Law Council OF AUSTRALIA

Business Law Section

21 April 2026

Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: rri.consultation@asic.gov.au

Dear ASIC,

Consultation Paper 387: Enhanced beneficial ownership disclosure: proposed legislative instrument, form and guidance: March 2026

1. These are the submissions of the Corporations Committee of the Business Law Section of the Law Council of Australia in response to ASIC's release of Consultation Paper 387 (**CP 387**), draft ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument (**Principal Instrument**) and draft Substantial Shareholding Notice (**Proposed Notice**).

Introductory comments

2. The Committee is supportive of the initiatives outlined in CP 387 and commend the work undertaken by ASIC to advance the efficient introduction and operation of the *Treasury Laws Amendment (Strengthening Financial System and other Measures) Act* 2025 (**Amending Act**) and ease transitioning to the new disclosure regime.

3. It is imperative that, in view of the changed practices concerning listed entity beneficial ownership disclosure that have existed for decades, market participants and their advisers have sufficient time to adapt to the new procedures. The Committee makes some further timing submissions below.

4. Instead of adopting a submission format that follows the list of proposals and questions in CP 387, our submission is grouped by the key issues that we believe should be addressed further in order of our assessment of their policy significance. The Schedule to our submission then addresses our response to each of the questions raised in CP 387 by reference to our primary submissions.

1. The Proposed Notice

1.1 Overview

5. The Committee supports the proposal to move from the existing forms 603, 604 and 605 and to adopt a single form to meet substantial shareholding disclosure obligations.

6. In supporting that initiative, we make the following submissions concerning the Proposed Notice.

1.2 A streamlined format for substantial shareholders without derivative interests

7. CP 387.69 notes that many substantial holders will not hold interests in derivatives, and poses the question whether it is preferable to provide a streamlined format for substantial holders without derivative interests.

8. The Committee would more strongly emphasise the point that a vast majority of substantial holders will not hold interests in derivatives. There are only a handful of significant market transactions per year involving complicated derivative transactions and a limited subset of investors that enter into derivative transaction on a regular basis, while non-derivative substantial holding notices are a daily and routine feature of the operation of Australia's securities markets.

9. This is a position we strongly made to Treasury on the bills for the Amending Act. A consideration of the financial impacts and compliance costs associated with the new regime should recognise that complicated forms, emphasising disclosure of transactions that are not being undertaken by most of the persons with a compliance burden, are extremely inefficient and confusing.

10. The Committee therefore strongly endorses an approach to the design of the Proposed Notice where a "yes/no" confirmation is available to certify whether there is any derivative based holding percentage required to be reported under the form. If the "no" confirmation is made, the aspects of the Proposed Notice should cease to be part of the form requiring completion. The Committee believes such an approach can be easily achieved from a design perspective.

11. The design of a simplified form could also allow for more "up front" disclosure of movements in "relevant interests", which are after all (1) the control-related interests that are relevant to takeover law compliance, and (2) as noted above, also the kinds of interests held by the vast majority of substantial holder notice filers. The Proposed Notice leads with a table of different types of non-derivative based and derivative based interests, and only provides relevant interest disclosure (the total of the non-derivative based holding percentage and the relatable derivative based holding percentage) on the second page and, while we appreciate that the Amending Act now mandates those disclosures (and thus it is the law, rather than ASIC, which has created the risk of relevant interests getting "lost" in a forest of derivative-based disclosures), we believe it would be useful to give disclosure of relevant interests great prominence.

1.3 Opportunity for a simplified presentation format

12. The Committee believes that the introduction of the regime offers an opportunity for ASIC to reflect on how the design of the existing form can be simplified and refined in a way that assists the efficient and clear communication of information concerning substantial shareholdings.

13. The current forms 603, 604 and 605 have remained largely unchanged for more than 35 years. In the experience of our members, aspects of the existing forms are dense and confusing—although the market is familiar with them, so there might be merit in considering allowing their continued use, in circumstances where the "no" derivative-based holdings certification is made, for a transitional period, noting that many investment entities may find it easier to continue in the old format for a time, allowing more time to update systems, despite the benefits of a new simplified format.

14. For retail investors we believe the key aspects of what is required to be disclosed are relatively simple—who is the holder that has a disclosable interest and what is that disclosable interest, and the change (if relevant).

15. Most of the balance of disclosure will only be of interest to technical readers—the target entity, professional investors and professional advisors.

