21 April 2026

Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

email: rri.consultation@asic.gov.au

To whom it may concern:

Australian Custodial Services Association Response to ASIC Consultation Paper CP387 on Enhanced Beneficial Ownership Disclosures

The Australian Custodial Services Association (**ACSA**) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients, and the market. Members of ACSA include J.P. Morgan, HSBC, State Street, BNP Paribas, BNY Mellon, Citi, Clearstream, and The Northern Trust Company.

Collectively, the members of ACSA hold securities and investments in excess of AUD $6 trillion[1] in value in custody and under administration for Australian clients comprising institutional investors such as the trustees of major industry, retail and corporate superannuation funds, life insurance companies, responsible entities and trustees of wholesale and retail investment funds, and various forms of international investors into Australia.

ACSA attaches its response to the questions raised by ASIC's CP387 consultation and highlight the following:

1. General comments and support for policy objectives

Custodians support the policy objective of enhancing market transparency by improving the identification of ultimate beneficial ownership and economic exposure to securities listed on Australian markets. Increased transparency can strengthen market integrity and investor confidence when implemented in a manner consistent with established market structures, legal ownership frameworks and global custody practices.

However, CP 387 introduces significant operational and enforcement mechanisms that, if applied without appropriate guardrails, risk producing outcomes that are disproportionate, impractical, and potentially harmful to market functioning—particularly in relation to omnibus custody models, nominee structures and cross-border investment arrangements.

2. Role of custodians as nominees and bare trustees

Licensed custodians are widely recognised as holding securities as **nominee or bare trustee only**, without beneficial ownership or independent control over voting, disposal or corporate actions. Custodians:

- Do not invest in the securities they hold;
- Do not make investment decisions;
- Cannot vote, dispose of or otherwise act in relation to securities without proper client instruction;
- Act solely as agent on behalf of their clients under contractual arrangements.

[1] As at 30 June 2026, https://acsa.com.au/page/IndustryStatistics

Australian law and ASIC Regulatory Guide 5 expressly recognise that custodians and nominees do **not** have a relevant interest in securities merely because they hold them in the ordinary course of providing custodial services. There is therefore no circumstance in which a custodian's holding should be treated as beneficial ownership for disclosure or enforcement purposes.

Any enhanced beneficial ownership regime should clearly preserve this distinction between **legal title and beneficial ownership**, and should not impose obligations or consequences on custodians that are properly attributable only to the ultimate beneficial owners or other parties exercising control.

3. Tracing notices and information-gathering obligations

Custodians agree that tracing notices should reflect the requirements set out in section 672AD of the Corporations Act, and that no additional information should be required beyond what is explicitly prescribed in legislation.

In responding to tracing notices, it is important to recognise that:

- Custodial holding chains often involve multiple layers, including global custodians, sub-custodians, intermediaries, funds and underlying investors;
- A single beneficial owner may hold interests through multiple custodians or structures;
- No single custodian has a complete, consolidated view of an investor's global holdings or economic exposure.

Accordingly, the regulated entity seeking beneficial ownership information must bear responsibility for consolidating information across the custody chain. Custodians should not be expected to infer, aggregate or validate beneficial ownership beyond the information they lawfully and reasonably hold in their specific role within that chain.

4. Registers of relevant interests – feasibility and standardisation

The proposal to prescribe minimum specifications for registers of relevant interests introduces material operational complexity. Designing, implementing and maintaining such registers requires:

- Clear, standardised data fields mandated by ASIC;
- Alignment with internationally recognised data standards;
- Automation to manage high transaction volumes and frequent changes.

Without a single prescribed standard, there is a risk of inconsistent implementation across market participants, reducing the usefulness of the information while materially increasing cost and operational risk.

Custodians strongly encourage ASIC to adopt recognised international standards—such as ISO formats and, where relevant, frameworks used in other jurisdictions (e.g. those developed under the European Shareholder Rights Directive II)—to support interoperability, automation and accuracy.

