BY EMAIL

To: Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

21 April 2026

Australia: Enhanced Disclosure of Ownership of Listed Entities Reform

The International Swaps and Derivatives Association, Inc. [1] ("**ISDA**") appreciates the opportunity to engage with the Australian Securities and Investments Commission ("**ASIC**") in relation to ASIC's consultation ("**Consultation**") on determinations it proposes to make under the *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Act 2025* ("**Reform**").

We refer in this letter to:

(a) the Consultation Paper 387: Enhanced beneficial ownership disclosure: Proposed legislative instrument, form and guidance dated March 2026 ("**Consultation Paper**");

(b) the draft ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument attached to the Consultation Paper ("**Draft Instrument**");

(c) the draft Substantial Holding Notice attached to the Consultation Paper ("**Draft Notice**");

(d) the draft ASIC Regulatory Guide 5 *Relevant interests and deemed economic interests*

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

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attached to the Consultation Paper ("**Draft RG 5**");

(e) the draft ASIC Regulatory Guide 9 *Takeover bids* attached to the Consultation Paper ("**Draft RG 9**"); and

(f) the draft ASIC Regulatory Guide 222 *Substantial holding disclosure and tracing requirements* attached to the Consultation Paper ("**Draft RG 222**").

ISDA has been actively engaged for many years in providing input on legislative and regulatory issues impacting global derivatives markets in major international jurisdictions, including Australia. ISDA would like to thank ASIC for its continual efforts to ensure that the Australian regulatory framework remains globally aligned with efforts to ensure safe and efficient markets.

Further to our correspondence with ASIC dated December 8, 2025 and February 16, 2026 regarding the implementation of the Reform, we set out in this letter our responses to a number of the proposals included in the Consultation Paper. We would be delighted to continue to engage with ASIC to assist with the implementation of this new regime in a manner that promotes properly informed and transparent markets in Australia, is proportionate, and is consistent with comparable jurisdictions internationally.

At the outset, ISDA wishes to acknowledge the policy underlying the new substantial holding disclosure regime in the Reform to increase the availability of companies' beneficial ownership information, support corporate transparency and contribute to the efficient operation of financial markets. ISDA also wishes to acknowledge ASIC's efforts in developing its policy on enhanced beneficial ownership disclosure and consideration of the regulatory and financial impact of its proposed approach.

As noted in our earlier correspondence, the material changes to the substantial holding disclosure regime in the Reform will have a significant impact on market participants, including our members, who will need to make material changes to their existing approaches, processes and systems for monitoring and managing disclosure, including as a result of the increased number of substantial holding notices that will need to be given, the material complexity in the new requirements for disclosure, and expanded requirements to provide documents. The significance and cost of this task, and the time it will take to update technology systems and related processes (including compliance processes), should not be underestimated.

We have set out below our comments in relation to a number of the proposals in the Consultation Paper.

Proposals B2 and B7 – Deemed economic interest due to non-linear pay-off derivatives

We refer to Proposal B2 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 *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. We also refer to the equivalent Proposal B7 in relation to offsetting short positions.

As an initial comments, ISDA has received feedback from its membership that, noting the reference to linear, symmetric pay-off profile is not expressly defined, and it may be helpful for ASIC to provide further guidance, including illustrative examples of instruments that would be considered to have, or not have, a linear symmetric pay off profile. In addition, ISDA suggests that market participants may benefit from further clarification in the relevant regulatory guidance on what constitutes a "generally accepted standard pricing model," including non exhaustive examples. It is expected that this would assist market participants in applying the requirements in a consistent and comparable manner.

ISDA has sought feedback from members as to whether the delta-adjusted approach set out in the Consultation Paper or a full notional approach (e.g. as provided for under the Hong Kong regime) is preferable.

As noted in our earlier correspondence, a delta-adjusted approach creates significant and time-consuming challenges and complexity in calculation and disclosure. While sell-side entities may have highly sophisticated models, counterparties (including corporates, super funds, institutional investors etc) may face significant difficulty and operational burden where they are required to make delta-adjusted calculations, especially where the buy-side entity does not execute enough of these products to economically justify the relevant knowhow. Despite these complexities, ISDA has received feedback from its membership that the delta-adjusted approach could provide a more accurate and provide a better reflection of actual economic exposure.