16. Our members have been discussing a range of ways that disclosure may be simplified. Possibilities include:

    - Separate forms for relevant interest only and relevant interest plus derivative interest disclosures.
    - Transitional use of existing forms for relevant interest only disclosure as noted above.
    - If in on-line format, a drop down menu that allows selection of a relevant interest only holding and then hides the derivative based components of the form (similar to the approach taken by ASX in various forms).
    - Redesign of the form for further simplification. If it assists ASIC we attach an alternative style of presentation we have been discussing amongst our members.

17. The Committee would be very happy to engage in further discussions with ASIC on this topic as we believe there are significant benefits in terms of cost and efficiency that could be achieved in spending time now to explore this issue further.

1.4 Some Disclosure Improvements

18. The Committee believes there are some specific improvements that could be made to substantial shareholder reporting that would reduce financial impacts and compliance costs, without adversely impacting the policy underlying the new substantial holding disclosure regime in the Amending Act to increase the availability of companies' beneficial ownership information, support corporate transparency and contribute to the efficient operation of financial markets.

19. *First*, the obligation in the form to list all the entities in a corporate group who have relevant interests and associations. The Committee finds it unhelpful and inefficient to require a large corporate group that is subject to publicly available financial reporting to have to list page upon page of its subsidiaries. No investor is assisted by that kind of disclosure. The Committee also notes that, while we advise our clients that such disclosure is technically required and recommended in view of the penalties for non-compliance, market practice is haphazard at best.

20. The Committee suggests that ASIC should allow the parent entity of a corporate group that is the subject of publicly available financial reporting to disclose that it is providing a substantial notice for it and on behalf of its subsidiaries without having to list those subsidiaries in the Proposed Notice.

21. *Second*, the obligation to disclose the consideration paid for each transaction the subject of reporting in a substantial shareholding notice can be very complicated and confusing, particularly where there are a large number of on-market purchases being reported.

22. In our experience what target companies and market participants are looking for from that type of disclosure is the highest price paid in the last 4 months (as that would be relevant to disclosure if a takeover offer were to be made) and the average cost per security paid by the investor for its investment.

23. The Committee considers that this aspect of disclosure could be simplified by an obligation to disclose the highest price paid for securities under a new transaction disclosed in the notice (and the date of that transaction) as well as the aggregate price paid for securities under new transactions disclosed in the notice.

24. *Third*, we have some concerns regarding the obligation to disclose the address of individuals. ASIC will be aware of the work currently being undertaken in relation to privacy and security issues concerning director notifications. The Committee submits a similar issue arises here and should be addressed in the same way.

25. *Fourth*, the obligation to disclose the registered holder of the securities the subject of disclosure is not always able to be complied with (although where known, registered holder information is useful to target companies as it enables matching of registered holdings with substantial holder disclosure). In some situations, this information will simply not be known: by way of example, the borrowing of securities the subject of an Australian Master Securities Lending Agreement. The Proposed Notice should recognise that disclosure of the registered holder is only required where that is known.

26. In that regard, the reference to and obligation to enter a member identifier in the register contemplated by Principal Instrument paragraph 26 should also recognise that limitation.

27. The Committee acknowledges ASIC's power to implement some of the changes outlined above needs to be considered. However, we submit consideration could be given to implementation by way of class order under section 673 of the Corporations Act.

1.5 Machine-readable web-based format

28. In principle we support digital document lodgment and web-based lodgement procedures. However, care must be exercised to ensure that the financial impacts and compliance costs in facilitating information capture in these ways are minimised. It needs to be recognised that substantial shareholding disclosure needs to be made to target companies and securities exchanges and lodgement obligations arise for many types of investors, including foreign investors and individuals.

29. Our members are not systems experts, but offer, by way of an example, that we have not received well recently the complexity and registration requirements for filings now needed to be made under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

30. CP 387.72 indicates ASIC is giving further consideration to registration requirements for substantial shareholders or their advisors who use an online portal to submit the notice.

31. The Committee does not support registration requirements if that is the only way to lodge a notice with ASIC, but would support this as an option. The lodgement of substantial shareholding notices is time-sensitive and the disclosing entity may only have an episodic need to do so, may be outside Australia, and may not have Australian professional advisors. Comparative ASIC registration requirements such as a corporate key for ASIC company filings are clearly not an appropriate comparison to this disclosure obligation.

1.6 Standard form documents and accompanying documents

32. The Australian substantial holder disclosure regime is an outlier in its requirement for the disclosure to be accompanied by each agreement that contributed to the situation. Compliance by filers of substantial holder notices under the current regime in relation to the disclosure of such agreements is somewhat haphazard. The increased scope of the disclosure requirements introduced by the Amending Act will result in a significant operational and compliance burden, which we do not consider will contribute to achieving the objectives of the new regime.