5. Freezing orders – material practical and market risks

The introduction of ASIC's freezing order powers represents the most significant and novel operational risk for custodial market infrastructure.

In particular, freezing or blocking securities at the **registered holder (custodian) level** due to non-compliance by an underlying party presents substantial risks:

- **Contagion risk**: Omnibus accounts pool holdings for multiple investors. Freezing at the custodian level risks unintentionally affecting compliant, uninvolved investors.
- **Systemic impact**: Assets held on behalf of Australian superannuation funds, sovereign funds and offshore institutional investors could be restricted despite full compliance by those investors.
- **Operational infeasibility**: Many custody platforms are not designed to freeze a specific percentage of an omnibus holding attributable to a single beneficial owner without significant system rebuilds.
- **Market confidence**: Freezing assets of compliant investors could generate negative market perception and discourage investment in Australian markets.

Custodians recommend that any freezing or blocking action be applied **only at the level of the party that has failed to comply**, and within the systems of the intermediary directly servicing that non-complying party—not upstream through registries, CSDs or nominee custodians.

Where a custodian has fully complied with a tracing notice, and an underlying party has not, the custodian's own holdings should not be subject to freezing or restriction.

6. Protection of uninvolved parties and omnibus structures

Further clarity is required on how "uninvolved parties" are protected under CP 387, particularly in relation to omnibus custody arrangements. Nominee and omnibus structures are a fundamental and legitimate feature of modern capital markets, enabling efficient access, settlement and cross-border investment.

ASIC guidance should:

- Explicitly recognise omnibus custody models;
- Define how freezing orders can be applied without collateral impact;
- Clarify that custodians are not expected to override proper client instructions or second-guess investment decisions.

Without such clarity, there is a risk that implementation of freezing powers will be inconsistent with established global market practice and unfairly penalise compliant investors.

7. Comparability with overseas regimes

Custodians note that while ASIC proposes to regard certain overseas disclosure regimes as equivalent, the enforcement mechanics proposed under CP 387—particularly regulator-initiated freezing orders—are not mirrored in those jurisdictions.

For example:

- In the United Kingdom, restrictions arise through court orders initiated by issuers, not through regulator-imposed freezing;
- In New Zealand, similar enforcement arises via court processes;
- In the United States, non-compliance is addressed through reporting penalties rather than freezing of securities.

Given these differences, equivalence should be assessed not only by reference to disclosure rules, but also by reference to enforcement mechanisms and their practical market impact.

8. Implementation timeframes and transitional arrangements

Finally, any reforms requiring custodians to modify systems to support new reporting formats, registers, instruction tracking or freezing mechanics will require:

- Detailed technical design;
- Budget approval;
- Analysis of downstream impacts across sub-custodians and ICSDs;
- Robust testing to avoid unintended settlement or voting failures.

Custodians strongly recommend that ASIC provide sufficient transitional periods, and consider phased implementation—particularly in relation to freezing order mechanics—beyond the currently contemplated commencement date.

9. Conclusion

Custodians support the goal of enhanced beneficial ownership transparency. However, the practical application of CP 387 must reflect:

- The legal distinction between beneficial and legal ownership;
- The layered nature of custody chains;
- The operational realities of omnibus accounts;
- The need to avoid market-wide collateral impact from enforcement actions.

We encourage ASIC to work closely with custodians and market infrastructure providers to ensure that the final framework achieves its policy objectives **without undermining market efficiency, investor confidence or established international custody practices**.

If you have any questions in relation to this submission please do not hesitate to contact me.

Yours sincerely

[redacted]

Chief Executive Officer
Australian Custodial Services Association

[redacted]

About ACSA

Custodians provide a range of institutional services, with clients typically favouring a bundled approach to custody and investment administration. Solutions may include traditional custody and safekeeping, investment administration, foreign exchange, securities lending, tax and financial reporting, investment analytics (risk, compliance and performance reporting), investment operations middle office outsourcing and ancillary banking services.