By way of comparison to the delta-adjusted approach, the Hong Kong regime provides for a calculation mechanism which refers to, generally speaking, the number of shares that may have to be delivered to the person, or by the person, on the exercise of rights under the derivatives, the number of shares by reference to which the amount payable under the derivatives is derived or determined, or (in the case of stock futures contracts) the contract multiplier times the number of contracts the person holds.[2] ISDA notes that adopting a full notional approach would provide a simpler, clearer and more objective disclosure regime which relies on number of underlying securities referenced under the derivative in a manner that facilitates regulatory simplification and reduces operational burden. A full notional approach will be consistent with how physically settled derivatives are disclosed and this approach could also reduce the risk of inconsistent

2 Securities and Futures Ordinance, 322m SFC Part XV Outline, paragraphs 2.5.1 and 2.5.2 (including noting paragraph 2.5.2 provides further guidance where it is not possible to determine precisely the number of shares in which a person is taken to be interested (or have a short position)).

application and inaccurate disclosures. The Hong Kong approach may also more comfortably deal with market rallies, whereas a delta-adjusted approach may lead to the sudden disclosure of many derivatives despite there being no new trading activity. In this regard, ISDA considers that the Hong Kong approach promotes a more accurate reflection of market movements in comparison to a delta-adjusted approach.

However, ISDA recognises that adopting a full notional approach would be likely to involve the disclosure of higher deemed economic interests than other jurisdictions that have required a delta-adjusted approach and may present certain challenges in the context of more complex derivatives. In this regard, it is important to acknowledge that the risk of over-reporting which is presented by the full notional approach may result in disclosures being less useful from an investor standpoint and the challenges. The full notional approach increases the likelihood of the need to file more regularly, which carries with it the accompanying documentation and other prescriptive requirements that apply to the Australian disclosure regime (which are materially more onerous than Hong Kong, including criminal penalties for failure to comply). As noted further below in respect of Proposal B10, the requirement to calculate delta on a daily basis will be onerous, specifically for buy-side clients. As an example, while a client will monitor whether a 1-year cash settled call option is in/out of the money during the term, it is unlikely they do so on a daily basis, especially if some distance from the strike. Buy-side entities are currently also unlikely to frequently monitor physically settled derivatives. ISDA has received feedback from its membership that it is unlikely such clients have existing capability to calculate delta and even less so on a daily basis.

In the event that ASIC retains the delta-adjusted approach:

(a) ISDA respectfully submits that, due to the complexities with the calculations required to implement the delta-adjusted approach and for the other reasons identified in this submission (including regarding complexity of the regime and onerous requirements to provide documentation, for example), market participants should be afforded an additional two business days to submit substantial holder notices. It is submitted that this would provide more accurate disclosure to the market and reduce the risk of errors. This is likely to be particularly important where counterparties are reliant on market makers for delta information, as additional time will be required for market makers to collate and provide this information to their counterparties;
(b) ISDA respectfully submits that it will be important to provide clarity and flexibility to make such calculations using readily observable inputs and a range of inputs. There will be no one "correct" deemed economic interest for a derivative as it depends on the variable inputs used, and the relevant inputs may vary from market participant to market participant. ISDA would be grateful if ASIC's guidance could provide further clarity and convey ASIC will afford market participants flexibility

to make such calculations using readily observable inputs and a range of inputs, to the extent possible; and

(c) given the complexity of calculations, ISDA members have noted that it is likely buy-side clients will request delta calculations from the derivative writer. In light of the proprietary nature of the commercially sensitive models used to make these calculations, we expect many derivative writers will be reluctant to do so where it may result in a third party, whether it be a regulator or a listed company, seeking access to the model to verify that it satisfies the requirement of being a "generally accepted standard pricing model". In any case, provided such calculation uses a "generally accepted standard pricing model" and that is certified by the person making the calculation (whether that person is the taker, the derivative writer or another person), it would benefit and provide certainty to the industry if firstly ASIC provides relief to a person in respect of its requirements to provide information in its substantial holding reporting to the extent that the person has relied on calculations provided by the counterparty to the derivative (or any other person who provides the relevant calculations), and similarly that the providers of such calculations are also not liable for providing such determinations (to the extent it is within ASIC's power to do so), and secondly that there is no requirement to disclose the model used. In the absence of any relief for calculation providers, sell-side entities may be reluctant to provide such information creating a further burden on the buy-side/institutional client.

Separately, ISDA has received feedback from its membership that it would be helpful for ASIC to clarify when it considers a derivative to have a linear, symmetric pay-off profile and also as to ASIC's expected treatment for commonly traded products (such as market traded equity index futures (e.g. SPI 200) and vanilla equity swaps or total return swaps without embedded optionality), and would welcome clarification from ASIC on this issue.

Proposal B4 and B8 – Deemed economic interest in securities in a basket or index

ISDA is supportive of an exemption for basket and index securities (and for volatility and variance derivatives, which are discussed separately below).