33. *First*, we strongly support the initiative surrounding standard form documents as listed in Principal Instrument paragraph 30.

34. The Committee suggests the addition of the following standard form documents:

    - 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;
    - 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 paragraph 30 of the Principal 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 submit that the disclosure of these would not contribute towards achieving the objective on enhancing market transparency.

35. *Second*, we submit that ASIC should permit disclosure of the core terms of deemed economic interests, such as whether the instrument is cash-settled or physically settled, the identity of the underlying securities and the relevant reference price, without requiring market participants to lodge the underlying transaction documents. A document production requirement for cash-settled derivatives would depart from the position adopted in other comparable jurisdictions and would necessitate material changes to the reporting frameworks and compliance processes that market participants currently use to satisfy disclosure obligations across multiple markets. Market participants have also indicated to us that compelled disclosure of commercially sensitive documents may discourage participation in the Australian market. In addition, derivatives documentation is often extensive and highly technical, which would result in substantial holder notices becoming unnecessarily long and difficult to use, without materially advancing the underlying objective of market transparency.

36. In our view, disclosure of this information in a concise summary form would still promote the Amending Act's objective of supporting properly informed markets. That approach would better reflect the practice in comparable jurisdictions, while also reducing the significant operational burden otherwise imposed on the market. It would further avoid the additional and potentially unnecessary complexity that would arise if market participants were required to provide full transaction-by-transaction disclosure together with all supporting documentation. A practical alternative would be to adopt an approach analogous to that used for relevant securities lending arrangements, allowing disclosure by way of a summary table rather than requiring all related derivatives documentation to be annexed.[1] The provision by ASIC of a standard form summary template would also assist by establishing an appropriate and consistent level of detail, while giving market participants greater certainty as to ASIC's expectations.

37. Concerns have also been raised with us that, in some cases, overseas legal regimes may restrict the disclosure of particular information, including names, addresses or other identifying details. There may also be legitimate commercial sensitivity associated with disclosing matters such as the identity of derivative counterparties or details of underlying short positions. International financial institutions may, for example, be subject to data protection or secrecy laws in other jurisdictions under which either counterparty consent is required before client information can be disclosed or prior approval must be obtained from a relevant foreign regulator before certain information may be shared.

38. Against that background, we ask ASIC to consider introducing an exemption from disclosure, or alternatively permitting redaction, where the disclosure of particular information would contravene an applicable law, including foreign privacy or data protection requirements.

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1 ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821

1.7 Exempted foreign listings

1.7.1 Scope of exempt jurisdictions

39. The Committee supports the approach taken in Proposal B22 to declare the substantial holding disclosure requirements of certain foreign jurisdictions (New Zealand, the United Kingdom and the United States of America) in Principal Instrument paragraph 31, so that entities subject to those requirements and holding shares or CDIs listed on Australian markets are exempt from the Australian substantial holding disclosure requirements.

40. The equivalence exemption mechanism appropriately recognises the comparability and general equivalence of the reporting and disclosure requirements of other jurisdictions and regulated markets, and prevents “double up” requirements and compliance costs for issuers without affecting the integrity of the substantial holding and tracing notice regimes. The criteria ASIC has adopted for assessing equivalence in CP 387 paragraphs 85(a)–(c) are, in our submission, appropriate and proportionate.

41. However, we submit that:

    (a) the list of jurisdictions proposed to be declared equivalent ought to be expanded to include Canada, so as to avoid an increased compliance burden that is disproportionate to any the marginal increase in market transparency; and

    (b) alternatively, the interests in entities with “Foreign Exempt Listing” status on the ASX ought to be treated separately to foreign entities with a primary or a dual listing on ASX.

1.7.2 Equivalence of Canadian substantial holding disclosure regime

42. Canada’s substantial holding disclosure regime, administered by the Canadian Securities Administrators under National Instrument 62–103 and the applicable provisions of provincial securities legislation, we submit, satisfies each of the equivalence criteria identified in paragraph 85 of CP 387.