These services represent key investment back office functions – often representing the client's asset book of record and essential source data in relation to the investments they hold.

The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions.

ACSA works with peer associations, regulators and other market participants on a pre-competitive basis to encourage standards, promote consistency, market reform and operating efficiency.

Note: The views expressed in this letter are prepared by ACSA for the purposes of consideration by ASIC in its CP387 consultation and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA.

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<u>March 2026 ASIC Consultation Paper Questions - CP387</u>

B1 We propose that the number of issued securities of a particular class in a listed entity that a person has a deemed economic interest in because of a non-physically settleable derivative with a linear, symmetric pay-off profile—is equal to the full notional amount of securities underlying the derivative.

B1Q1 Do you agree with our proposal?

B1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not the registered holders of derivatives, whether physically settled or not physically settled, ACSA has no view regarding this change to include derivatives in the definition of deemed economic interests.

B2 We propose to adopt a principle-based approach to determining the calculative methods for deemed economic interests. Adopting this approach, we propose the number of issued securities of a particular class in a listed entity that a person has a deemed economic interest in because of a non-physically settleable derivative without a linear, symmetric pay-off profile—is equal to the delta of the derivative calculated under a generally accepted standard pricing model multiplied by the full notional amount of securities underlying the derivative.

B2Q1 Do you agree with our proposal to adopt a principle-based approach? Should a prescriptive approach be preferred instead?

B2Q2 Do you agree with our proposal regarding calculative methods?

B2Q3 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions.

B3 We propose to define a 'generally accepted standard pricing model' as a model that:

(a) is generally accepted in the Australian financial services industry as a model used to price the type of derivative; and

(b) takes into account each of the following matters to the extent that they are relevant to the pricing of the derivative:

(i) an interest rate;

(ii) any dividend payments in relation to the underlying issued securities; (

iii) the time to maturity of the derivative;

(iv) the price of the underlying issued securities; and

(v) the volatility of the price of the underlying issued securities.

B3Q1 Do you agree with our proposal?

B3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions.

B4 We propose that:

(a) where the benefit under a derivative is determined in reference to a basket or index of assets that includes securities, subject to section 11(3) of the Principal Instrument, the deemed economic interest must be calculated on the basis of the weight of the security by value in the basket or index out of the total value of securities in the basket or index; and

(b) the number of securities in a class of underlying issued securities in which a person has a deemed economic interest is zero if:

> (i) the number of issued securities in that class in which the person has a deemed economic interest represents less than 5% of the total securities in that class that are on issue; or
>
> (ii) the securities in that class in the basket or index represent less than 20%, by value, of all securities in the basket or index.

B4Q1 Do you agree with our proposal?

B4Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions.

B5 We propose not to prescribe a specific exception for volatility or variance derivatives.

B5Q1 Do you agree with our proposal?

B5Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions.

B6 We propose that the number of issued securities of a particular class in a listed entity that a person has an offsetting short position in because of a short position derivative with a linear, symmetric pay-off profile—is equal to the full notional amount of securities underlying the derivative.

B6Q1 Do you agree with our proposal?

B6Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions.

B7 We propose that the number of issued securities of a particular class in a listed entity that a person has an offsetting short position in because of a short position derivative without a linear, symmetric pay-off profile—is equal to the delta of the derivative, as calculated using a generally accepted standard pricing model, multiplied by the full notional amount of securities underlying the derivative.

B7Q1 Do you agree with our proposal?

B7Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives; ACSA has no view regarding questions.