As conveyed in our earlier correspondence, ISDA respectfully submits that the following types of non-physically settable derivatives should be exempted from the regime:

(a) various specified significant indices should be expressly excluded (in addition to and without limiting the general exemption for basket and index securities), as their inclusion would create complexity for counterparties in calculating economic exposure. In particular, ISDA respectfully submits that the ASX 200, ASX 100 and ASX 50 indices be expressly exempted. Economic exposure to these indices should not, in any event, be indicative of an intention to acquire control;

(b) any positions in index futures or exchange-traded options referencing indices which may be Australia-focused, or where the indices contain one or more Australian issuers, irrespective of whether the applicable thresholds are satisfied, on the basis that exchanges would only allow trading over recognised indices and so, avoidance concerns should be mitigated;

(c) any over-the-counter derivatives positions, including but not limited to, total return swaps and options, referencing indices which may be Australia-focused, or where the indices contain one or more Australian issuers (including, in accordance with our submission set out above supporting ASIC taking an approach consistent with the Hong Kong regime);[3]

(d) any intra-group derivatives between wholly-owned entities, related bodies corporate and associated entities (as explained further in our previous correspondence); and

(e) any intra-day derivatives.

ISDA has received feedback from its membership that instruments such as equity index futures (for example, broad domestic market indices) are often used for portfolio level hedging and efficient market exposure, rather than as a means of acquiring indirect economic interest or influence over individual issuers. Treating these instruments in the same manner as single name or narrowly defined exposures risks conflating fundamentally different use cases. Accordingly, ISDA respectfully submits that exempting these types of instruments would be consistent with the broader policy intention of the regime.

In relation to intra-group trades, exempting these types of trades would be important as derivatives positions may well be entered into between group members to transfer the economic exposure under a derivative with a third party to the relevant risk management entity through back-to-back trades. While ISDA acknowledges that these reforms and CP 387 are predominantly related to non-physically settleable derivatives, providing a similar outcome on this issue (and many others in this submission) for physically-settleable derivatives would be helpful to market participants, if it was feasible for ASIC to do so.

Further, ISDA respectfully submits that intra-day trading should be exempt from the substantial holding requirements. This is because intra-day trading is not likely to be

[3] Beyond the types of indices and baskets described in the Hong Kong regime, we would be grateful for ASIC to consider whether it would be consistent with the policy objectives of the Reform to allow an exemption for derivatives which refer to an index which is, for example, a financial benchmark as described in section 908AB of the Corporations Act which is available for use beyond the individual transaction (e.g. a recognised index, even if that index does not meet the criteria described above in relation to the Hong Kong index exemption).

for the purposes of control, and may create additional confusion (and "add to the 'noise'") in the disclosures that are being made.

In relation to the specific proposal in each of Proposal B4 and Proposal B8, ISDA:

(i) supports the approach outlined in paragraph (a) of Proposal B4 and Proposal B8 (that the calculation is to be done 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). Members have noted that it would be helpful if ASIC could provide practical or worked examples of how to calculate a deemed economic interest for a derivative over an index;

(ii) in respect of paragraph (b)(i) of Proposal B4 and Proposal B8, notes that there is uncertainty as to whether the 5% deemed economic interest threshold refers to the deemed economic interest arising from each index or basket traded derivative alone or the entire holdings of the market participant. ISDA respectfully submits that the relevant deemed economic interest should be the interest arising from the index or basket in respect of each derivative;

(iii) in respect of a paragraph (b)(ii) of Proposal B4 and Proposal B8, respectfully submits that the number of securities in a class of underlying issued securities in which a person has a deemed economic interest should be zero if the securities in a basket or index represent less than 30%, by value, of all securities in the basket or index. Adopting a 30% threshold would align with the approach taken in Hong Kong and substantially simplify the understanding and management of reporting obligations. A practical circumstance where a 20% threshold would cause unintended consequence is for a cash-settled derivative basket over the four major Australian retail banks, which is a common strategy to gain exposure to the Australian financial sector as a whole and not a strategy to gain influence over any of the underlying shares. The existing drafting in the Draft Instrument would give rise to a deemed economic interest in each of those banks where the basket is evenly weighted. Given the size of the Australian equities market in comparison to other global markets, there may be other similar market sector derivative basket exposures which commonly involve a small number of shares with the intention being to gain sector exposure rather than influence over any particular entity.

ISDA also respectfully requests that ASIC clarify whether the basket or index weighting is determined solely on entry into the derivative or needs to be calculated on a daily basis. Requiring daily recalculation and monitoring of basket or index weights, where index weightings are continuously shifting or a share in a large basket is delisted, would be significantly burdensome and ISDA submits that the weighting should be determined solely on entry into the derivative.

In addition, ISDA members have raised that there is some inconsistency regarding the drafting of Proposals B4 and B8 as set out in the Consultation Paper and the corresponding sections 11(3) and 15(3) of the Draft Instrument. In particular, the Consultation Paper includes "or" at the end of paragraph (i), whereas the Draft Instrument includes "and" at the end of paragraph (i). As a result, it is unclear whether it is intended that both conditions need to be satisfied for the number of issued securities in a class of underlying issued securities in which a person has a deemed economic interest to be zero. We would be grateful for ASIC providing clarity in this regard, including in Draft RG 5.

