming convention requirements;</p> <p>(b) if a product issuer proposes to change the name of the product, the product issuer must first seek the approval of the licensed exchange for the new name; and</p> <p>(c) a licensed exchange may require a product issuer to change the name of their product if the licensed exchange forms the view that the name of a quoted product is, for any reason:</p> <p>(i) capable of misleading retail investors as to the nature, features or risks of the product; or</p> <p>(ii) not consistent with ASIC guidance on naming conventions.</p>	2	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?	CXA is of the view that the proposed rule outlined in paragraph (a) would be sufficient to ensure that an issuer complied with the naming requirements. Pursuant to CXA Operating Rule 14.12(b), if the name of a product ceased to be consistent with ASIC naming conventions or was capable of misleading retail investors then it would no longer be eligible for quotation.
		3	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?	Not applicable.

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C4	To the extent that our proposals in Section B are adopted following this consultation, we are interested in feedback on transitional arrangements that will reflect the most appropriate balance between the aims of: (a) reducing confusion for investors through the use of consistently applied labels across both existing and new ETPs (particularly in relation to primary labels); and (b) minimising costs and administrative burden on industry and licensed exchanges in respect of any transition. At a minimum, we propose to work with licensed exchanges to ensure that any existing product that updates its primary label also considers the application of any relevant secondary labels. We propose that compliance will be enforced by licensed exchanges, if necessary.	1	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.	CXA is of the view that if ASIC proceeds with the updated labels then they should be applied equally to all new and existing funds, otherwise it is likely to cause substantial confusion for investors.
		2	Please outline your understanding of what would be required from you to implement the new naming conventions, including: (a) an	Not applicable.



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			estimate of costs; (b) what you would consider a reasonable timeframe if adoption was to be mandated for all or any class of products; and (c) any relief or other assistance from ASIC that you consider may be needed to facilitate a transition for existing products.	
		3	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.	Not applicable.
		4	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?	CXA notes that there is likely to be a significant impact on resources required for fund managers that are required to transition to the new naming conventions (particular where they have multiple funds). In our view the transitional arrangements should allow for a window long enough to allow funds to make the required changes to their PDS as part of their annual PDS roll rather than as a standalone PDS update.





Primary Label	Secondary Label	Definition	Example	Mapping to CXA Funds
				<ul style="list-style-type: none"> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul>
ETF	Specialised	<ul style="list-style-type: none"> <li>• Collective investment vehicle (including managed investment scheme)</li> <li>• Has 1 or more of the following characteristics:               <ul style="list-style-type: none"> <li>- Uses debt or leverage to make a financial investment</li> <li>- Includes an inverse exposure</li> <li>- Uses short selling</li> </ul> </li> <li>• Does not require Synthetic or Hedge Fund naming</li> </ul>	XYZ ETF (Specialised) Or XYZ ETF (Active Specialised)**	[REDACTED]
ETF	Synthetic	<ul style="list-style-type: none"> <li>• Collective investment vehicle (including managed investment scheme)</li> <li>• Uses derivatives to achieve a material exposure (more than 10% of NAV) to the underlying assets***</li> </ul>	XYZ ETF (Synthetic)	[REDACTED]
ETF	Hedge Fund	<ul style="list-style-type: none"> <li>• Collective investment vehicle (including managed investment scheme)</li> <li>• Active investment strategy</li> <li>• Has 2 or more of the following characteristics (as outlined in RG 240):</li> </ul>	XYZ ETF (Hedge Fund)	<ul style="list-style-type: none"> <li>■ [REDACTED]</li> </ul>



Primary Label	Secondary Label	Definition	Example	Mapping to CXA Funds
		<ul style="list-style-type: none"> <li>- Complexity of investment strategy or structure</li> <li>- Use of leverage for investment purposes</li> <li>- Use of derivatives, other than for managing risk or more efficiently gaining exposure</li> <li>- Use of short selling</li> <li>- A performance fee</li> </ul>		

Notes:

\*CXA agrees with the proposed updates to INFO 230 which state that smart beta or rules-based products that are collective investment vehicles should use the “Active” label in addition to the “ETF” label in certain situations ie where investment decisions are made on a discretionary basis or it is not sufficiently transparent about its portfolio selection methodology and does not provide full portfolio disclosure on a daily basis. ETPs that use this type of investment strategy but are not collective investment vehicles should be labelled “Structured Product”.

\*\*Where a fund is both Active and Specialised both labels should be included in the title of the ETP.

\*\*\*CXA suggests retaining the current “Synthetic” label to help investors understand that derivatives are being used to achieve a material exposure to the underlying instruments in the investment strategy. Derivatives may also be used other than as underlying assets in a limited set of circumstances (eg risk management, equitisation, or in an immaterial way) as set out in the conditions of quotation imposed by a market operator.