B8 We propose that:

(a) where the benefit under a derivative is determined by reference to a basket or index of assets that includes securities, subject to section 15(3) of the Principal Instrument, the offsetting short position must be calculated on the basis of the weight of the security by value in the basket or index out of the total value of the securities in the basket or index; and

(b) the number of securities in a class of underlying issued securities in which a person has an offsetting short position is zero if: (i) the number of issued securities in that class in which a person has an offsetting short position represents less than 5% of the total securities in that class that are on issue; or (ii) the securities in that class in the basket or index represents 20% or more, by value, of all securities in the basket or index.

B8Q1 Do you agree with our proposal?

B8Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions

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B9 We propose to replicate the situations which do not give rise to deemed economic interests as set out in s671AL, 671AM, 671AN and 671AP for offsetting short positions.

B9Q1 Do you agree with our proposal?

B9Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions

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B10 We propose the following general calculation rules that apply to both deemed economic interests and offsetting short position calculations:

(a) A person's offsetting short position must not be netted against a person's deemed economic interest.

(b) The number of issued securities of a particular class in a listed entity that a person has a deemed economic interest or an offsetting short position in because of a derivative must be calculated daily.

(c) Where the derivative does not have a linear, symmetric pay-off profile, the deemed economic interest or offsetting short position must be calculated:

(i) using a single generally accepted standard pricing model that is applied consistently; and

(ii) based on the most recent closing price for the underlying issued securities published by the operator of the financial market on which the listed entity has a primary listing.

B10Q1 Do you agree with our proposal?

B10Q2 Are there any other general calculation rules you consider we should apply to improve integrity of the calculative methods?

B10Q3 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions

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B11 We propose to exempt licensed client facing service providers (*AFS licensees who are authorised to deal in derivatives*), market makers, and operators of clearing and settlement (CS) facilities from reporting deemed economic interests and offsetting short positions in the following circumstances:

(a) for Australian financial services (AFS) licensees authorised to deal in derivatives, where the licensee deals in derivatives in the ordinary course of its business for the purpose of:

(i) facilitating a client obtaining economic exposure, at the client's request, to changes in the value of securities in a listed entity;

(ii) hedging (on an aggregate basis) an economic position of the licensee that has resulted from the licensee facilitating the obtaining of economic exposure by the client; or

(iii) otherwise managing a risk of the licensee that has resulted from the licensee facilitating the obtaining of such an economic exposure by the client, on the condition that the client must provide to, or at the direction of, the licensee, any consideration the licensee is required to provide under the derivative;

(b) for AFS licensees authorised to make a market in derivatives or securities, the AFS licensee deals in derivatives in the ordinary course of its business of making a market, or for the purposes of hedging an economic position of the licensee that has resulted from the licensee making a market in derivatives or securities; or

(c) for CS facility licensees, the licensee enters into a derivative in the course of operating the clearing and settlement for the purposes of facilitating a client who is a participant in the facility, at the participant's request, obtaining economic exposure to changes in the value of securities in a listed entity; and

(d) for each circumstance in B11(a)–B11(c), all of the following conditions must be satisfied:

(i) the licensee has adequate systems for the purposes of identifying derivatives to which the exempt transaction relates; and

(ii) the dealing in the derivative does not have, and is not reasonably capable of having, the effect of giving the licensee any capacity to determine, influence or attempt to influence the affairs of the listed entity.

The exemption operates to exclude deemed economic interests and offsetting short positions from arising.

B11Q1 Do you agree with our proposal?

B11Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are not registered holders of derivatives, ACSA has no view regarding questions

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B12 We propose to exempt foreign equivalent licensees from reporting deemed economic interests and offsetting short positions in the same circumstances described in Proposal B11. The exemption would operate for persons that:

(a) are incorporated or formed, and have their principal place of business in a jurisdiction outside of Australia;

(b) are licensed or authorised by an overseas regulatory authority and whose activities (including those referred to in Proposal B11) are regulated by the overseas regulatory authority; and

(c) does not hold and is not required to hold an AFS licence or a CS facility licence.

B12Q1 Do you agree with our proposal?