43. The Canadian substantial holding disclosure regime includes the following features:

    - **reporting threshold**: the early warning system imposes a reporting obligation when a person acquires beneficial ownership of, or the power to exercise control or direction over, 10% or more of the outstanding securities of a class of voting or equity securities of a reporting issuer (including convertible securities and rights to acquire voting or equity securities). Once the initial 10% threshold is crossed, further early warning reports and news releases are required for every increase or decrease of 2% or more in the acquirer’s holdings, for every material change in information contained in a previously filed report, and if the acquirer’s holdings fall below the 10% reporting threshold. We also understand that the reporting threshold drops to 5% where the issuer becomes the target of a take-over bid;

- **disclosure timing**: once the 10% threshold is crossed, the acquirer must: (a) issue and file a news release containing prescribed information before the opening of trading on the next business day following the acquisition; and (b) file an "early warning report" within two business days of the acquisition;
- **equity derivatives reporting**: the early warning system extends to, and takes account of, interests arising from equity-settled derivatives in circumstances where the party holding the derivative has the ability to obtain the underlying voting or equity securities or to direct the voting of such securities held by a counterparty; and
- **System for Electronic Disclosure by Insiders**: SEDI is an electronic filing system through which insiders of Canadian issuers disclose their security ownership and related transactions. Reporting insiders include directors, certain senior officers and substantial securityholders (being securityholders with a 10% interest or greater). An initial insider report is required to be filed within 10 calendar days of becoming a reporting insider, and subsequent insider reports must be filed within five calendar days of any change in beneficial ownership (this is not dissimilar to ASX requirements for an Appendix 3X ("Initial Director's Interest Notice") or an Appendix 3Y ("Change of Director's Interest Notice")). SEDI promotes market transparency by providing a public, centralized electronic record of insiders' ownership of, and transactions in, an issuer's securities, allowing investors and regulators to monitor insider activity and assess whether insiders are increasing or decreasing their economic exposure to the issuer.

44. These requirements are sufficiently "equivalent" to the Australian regime (given the similarities in the timing of disclosure obligations, the ongoing reporting of movements in holdings, and the coverage of equity-settled derivatives) to justify the same treatment as is proposed for New Zealand, the United Kingdom and the United States.

45. Whilst acknowledging that the reporting thresholds are higher than the Australian regime, the features of the Canadian disclosure regime make it apparent that extending the equivalence declaration to Canada would not diminish the protection of securityholders or the integrity of the substantial holding and tracing notice regimes, as the disclosure obligations are comparable to those of the three jurisdictions ASIC has already identified.

46. ASIC has previously recognised the comparability and general equivalence of the TSX and ASX in other fundraising contexts. For example, ASIC Regulatory Guide 72 (*Foreign securities: Disclosure relief*) includes the TSX in the class of "approved foreign markets" for the purposes of several ASIC instruments, on the basis that it is "comparable to the ASX market in terms of being fair, efficient, well-informed and internationally competitive" (ASIC RG 72.56).

47. Similarly, ASX accepts equivalence for the TSX substantial holding disclosure regime—ASX Listing Rule 3.17.3 and 3.17.4 references "equivalen[ce] to Part 6C.1 of the Corporations Act" and ASX regulates issuers with a primary listing on TSX as having to comply with that requirement (by reason of the equivalence).

48. Subjecting entities that are already complying with the Canadian disclosure regime to overlapping Australian substantial holding disclosure obligations imposes a compliance burden that is disproportionate to any marginal increase in market transparency; particularly where ASIC has recognised those markets as “well-informed”.

49. Failing to extend the equivalence declaration to Canada may reduce the attractiveness of the ASX for TSX-listed companies considering a primary or foreign exempt listing on the ASX, as those companies would face duplicative substantial holding disclosure obligations not borne by their counterparts listed in New Zealand, the United Kingdom or the United States. Recognising Canada as an equivalent jurisdiction would complement ASIC’s broader capital markets agenda of promoting internationally competitive and attractive public markets.

1.7.3 Two-tiered approach: exception for foreign exempt listings

50. An ASX foreign exempt listing is for entities listed on another securities exchange that wish to have a secondary listing on ASX and that meet certain eligibility requirements. Entities in this category must comply primarily with the rules of their home exchange and are exempt from most of ASX’s Listing Rules, though it is important to note that entities with an exempt foreign listing must comply with ASX Listing Rules 3.17.3 and 3.17.4. Other than for New Zealand companies, high financial thresholds apply for a company to be admitted as an ASX Foreign Exempt Listing. If the entity is not a qualifying New Zealand entity, it must also have at least A$200 million operating profit before tax for each of the last three years or, at the time of admission, have net tangible assets of at least A$2 billion or a market capitalisation of at least A$2 billion. Only entities listed on a stock exchange acceptable to ASX can be admitted to as a Foreign Exempt Listing, which are primarily the main exchanges in developed markets, considered to have broadly equivalent listing standards.