ISDA has also received feedback from its membership that it would be helpful if ASIC could provide guidance on the calculation of deemed economic exposure for, and the application of the tests set out in Proposal B4 and B8 to, types of basket derivatives where the calculation of the final exposure determined at maturity may differ from the composition of the basket (for example, worst-of-basket derivatives where the settlement amount is linked to the worst performing underlying in the basket).

Proposal B5 – No exception for volatility or variance derivatives

We note that ASIC proposes not to prescribe a specific exception for volatility or variance derivatives on the basis that the economic exposure a person attains from entering into variance or volatility derivatives would not result in a significant deemed economic interest under the proposed calculation method.

ISDA respectfully requests that ASIC include in the final instrument an exception that clarifies that the number of securities in a class of underlying issued securities in which a person has a deemed economic interest, or an offsetting short position, because of a volatility or variance derivative is zero. As noted in our February letter, the inclusion of these derivatives in the reporting under the Reform could be confusing, potentially misleading and very difficult to calculate – ultimately reducing and undermining the effectiveness of disclosure under the disclosure regime as amended by the Reform. Even if these types of trades do not give rise to a significant deemed economic interest, any uncertainty as to whether such a trade gives rise to a very slight deemed economic interest means that market participants need to consider the position in respect of these types of trades and potentially run complex calculations to determine whether any deemed economic interest arises from each relevant trade (and, if so, that deemed economic interest could potentially trigger a reporting requirement when combined with the other positions of the market participant and its associates). This would create a significant compliance burden and give rise to significant difficulties for appropriate monitoring and compliance processes for little market integrity benefit, particularly where ASIC has acknowledged in the Consultation Paper that the economic exposure a person attains from entering into variance or volatility derivatives is unlikely to materially influence the underlying securities of a listed entity.

Accordingly, ISDA respectfully submits that providing an exception would improve certainty and be consistent with ASIC's policy with regard to these derivatives.

Proposal B10 – General calculation rules

ISDA is acknowledges the policy rationale for the general calculation rules proposed in paragraphs (a), (b) and (c) of Proposal B10.

Daily calculations would be significantly burdensome for buy-side entities who, as explained above, may be unlikely to have the systems, processes and resources to calculate delta daily. As noted above with respect to Proposal B4 and B8 above, ISDA respectfully requests that, provided a calculation uses a "generally accepted standard pricing model" and that is certified by the person making the calculation (whether that person is the taker, the derivative writer or another person), it would benefit and provide certainty to the industry if ASIC firstly provides relief to a person in respect of its requirements to provide information in its substantial holding reporting to the extent that the person has relied on calculations provided by the counterparty to the derivative (or any other person who provides the relevant calculations), and similarly that the providers of such calculations are also not liable for providing such determinations (to the extent it is within ASIC's power to do so) and secondly that that there is no requirement to disclose the model used.

Members have also noted that the mandatory use of the closing price may be inappropriate where there is a suspension of trading or corporate action such as a share split or consolidation where the recent closing price would not be accurate. ISDA respectfully submits that, in these circumstances, there should be flexibility for market participants to make use of other valuations or prices, such as a volume-weighted average price over the relevant day. The ability for calculation agents to make adjustments to prices is a common tool used in financial markets to account for trading disruptions, and we respectfully suggest that providing for this flexibility would allow for calculations of deemed economic interests to provide a more accurate picture of those interests.

Proposal B11 – Client facing services and market maker exemptions

ISDA is supportive in principle of Proposal B11 to exempt licensed client facing service providers, market makers and the operators of clearing and settlement facility services. These are very important exemptions. However, members have expressed several concerns regarding the conditions that need to be met for the exemption to be available. More detail on these concerns is set out below.

Hedging on an aggregate basis

We refer to the condition in the client services exemption which imposes a requirement that the licensee deals in the derivative for the purposes of, relevantly, hedging "(on an aggregate basis)" an economic position of the licensee that has resulted from the licensee facilitating the obtaining of such an economic exposure by the client (section 19(b)(ii) of the Draft Instrument). We would be grateful for ASIC to consider whether the reference to "(on an aggregate basis)" is necessary and if so clarify what is the policy rationale for including this reference. An alternative, to provide more flexibility, could be to replace this with a reference to "(whether on an individual, aggregate or portfolio basis)" to clarify that this condition is not limiting the availability of the exemption to where hedging has occurred only on an aggregate basis.

Client to provide consideration

We refer to the condition in section 19(c) of the Draft Instrument regarding consideration. This condition is not included in section 671AO of the Reform and there does not appear to be a clear policy rationale for only allowing derivatives to have a zero value under the amended substantial holding disclosure regime only when the client must provide to, or at the direction of, the licensee any consideration that the licensee is required to provide under the relevant derivative to which the client is not a party. We respectfully submit that this condition is highly complex to apply, is not required in order to achieve the policy rationale for section 671AO of the Reform, and ISDA respectfully requests the removal of this condition.