B12Q2 Should the exemption only extend to foreign equivalent licensees operating under overseas regulatory regimes that ASIC has assessed as being sufficiently equivalent to the Australian framework?

B12Q3 Would you suggest any changes to our proposed approach? If so, please provide details.

ACSA has no comment on this proposal.

B13 We propose that:

(a) where the holding percentage that a licensed market maker, client facing service provider, or foreign equivalent licensee, would otherwise have been required to report increases above 20% or decreases to 20% or below of the voting securities in a particular listed entity—the exempt licensee is required to provide a statement of its exempt deemed economic interests and offsetting short positions to the market of the listed entity; and

(b) where an exempt licensee is required to provide a substantial holding notice they must indicate whether they have an interest in other securities of the listed entity that are subject to the exemption.

B13Q1 Do you agree with our proposal?

B13Q2 Should licensees who rely on this exception be required to provide a statement of their exempt interests to the market if their holding percentage increases above 20% or decreases to 20% or below of the voting securities of the listed entity?

B13Q3 Alternatively, should licensees who rely on this exception be required to provide a statement to the market if their net economic exposure exceeds 5% or 10% of the voting securities in a particular listed entity?

B13Q4 Should licensees who rely on this exception be required to disclose their reliance if they lodge a substantial holding notice in relation to the entity for interests not covered by the exception?

B13Q5 Would you suggest any changes to our proposed approach? If so, please provide details.

As Custodians do not hold economic interests in the holdings in nominee names, ACSA does not have any comments on these questions.

B14 We propose that the content of the ASIC issued tracing notice reflects legislative requirements only in s672AD. We do not propose to determine, by legislative instrument, any further information that needs to be disclosed.

B14Q1 Do you agree with our proposal?

Yes as Custodians will only need to provide what is required by law under S672AD

B14Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

No changes recommended

B15 We propose to prescribe minimum specifications in relation to the form of register that the key person for a listed entity must keep under s672DA(3). The register must:

(a) be kept in a delimited file format and be provided in that format when providing a copy under s672DDB(4);

(b) to the extent applicable, include a separate data field for each item of information mentioned in section 26(3) of the Principal Instrument; and

(c) be set out and organised in a way that is consistent with the ordering of items of information in section 26(3) of the Principal Instrument. The content of a register must reflect legislative requirements as contained within new s672DB. We do not propose to prescribe any additional information that must be kept in the register.

B15Q1 Do you agree with our proposal?

B15Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

ACSA has no comments on this proposal.

B16 We propose not to specify any exemptions from the obligation to keep a register of relevant interests under s672DA(3).

B16Q1 Do you agree with our proposal?

B16Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Do ACSA members have a comment here?

B17 We propose that substantial holders will need to complete a single form to meet their substantial holding disclosure obligations, in place of the current requirement to submit one of three separate forms: see a draft of the ASIC Substantial Holding Notice at Attachment 2.

We are also considering whether a simplified version of the form should be provided for substantial holders that do not hold any interests in derivatives. A simplified version of the form at Attachment 2 would involve omitting the shaded sections and including a corresponding proforma declaration.

B17Q1 Do you agree with our proposal to consolidate the existing forms into a single form?

B17Q2 Are there any other design features we should consider integrating in the draft ASIC Substantial Holding Notice that would assist holders in navigating or accurately completing the form?

To align with global messaging standards ACSA recommends the forms meet current ISO standards

B17Q3 Do you consider we should provide a simplified form for substantial holders that do not have any interest in derivatives?

Yes as custodians are generally not registered holders of derivatives and may have no visibility of ownership structures.

B17Q4 Would you suggest any changes to our proposed approach? If so, please provide details.

ACSA suggests that sufficient lead time is given implement this change s in both operational processes and technology solutions for automated forms – ACSA believes a transitional period where both old and new forms are supported for a period of 24 months.

B18 We are exploring replacing the existing image-based substantial holding notice forms with a machine-readable web-based version. This version would require substantial holders to submit their holding information online.