51. In *Advancing Australia’s Evolving Capital Markets* (REP 823), ASIC express its support for ASX’s proposal for consultation on lowering the financial thresholds for foreign exempt listings, including to make the ASX more attractive as a secondary listing venue for foreign entities. ASX noted in its submissions that it considered that the overall quality of foreign exempt listing could be maintained with a lower minimum size threshold because it is only available to companies listed on acceptable exchanges that have equivalent standards of rules and compliance.

52. In ASX’s most recent Foreign Entity Report for February 2026, there are 49 entities with foreign exempt listing status on ASX, the vast majority of which (45 entities) will be exempted as they are incorporated in either New Zealand or the United States. The remaining 4 entities are incorporated in Canada (3) or Jersey (1).

53. It is perverse to treat foreign exempt listed issuers differently, based on where they are incorporated, in circumstances where, as foreign exempt list, each entity is exempt from complying with the majority of ASX Listing Rules.

54. Further, entities with foreign exempt listing status often have a relatively small percentage of their issued share capital trading on the ASX:

Entity	CDIs trading on the ASX	Total common shares over which CDIs have not been issued
Capstone Copper	174,412,328	763,743,112
DPM Metals	16,266,604	221,434,508
NexGen	133,672,685	527,768,402

55. The imposition of Australian substantial holding disclosure requirements on shareholders of these entities imposes a significant additional burden. These shareholders are likely to hold and trade their shares on the entity's primary exchange and are required to comply with the substantial holder requirements of that primary exchange (which the ASX has already judged to be an acceptable exchange that has equivalent standards of rules and compliance).

56. Considered from the perspective of a substantial holder of shares in a foreign exempt listed entity, such a holder may hold their shares exclusively on the entity's primary foreign exchange and have no personal connection whatsoever with Australia. Such a holder may have no knowledge of the entity's secondary listing on the ASX, may not be aware that Australian substantial holding disclosure requirements apply to them, and may have no existing relationship with Australian legal or compliance advisers. In these circumstances, subjecting such holders to Australian substantial holding disclosure obligations represents a significant regulatory overreach and imposes an unnecessary and disproportionate compliance burden. It is unreasonable to expect substantial holders with no connection to Australia, who are already complying with the disclosure regime of the entity's primary exchange, to monitor and comply with Australian disclosure requirements in respect of a secondary listing of which they may not even be aware. Further, to the extent that a foreign exempt listed entity receives a "substantial holder notice" under the disclosure regime applicable to that entity, it is obliged to lodge that notice with ASX.

57. In that regard, we suggest that a separate category of exclusions apply to all foreign exempt listed entities.

2. Long derivative positions

2.1 Linear, symmetric payoff profile test

58. The Committee agrees that the reference to a non-physically settleable derivative with a linear, symmetric pay-off profile is appropriate terminology to distinguish between derivatives where the full notional amount of securities underlying the derivative should be disclosed and derivatives where a different measure should be used.

59. In that regard, we endorse the comments made at CP 387.13.

2.2 Delta disclosure based on generally accepted standard pricing models

60. The feedback from our members on the proposed calculative method was mixed, and the Committee therefore remains neutral on the calculation approach.

61. Some of our members believed that a European principles-based approach is appropriate.

62. Other members urged ASIC to consider whether an approach more aligned to current Takeovers Panel guidance, and looking simply at the notional number of securities underlying the derivative, would be a more proportionate and clearer approach. These members questioned the complexity of the delta-based calculation approach and (noting investment banks will typically be exempted from disclosure) expect many if not most entities required to report will have considerable difficulty applying it. They noted these difficulties will be compounded by the requirement for daily recalculations.

63. Selection and application of a pricing model may also be impossible for parties whose interest arises, through the extension provisions, under derivatives to which they are not a party. For example, if person A holds more than 20% voting power in person B, and person B has a deemed economic interest under a derivative in more than 5% of person C, then A will also have a deemed economic interest in person C, will be able to discover that interest through person B's disclosure, but may have insufficient information about the underlying transaction to select or apply a pricing model to calculate the level of its own interest.

64. Differences in the pricing model adopted by different reporting entities will also lead to differences in reported positions which reflect the choice of pricing model rather than differences in underlying transaction terms. This will be confusing to the market, and becomes potentially even more con-fusing under the extension provision—in the example above, A (if it was able to establish a basis to apply a pricing model) and B could be reporting different economic interests arising from exactly the same underlying transaction.