Capacity to determine, influence or attempt to influence affairs

Each of the exemptions set out in sections 19, 20 and 21 of the Draft Instrument includes a condition that 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.

ISDA acknowledges that section 671AO(4)(b) provides that, in determining the exemption, ASIC should have regard to the likelihood that, and extent to which, the potentially exempt entity would exercise a capacity to determine, would influence, or would attempt to influence, the outcome of decisions about a Chapter 6C body's financial and operating policies. Members have expressed concern that this condition may have the effect of undermining the exemption as it applies in respect of the relevant licensee. The size of a particular hedge could give rise to a technical capacity to influence a listed entity's affairs in combination with other client and house positions of a licensee, especially in light of the breadth of the term "affairs". This is problematic for over-the-counter equity derivatives under which a hedging party retains voting rights.

We respectfully submit that this condition risks undermining the exemption and should be removed, which we consider is consistent with the policy aims of section 671AO.

Adequate systems

Further, the exemptions included in section 19(e), 20(c) and 21(c) of the Draft Instrument also require licensees to have adequate systems for the purposes of identifying derivatives or transactions to which those sections apply and it appears that, if a licensee does not have "adequate" systems, then all relevant derivatives do not have a zero value. ISDA respectfully submits that the existing drafting in the Draft Instrument leads to uncertainty for the entities seeking to rely on these exceptions that are required to make an evaluative judgment of the sufficiency of their systems for the exemption to apply. Regulated entities are generally subject to various regulatory requirements over which a regulator has oversight and these may be sufficient. Accordingly, ISDA would respectfully submit that these systems conditions be removed from the exceptions under Proposal B11.

If ASIC is not minded to remove that condition, we would be grateful for ASIC to take an alternative approach of:

(a) including a separate standalone requirement in the instrument for an entity that is purporting to rely on section 19(e), 20(c) and 21(c) that it must have adequate systems (but where the breach of this requirement does not mean that all derivatives which had been treated as having a zero value no longer have the benefit of each relevant section); and
(b) providing guidance on what will constitute an adequate system for these purposes, noting the existing descriptions in the paragraph RG 5.193 of the draft Regulatory Guide 5. Such guidance could include examples of measures ASIC considers that licensees should take to satisfy this requirement.

Further, ISDA respectfully requests that both the Draft Instrument and Draft RG 5 expressly clarify that, once the relevant threshold is reached and the exemption no longer applies, any information provided by market makers and client facing service providers is limited to portfolio level information for each sub category and does not extend to transactional level information. ISDA also respectfully requests that both documents expressly clarify that market makers and client facing service providers are not required, at any stage, to provide copies of any relevant agreements or transaction documents (including confirmations) in respect of their economic exposure.

Proposal B13 – When exempt licensees are to provide statements of interest and positions

Section 22 of the Draft Instrument provides that where licensees which are exempt in accordance with sections 19, 20 and 21 of the Draft Instrument are otherwise 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 operator of the listed entity.

Members have noted that this requirement undermines the effect of the exemptions set out in Proposal B12 where exempt licensees will still be required to calculate and verify exempt transactions. In the circumstances of these exemptions in which the relevant dealing is intended to facilitate, hedge or manage risks associated with client exposures or forms part of ordinary course market making, we do not consider that requiring statements of exempt interests is necessary to achieve the policy rationale of advancing the market's understanding of ownership and control over a listed entity. As such, ISDA respectfully submits that this requirement should be removed.

Proposal 14 – ASIC issued tracing notice

ISDA is supportive of ASIC not determining any further information to be disclosed in the content of an ASIC issued tracing notice.

Proposal 17 – Substantial holding notice

With regard to the Draft Notice:

(a) ASIC may wish to consider whether there should be separate forms for where there is a deemed economic interest and where there is only a relevant interest. In many cases, a person may acquire a substantial holding without any derivative-based holding. In those circumstances, a separate form for notices that do not involve a deemed economic interest could simplify reporting;

(b) ISDA respectfully submits that particulars of each transaction should not be required to be included. Market participants may enter into a significant number of trades that can result in an overwhelming volume of transactions to be included in the substantial holder notice, creating greater operational challenges in completing a substantial holder notice in the require time-frame;

(c) ISDA would be grateful if ASIC could provide further certainty regarding the substantial holder details it expects to be provided where the persons with a deemed economic interest are part of a large corporate group. ISDA understands that there are different existing practices and approaches in the market to including members of the corporate group and respectfully submits that requiring all members of a corporate group to be included in a substantial holder notice does not advance the policy rationale of the Reform;

(d) ISDA respectfully requests that the requirement to list the registered holder of securities in paragraph 4 of the Draft Notice be removed. As ASIC will be aware, holdings of securities giving rise to relevant interests are often intermediated and may involve one or more sub-custody arrangements. The requirement to name the registered holder of securities, along with the requirement to include all members of a corporate group in a notice, creates additional complexity in completing notices in the short time-frame in which they must be submitted;