B18Q1 Are there any features that should be considered for inclusion as part of a webbased substantial holding notice form?

B18Q2 What registration requirements (if any) should be imposed on users of a web-based substantial holding notice form?

ACSA recommends functionality should be limited to uploading substantial shareholding forms only.

ACSA members are generally Global Banking organisations with strict security access protocols for information security and data protection. Past experience with regulatory data changes has highlighted that alignment is needed regarding access controls in line with custodians' technology approved standard controls.

B18Q3 Would you suggest any changes to our proposed approach? If so, please provide details.

B19 We are considering specifying a digital file format for storing and submitting substantial holding information that draws on existing data standards already tailored to exchanging holding or financial reporting information.

B19Q1 Are there any specific data standards we should consider for the purpose of storing and submitting substantial holding information?

B19Q2 Do you consider ASIC should prioritise less versatile but simpler 'human-readable' file formats as data standards for storage and submission or avoid formats that require specialty software?

Utilising industry standard platforms ensures standardisation of responses across all Custodians.

ACSA supports the adoption of international ISO standards or those introduced as part of the European Shareholder Rights Directive II (SRD II) which has enabled participants to automate the disclosure process. Adoption of these standards in Australia may also increase the response times and quality of information provided by entities based in the EU.

If businesses need to design, implement, and maintain registers they would need a standard format of information required which has been directed by the relevant government agency, especially considering the inclusion of a machine-readable format lodgment process.

B20 We propose that the content of the new substantial holding notice form should substantively reflect legislative requirements only. However, to the extent that any additional information in the new substantial holding notice does not reflect legislative requirements, we propose to prescribe that information as additional particulars that are required.

B20Q1 Do you agree with our proposal?

B20Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

ASIC should provide a clear list of what constitutes additional particulars. ACSA suggests ASIC perform a periodic review of additional particulars to ensure information requested remains relevant.

B21 We propose to prescribe by legislative instrument the following standard form documents that do not need to accompany a substantial holding notice:

(a) International Swaps and Derivatives Association (ISDA) Master Agreement including the Schedule to the Master Agreement;

(b) Futures Industry Association (FIA)–ISDA Cleared Derivatives Execution Agreement;

(c) FBF Master Agreement relating to Transactions on Forward Financial Instruments;

(d) DRV German Master Agreement for Financial Derivatives Transactions; and

(e) master securities lending agreement as defined in ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821, where the prescribed information under that instrument is provided, including:

> (i) Australian Master Securities Lending Agreement as published by the Australian Securities Lending Association;
>
> (ii) Global Master Securities Lending Agreement as published by the International Securities Lending Association;
>
> (iii) Global Master Repurchase Agreement as published by the Securities Industry and Financial Markets Association and the International Capital Market Association; and
>
> (iv) written agreements commonly known as prime broking agreements or prime brokerage agreements between a service provider and a wholesale client.

B21Q1 Do you agree with our proposal?

B21Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
B21Q3 For which additional agreements would you suggest this standard form exemption could apply, especially with respect to derivatives agreements?

B21Q4 Where a substantial holding notice does not require the full derivatives agreement to accompany it, should a summary of key terms or a trade confirmation be required?

ACSA propose sthat the standard form exemption be extended to include the Master Securities Lending Agreement (MSLA) as published by the Securities Industry and Financial Markets

Association (SIFMA) — the predominant standard-form agreement used for securities lending transactions in the United States.

B22 We propose to declare that relevant requirements in New Zealand, the United Kingdom and the United States impose substantial holding disclosure requirements equivalent to those under Australian law so that entities that are subject to those requirements that hold shares listed on Australian markets will be exempt from the substantial holding disclosure requirements.

B22Q1 Do you agree with our proposal?

