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# Submission to Consultation paper 387 – Enhanced beneficial ownership disclosure: Proposed legislative instrument, form and guidance

## Purpose

AustralianSuper welcomes the opportunity to provide feedback on Consultation Paper 387 – Enhanced Beneficial Ownership Disclosure.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Over 3.6 million Australians are members of AustralianSuper, and we manage over $410 billion of members' assets on their behalf.

We are a large Australian institutional investor with long term exposure to Australian listed equities, and make use of exchange-traded index instruments, including SPI futures, as part of ordinary portfolio construction and risk management activities.

AustralianSuper is supportive of a disclosure framework which focuses on instruments that may give rise to issuer level influence or control. This submission seeks to provide some practical, policy focused observations on the proposed scope and implementation of the regime, informed by our experience as a long term institutional investor.

## Summary of key points

AustralianSuper supports ASIC's objective of enhancing transparency around beneficial ownership and economic exposure. We therefore raise two key practical issues for consideration:

1. The proposed application of CP 387 to **broad index based derivatives, including SPI futures**, adds complexity to disclosure and risks extending issuer level disclosure concepts to instruments that do not facilitate issuer-specific influence or control.
2. The proposed **implementation timeline** does not sufficiently account for the complexity of embedding the new concepts in a way that produces consistent and meaningful disclosure outcomes.

### 1. Index derivatives and SPI futures

AustralianSuper is concerned about the proposed treatment of broad, index based derivatives, particularly SPI futures, under the CP 387 framework.

SPI futures are commonly used by institutional investors for portfolio implementation and risk management purposes, including cash equitisation, transition management and liquidity management. These instruments do not confer voting rights, discretion, or the ability to accumulate issuer specific positions. Any exposure to individual listed entities arises mechanically from index construction and weighting and is inherently diversified.

Although CP 387 proposes a constituent level look-through approach for index derivatives, we consider that there remains a misalignment between the policy objective of improving corporate transparency by showing who ultimately owns, controls and receives profits from listed entities, and the application of this concept to certain instruments that do not in practice give rise to this outcome. For example, the inclusion of SPI futures risks capturing high-volume, mechanical activity that does not raise the transparency concerns which the proposed reforms are intended to address.

As a result, disclosures relating to index futures may:

- provide limited insight into issuer level influence or control;
- increase compliance complexity without improving market understanding; and
- extend the regime beyond its intended focus on economic positions that may give rise to influence or control.

We therefore encourage ASIC to consider whether:

- broad, exchange traded index derivatives such as SPI futures should be excluded from the scope of the regime; or
- targeted carve outs or alternative approaches are appropriate, having regard to the index based and diversified characteristics of these instruments.

**2. Implementation approach**

AustralianSuper also notes the importance of a measured implementation approach. CP 387 introduces new concepts and calculation methodologies, including daily constituent level exposure assessments and delta adjusted derivative treatment. For large institutional investors with diversified portfolios and significant derivatives activity, careful design, testing and governance are required to ensure consistent and reliable outcomes.

In our view, implementing the proposals on an accelerated timeline materially increases implementation risk, including the potential for error and inconsistent market practice, which may undermine comparability and confidence in disclosures, and limit the effectiveness of the regime in meeting its stated objectives. Accordingly, we would encourage ASIC to consider a sufficient transition period, such as 12 months.

Further practical guidance would also assist in promoting consistent interpretation across the market to understand how thresholds are intended to be applied to index derivatives in practice, including aggregation methodology, calculation frequency, treatment of routine index activity such as rebalancing and rolls, and the measurement of economic exposure.

## Conclusion

AustralianSuper supports ASIC's objective of enhancing transparency around beneficial ownership and economic exposure in Australian listed entities. We consider that refinements to the treatment of index based derivatives and a considered implementation approach are important to ensure that the final framework remains appropriately targeted, proportionate and effective.

We are open to dialogue with ASIC as the proposals are finalised, and would welcome the opportunity to discuss practical implementation and timing considerations.

If you would like to discuss any aspect of our submission further, please contact me on [redacted] or email [redacted].

Yours sincerely

[redacted]
Principal, Portfolio Compliance