(e) it is presently unclear whether footnote 6 to the Draft Notice applies equally to offsetting short positions as it does to deemed economic interests, noting that paragraph 6 of the Draft Notice does not include an equivalent reference to footnote 6. This creates some uncertainty as to whether agreements would need to be attached to reports of offsetting short positions;

(f) as a general matter, members have queried the need for the disclosure of names, addresses and signatures, including as this information may be subject to prohibitions under privacy laws (as described further below). The requirement to execute the substantial holding notice also introduces significant frictions in the filing of notices;

(g) ASIC may wish to consider providing worked examples of notices, which would be of considerable assistance to market participants to understand ASIC's expectations of the level of detail to be included in the form;

(h) ISDA has received feedback from its membership that, in relation to the disclosure required under item #2, clarification may be beneficial as to whether the numerator and denominator are intended to be based on "Total Voting Shares" or "Total Votes." This clarification may be relevant in circumstances where a single voting share may carry more than one vote, as the basis of calculation could materially affect the disclosure outcome; and

(i) it would be helpful for ASIC to include a non-exhaustive list in the relevant regulatory guidance of instruments that may give rise to relatable derivative based holdings to ensure consistency of approach by market participants.

Proposal B18 – Web-based form

ISDA members have noted concerns with the proposal to adopt a web-based form, where there may be challenges in completing the form, increasing operational burden and the number of steps needed to make notifications (for example, by requiring user registrations). If ASIC determines to adopt a web-based form, we respectfully request that the current image-based version be retained as an alternative.

Proposal B21 – Standard form documents and issues regarding disclosure of documentation

Disclosure of documentation

As noted in our previous correspondence, ISDA reiterates that the imposition of broad requirements to disclose documentation in addition to information creates significant complexity, adds material operational and compliance burden, and creates a risk of causing confusion for the market in the meaning of the information and documentation being disclosed, which could actually undermine the effectiveness of the new disclosure regime.

ISDA respectfully submits that ASIC allow, for deemed economic interests, key information (such as, the specification of cash or physical settlement, the underlying securities and the reference price) to be disclosed, rather than imposing a requirement to produce documentation. Requiring the production of underlying documentation for cash-settled derivatives would not be aligned with the approach taken in other comparable jurisdictions and would require significant changes to the reporting systems and processes that financial institutions use for compliance with disclosure regimes internationally. ISDA has received feedback from its membership that a requirement to disclose sensitive commercial documents may make institutions less likely to come into the Australian market. Transactional documents used in derivatives markets can be lengthy, resulting in unwieldy notices that contains information that do not further the policy rationale of corporate transparency. Requiring disclosure of confirmations would pose significant time challenges where confirmations are negotiated following the trade date. In particular, ISDA submits that the provision of this key information in summary form rather than a line by line disclosure per transaction would still support the Reform's objectives of properly informed markets in a manner more consistent with the approach taken in other comparable jurisdictions and reduce the already significant operational burden imposed on the market by the Reform, and reduce the (potentially unnecessary) complexity that full disclosure on a transaction by transaction basis with all supporting documentation would otherwise create. An alternative, by analogy to the disclosure for relevant securities lending arrangements,[4] would be to allow market participants to disclose a table summary rather than attach all relevant derivatives documentation. The provision of a pro forma summary template by ASIC could ensure that ASIC administers the degree of detail included in summaries while providing helpful certainty to the industry.[5]

4 *ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821.*

5 By way of example, article 11(3) of the EU Commission Directive 2007/14/EC prescribes certain information to be included in notifications, including: "(a) the resulting situation in terms of voting rights; (b) if applicable,

Our members have noted concerns that, in some circumstances, foreign laws may prohibit disclosure of certain information (such as names and addresses) and there may be commercial sensitivity for disclosing, for example, the parties to a derivative or the underlying short position. We note that international financial institutions may be subject to data privacy law restrictions in other jurisdictions where (i) express consent from a counterparty may be required before providing client data or (ii) prior approval of the foreign authority is required before sharing of certain data.

ISDA would be grateful if ASIC could consider providing exemptions to disclosure (or, in the alternative, permit the redaction) of information where that information would be contrary to any applicable law (e.g. foreign privacy restrictions).