ACSA disagree where freezing orders are concerned. (See below)

B22Q2 Would you suggest any changes to the jurisdictions that we propose to declare as having equivalent requirements to the substantial holding disclosure requirements? If so, please provide details.

These jurisdictions do not have freezing orders by the regulator:

United Kingdom: Under Section 793 of the Companies Act 2006, a public company can issue a notice requiring information about interests in its shares. If a recipient fails to comply, the company (not the regulator) can apply to the court for an order imposing restrictions on the shares (Sections 794–797).

New Zealand: Under the Companies Act 1993, specifically in relation to disclosing beneficial ownership, if a disclosure tracing notice is not complied with, a company may apply to the court for orders, which can include a "freezing" or restriction on the shares.

United States: The U.S. approach is more focused on reporting requirements under the Corporate Transparency Act (CTA), which aims to record beneficial owners. While there are penalties for non-compliance, they are generally focused on fines and criminal liability for the owners rather than an automatic "freezing" by the company itself.

C1 We propose to update RG 5 (Relevant interests and deemed economic interests) to:

(a) provide guidance on deemed economic interests, including guidance about:
- (i) when a person is considered to have a deemed economic interest under s671AA and 671AQ; (ii) the basic rule for deemed economic interests for physically settleable derivatives in s671AA and non-physically settleable derivatives in s671AF;
- (iii) other requirements for calculating deemed economic interests;
- (iv) the extensions to the basic rule for deemed economic interests in s671AB–671AE and s671AG–671AI; and
- (v) the exceptions where a person is not taken to have a deemed economic interest in s671AL–671AQ;

(b) provide guidance on offsetting short positions, including guidance about:

(i) when a person is considered to have an offsetting short position under s671AS–671AX;
(ii) the basic rule for offsetting short positions in s671AS; and (
(iii) exceptions and extensions to the basic rule for offsetting short positions under s671AX;

(c) incorporate consequential amendments to reflect new sections updated or inserted by the Amending Act, including new s608A;

(d) reduce or, where appropriate, remove guidance dedicated to substantial holding notices (as we propose to move this guidance to RG 222); and

(e) rename the guide Relevant interests and deemed economic interests to reflect its expanded scope, which is focusing on the concepts of relevant interests and deemed economic interests.

C1Q1 Do you agree with our proposal?

C1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians are recognised as the largest shareholders of Australian listed (and some unlisted) companies - these shareholdings are held as a nominee or bare trustee and not as the beneficial owner. The custodian has no beneficial rights to the shares it holds and as a bare trustee acts on the authorised instructions of its clients pursuant to the contractual arrangements agreed between custodian and client.

The custodian cannot vote, sell, or seek to influence the company's business or participate in any corporate event without instruction from its client (who has control of their actions as owner of the shares). Custodians act purely as a clients' agent in the local market and support clients through connectivity to market infrastructure, expertise in laws and regulations, and a general understanding of the market environment and how to navigate it.

When it comes to substantial shareholder declarations, custodians and nominees are not considered to have a relevant interest in the securities they hold on behalf of their clients for the purpose of determining a substantial shareholding. Section 609 of the CORPORATIONS ACT 2001 states that "A financial services licensee (including custodians) does not have a relevant interest in securities merely because they hold securities on behalf of someone else in the ordinary course of their financial services business. This means custodians are not considered substantial holders for disclosure purposes."

ASIC Regulatory Guide 5 RG 5 explicitly recognises that custodians and nominees, when acting as bare trustees or agents for clients, do not have a relevant interest in the securities they hold for clients. Therefore, they are not required to make substantial holding disclosures in their own name.

There is no circumstance in which a custodian's holding in a company will meet the definition of beneficial ownership by the custodian in its own right. The laws and regulations put in place to support the public beneficial owner register should not require a custodian to provide its list of owners or shareholders for a public beneficial owner register as the custodian does hold an interest recognised as a beneficial owner.

With regards to derivatives, custodians are generally not registered holders of derivatives and may have no visibility of ownership structures.