ISDA understands from the Explanatory Memorandum for the Reform that the Reform intends to bring Australia's market transparency requirements into line with comparable jurisdictions.[6] To that end, we note that substantial shareholding notices in various comparable markets in the United States, the United Kingdom, Hong Kong, Singapore, and across Europe, do not require the inclusion of all trading activity in each file or, at least in the case of the United Kingdom, Hong Kong and Europe, the disclosure of related documentation. Our members have raised concerns that the current approach in Australia for the disclosure of deal documents is misaligned with comparable jurisdictions and the expansion of this approach to all equity derivatives will impose a significant operational burden on market participants in Australia. On this basis, ISDA respectfully requests that ASIC consider the approach taken in other leading comparable jurisdictions, particularly Hong Kong, and align the approach to be taken in the Australian regime more closely with the practices of those other jurisdictions, by requiring only position information for the various cash-settled derivative product types and a comparison with the most recent relevant position movements. There are substantial benefits of alignment for market participants with regional trading coverage that would ease participation in Australian financial markets.

Similarly, in the United States, we understand that at least for standard trades there is a market practice of market participants preparing a summary table of relevant information for cash-settled equity derivatives rather than filing the confirmation. Accordingly, we would respectfully encourage ASIC to refer to such cross-jurisdictional examples to ensure the requirements to disclose information and

the chain of controlled undertakings through which financial instruments are effectively held; (c) the date on which the threshold was reached or crossed; (d) for instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable; (e) date of maturity or expiration of the instrument; (f) identity of the holder; (g) name of the underlying issuer."

6 Explanatory Memorandum, paragraph 1.9.

documentation are proportionate and consistent with other major jurisdictions and ensure effective disclosure without imposing an undue compliance burden.

Lookback

ISDA further requests that required disclosure be limited to aggregate positions on derivatives and that ASIC does not apply a four-month lookback period in respect of the required disclosure. We note that such a long lookback period may marginally benefit market transparency but at the cost of imposing a significant burden on market participants. To the extent the four month lookback is relevant, noting that from a Corporations Act perspective it is only relevant for the minimum bid price rule (section 621(3) of the Corporations Act), then the four month lookback will apply once the person obtains a relevant interest. ISDA has also received feedback from its membership that, if the four-month lookback is required, further clarification is needed including how to handle discrepancies if daily position movements occur (which fluctuate as a result of daily delta calculations) versus the trades reported on the four-month lookback.

Practical challenges

Further, we have received member feedback that the changes to substantial holder notices will require a lot of time and cost to implement, and accordingly it is important for industry and counterparties to have certainty as soon as possible to commence these changes. The granular breakdown of deemed economic interests will entail significant system build, ongoing data maintenance and reconciliation burden and heightened risk of confusing the market with further detail to what are already complex documents.

We note in respect of section 608A of the Corporations Act (to be introduced by the Reform) that a disclosing market participant would need to depend on a counterparty agreeing to provide, and actually providing in a timely manner, relevant information. In this context, ISDA would be grateful to explore with ASIC whether an exemption for the disclosing party for liability or a ‘no action letter’ would be possible where the disclosing party has relied on information provided by a counterparty in relation to the counterparty’s hedges or other holdings and that information is incorrect.

In addition, our members have raised practical challenges for swap buyers where a swap writer’s hedge for the swap is another equity derivative. We note that the information to be disclosed by a swap buyer would depend on information provided by a swap writer, which may not be entirely transparent to the swap buyer and may change from time. As such, ISDA would be grateful to discuss with ASIC the disclosure requirements where critical information is not fully available.

Standard form documents

In relation to ASIC's specific proposal in B21, without limiting ISDA's submissions above, ISDA supports ASIC's proposals to prescribe the standard form documents that do not need to accompany a substantial holding notice. We consider that the master agreements included in the draft list generally captures agreements that are lengthy, in standard form and do not constitute useful information for the market regarding the reporting party's particular position.

In addition to the agreements identified in section 30 of the Draft Instrument, we would respectfully submit that the list of standard form documents include each of:

- the "Industry Standard Form Contracts" as defined ASIC's class no-action letter dated 2 February 2024 in respect of the application of the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* (Cth);
- written agreements commonly known as futures agreements or futures client agreements between a futures broker and a wholesale client or other generic terms of business and wealth management documentation (which may vary from market participant to market participant, but do not generally contains information which is expected to be relevant to properly informing the market);
- written agreements commonly known as master derivatives agreements;
- written agreements issued by industry associated commonly known as master confirmation agreements; and
- documents that are ancillary to such agreements and the agreements included in section 30 of the Draft Instrument (including, for example, schedules or addenda to those agreements, related credit support documents and definitional booklets). Related credit support documents and definitional booklets can be complex, lengthy and relatively standard in nature (acknowledging credit support documents between parties can have specific operational and other terms that govern the exchange of collateral between the relevant parties), and we respectfully submit that the disclosure of these would not enhance (and in fact would detract from) market transparency, and so ASIC should clarify that these credit support documents and definitional booklets should not be required to be disclosed.

In response to B21 Q4, we respectfully submit that only a summary of the key terms or a summary of the trade confirmation should be required, rather than the confirmation itself. We note that confirmations for over-the-counter equity derivatives can be lengthy, highly technical and include standardised provisions. Confirmations may also include personal information of counterparties which are individuals and employees of the relevant parties to the agreement. To provide clarity on what would be sufficient a summary for these purposes, ASIC may wish to prescribe the key terms consistent with the information identified to be disclosed in paragraph 13 of the Takeover Panel's Guidance Note 20: Equity Derivatives.

Proposal B22 – Equivalent foreign requirements exclusion

We refer to Proposal B22, which proposes 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.

We support ASIC's proposal to recognise these jurisdictions as imposing requirements that are equivalent to those under the Australian regime. As ASIC recognises, this exemption reduces the time, effort and compliance costs for entities subject to foreign law requirements without affecting the integrity of the substantial holding and tracing notices regime.

We would respectfully submit that the list in section 31 of the Draft Instrument be expanded to include Hong Kong and Canada. With regards to Canada, members have expressly noted that the imposition of the substantial holder notice requirements could act as a deterrent to Canadian companies which have expressed interest in dual listing in Australia.

Proposal C3 – Draft RG 222

ISDA is grateful for the guidance provided in Draft RG 222 regarding tracing notices, with particular reference to RG 222.134 to RG 222.137. ISDA respectfully suggests that ASIC further clarify the circumstances in which ASIC may disclose information it receives under a tracing notice given by ASIC as discussed in draft RG 222.137. As noted previously, members wish to understand whether this would involve the disclosure of information about counterparties to derivatives transactions and documents by ASIC to listed entities, their key persons or any other third parties.

We also note that draft guidance given in RG 222.167 regarding freezing orders. In this respect, ISDA would be grateful for ASIC's guidance on how freezing orders are likely to be exercised. In particular, ISDA respectfully requests that any such freezing order made does not restrict a counterparty's ability to, firstly, exercise rights (including, close-out netting rights and security) under the relevant derivative contract that gives rise to the deemed economic interest, and secondly, deal with its hedges (for example, the holding of physical securities) which relate to the relevant derivative contract that gives rise to the deemed economic interest. Members have noted that the consequences of being unable to deal with hedges creates significant market and credit risk.

Deadline for giving information

ISDA notes the time periods set out in section 671BA of the Corporations Act (to be introduced by the Reform) in respect of information that is required to be provided under section 671B(3) of the Corporations Act (to be introduced by the Reform).

The new substantial disclosure regime in the Reform imposes significant and extensive disclosure requirements, including in relation to documentation for a broad range of derivatives products. These requirements are materially more onerous than in comparable jurisdictions, including in relation to the imposition by the Reform of the requirement to produce underlying documentation for cash-settled derivatives.

To support the Reform's objectives of enhancing the disclosure and information available in the market, it is important that market participants have adequate time to appropriately source, and verify as accurate, all required information (and, if required despite the submissions above, all required documentation) before disclosing that information to the market. The current time periods set out in section 671BA of the Corporations Act (to be introduced by the Reform) are extremely short in light of the extent of the disclosure requirements in the Reform.

Accordingly, ISDA would be grateful for ASIC to consider extending the time periods in section 671BA of the Corporations Act (to be introduced by the Reform).

Timing

ISDA notes the 12 month implementation timeframe in the Reform, and that ASIC has noted in the Consultation Paper that the instrument, notice and regulatory guides are expected to be released in July 2026. This leaves potentially less than 5 months between finalisation of the instrument, notice and regulatory guides and the commencement of the new regime. The finalisation of the instrument, notice and regulatory guides is fundamental to the implementation of the Reform, and must occur to provide certainty before market participants finalise their updated processes and systems to comply with the Reform.

Given the complexity and wide-ranging impact of the Reform on systems and processes, ISDA respectfully submits that this does not allow sufficient time for market participants to properly develop, test and implement new reporting systems or significantly changed existing reporting systems and related legal compliance, technology, operations and processes, particularly as the systems and processes cannot be meaningfully finalised without the finalisation of ASIC's instrument, notice and regulatory guides. A truncated timeframe for implementation increases the likelihood of inconsistent interpretation of the requirements, operational strain and erroneous reporting.

ISDA

As noted in our previous correspondence, ISDA respectfully requests timing relief of 24 months, such as in the form of no-action relief, from the date of publication of the final instrument, notice and regulatory guides. ISDA respectfully requests that this timeframe is appropriate, taking into account the significant amount of work and time involved in complying with the Reform.

We would be very grateful for the opportunity to provide ASIC with any further detail that ASIC may require on these key matters and would be delighted to engage with ASIC further on these issues. Our members and other industry associations may also choose to make their own individual submissions in relation to the Consultation.

We would be very happy to discuss the matters set out in this letter, the Consultation Paper and the Draft Instrument at your convenience. Should you have any questions or desire further clarification on the matters discussed in this letter, please do not hesitate to contact [redacted]

Yours faithfully,

For the **International Swaps and Derivatives Association, Inc.**