C2 We propose to update RG 9 (takeover bids) to:

(a) amend legislative references and guidance to reflect sections updated or inserted by the Amending Act; and

(b) simplify and shorten the guidance consistent with ASIC's commitment to regulatory simplification.

C2Q1 Do you agree with our proposal? Agreed

C2Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

ACSA has no comment on these proposals

C3 We propose to update RG 222 (Substantial holding disclosure and tracing requirement) to:

(a) incorporate substantial holding disclosure guidance from RG 5;

(b) incorporate guidance on tracing notices from Regulatory Guide 86 Tracing beneficial ownership (RG 86), and withdraw RG 86 after RG 222 has been published;

(c) amend legislative references and guidance to reflect sections updated or inserted by the Amending Act;

(d) include guidance about the new ASIC freezing order powers under the Amending Act; and

(e) rename the guide Substantial holding disclosure and tracing requirements to reflect its broadened scope.

C3Q1 Do you agree with our proposal?

C3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Custodians provide essential asset safekeeping and related services to the financial services sector, including institutional superannuation funds and investment managers. Omnibus accounts support this objective and enable new investors—both domestic and offshore—to access the market efficiently and in a timely manner. Custodians do not (and cannot) second-guess client investment decisions or override proper instructions.

In considering enforcement actions, the regime should recognize the layers that may exist between a custodian and the ultimate beneficial owner. Enforcement should not unfairly penalise shareholders or unit holders who have complied where others have not, as this can create market inefficiencies and unintended financial impacts for compliant beneficial owners.

Information-collection systems should account for the nature of custody relationships and the high volume of daily transactions processed by custodians' clients. The regulated entity should be responsible for gathering the information and required to follow the custody chain to determine beneficial owners. Because a single beneficial owner may directly or indirectly use multiple custodians, only the regulated entity can consolidate a complete view of who may meet beneficial ownership criteria.

Freezing or blocking positions could generate significant negative press and lead to a reassessment of the risk of investing in the Australian market if the regime is perceived to allow assets to be frozen despite full compliance with the law.

ACSA recommends that custodians, nominees, and bare trustee structures are explicitly catered for regarding freezing powers. There needs to be a distinction between beneficial from legal ownership and recognition of the specific role of licensed custodians in Australia, including how freezing notices are applied and how information requests regarding related parties/associates are treated.

Where a custodian has complied with a tracing notice but an underlying party does not, any freezing notice affecting custodial holdings should be applied by the party servicing the non-complying party, not via the company, registry, CSD, or similar venue. A licensed custodian's holdings should not be frozen through a registry; instead, the intermediary facing the non-complying party should freeze the relevant holdings on its own books and records. This limits the impact to the non-complying party and avoids contagion to other investors. Freezing at the registered holder level due to non-compliance "down the custody chain" risks unintentionally freezing assets held for Australian superannuation funds and foreign sovereign funds, creating broader market and sovereign risk.

It would be beneficial for ASIC to explain how freezing notices will be enforced in practice, using specific examples or scenarios, particularly given that developed-market nominee account jurisdictions do not generally apply freezing orders to assets to such a degree in cases of non-compliance.

Further clarity is needed on how "uninvolved parties" are protected in omnibus accounts, given the operational difficulty of isolating specific holdings within a pooled position, especially where multiple layers of ownership exist. There remains limited practical guidance from ASIC on applying freezing orders in omnibus accounts, notwithstanding the updated language in RG222 and Information Sheet 151.

Could ASIC please define "uninvolved parties" in its regulatory guidance to ensure nominee companies and similar entities are appropriately protected.

If custodians are required to establish a process of freezing a specific % of holdings for a specific client in their systems, this may require a technology build, and sufficient time for budgeting, analysis of downstream impact, and implementation should be granted, i.e. an extension of the 4th December 2026 effective date should be considered with regards to freezing orders.