65. Finally members questioned the logic of applying different calculation methodologies to physically settleable and non-physically settleable derivatives when what is being measured is merely a deemed eco-nomic interest. We would further question the logic of this approach in the context of derivatives, where, in practice, the party with the "physical delivery" obligation does not have any interest in the securities (if it did, then the arrangement would give rise to a relevant interest, not a deemed economic interest) and physically-settleable positions may in practice be cash-settled.

2.3 Volatility or variance derivatives

66. The Committee notes ASIC's proposed position that no specific exception is necessary for volatility or variance derivatives, on the basis that those types of derivatives are unlikely to materially influence the underlying securities of a listed entity and would not result in a significant deemed economic interest under the proposed calculation method (CP 387.31).

67. In our view, the Principal Instrument should nevertheless make this position express by stating that a volatility or variance derivative gives rise to zero securities in the relevant class of underlying issued securities for the purposes of calculating any deemed economic interest or offsetting short position. Absent that clarification, the treatment of these products under the regime may be uncertain, difficult to administer and potentially misleading in practice. Even if such derivatives would rarely, if ever, result in a meaningful deemed economic interest, residual uncertainty as to whether they could produce a minimal deemed economic interest would still require market participants to assess those positions and, in many cases, undertake complex calculations on a trade-by-trade basis. That exercise would be necessary not only to determine whether any deemed economic interest arises at all, but also whether, when aggregated with other relevant positions and those of associates, it could trigger a disclosure obligation.

68. That outcome would impose a disproportionate compliance burden and create unnecessary complexity for monitoring and control processes, without any commensurate market integrity benefit. This is particularly so given ASIC's acknowledgement in CP 397 that the economic exposure obtained through volatility or variance derivatives is unlikely to materially influence the underlying securities of a listed entity. In those circumstances, an express exception would improve certainty, reduce avoidable compliance costs and better align the instrument with ASIC's stated policy approach to these products.

2.4 Index and basket thresholds

69. The Committee supports ASIC's approach to deeming an economic interest of zero for a basket or index of securities. The question is whether the percentages in paragraph 11(3) of the Principal Instrument are appropriate.

70. While some of the market participants we spoke to agree with the reasons for selecting those thresholds as explained in CP 387.29 and CP 387.30, others disagreed. Some market participants consider that, where securities in a basket or index comprise less than 30% by value of the basket or index as a whole, the number of underlying issued securities in which a person is taken to have a deemed economic interest should be zero. A 30% threshold would be consistent with the approach adopted in Hong Kong and would materially simplify the interpretation and administration of the reporting regime for market participants.

71. Market participants have identified a practical example of the difficulty that may arise under a 20% threshold: a cash-settled derivative basket over the four major Australian retail banks. That structure is commonly used to obtain broad exposure to the Australian financial sector, rather than to build influence in any one issuer. Another example of that sector weighting is Australian resources. However, under the current drafting of the Principal Instrument, an evenly weighted basket of that kind could give rise to a deemed economic interest in each of the four banks. Given the relative concentration of the Australian equities market, similar outcomes may arise in other sector-based baskets involving a limited number of constituents, notwithstanding that the commercial objective is sector exposure rather than influence over any particular listed entity.

72. The Committee also considers that ASIC should clarify whether the relevant basket or index weighting is to be assessed only when the derivative is entered into, or whether it must be recalculated on an ongoing basis. A requirement for daily recalculation and monitoring would be unduly burdensome, particularly where index weightings change continuously or where a constituent in a larger basket is delisted. In our view, the better approach is for the weighting to be determined at inception of the derivative, which would provide greater certainty and avoid unnecessary operational complexity.

73. The Committee further submits that the following types of non-physically settled derivatives should be exempted from the regime:

(a) 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 percentages in paragraph 11(3) of the Principal Instrument are satisfied, on the basis that exchanges would only allow trading over recognised indices and so, avoidance concerns should be mitigated; and

(b) any over-the-counter derivatives positions, including total return swaps and options, referencing indices which may be Australia-focused, or where the indices contain one or more Australian issuers.

2.5 Daily calculations

74. The requirement for daily calculations, as set out in paragraph 16 of the Principal Instrument, is onerous, particularly for those on the buy-side. As an example, where a person acquires a 1-year cash settled call option which may start out-of-the-money but fluctuate over the term of the option. While in our experience the person will monitor whether the option is in or out of the money during the term, it is unlikely they will do so on a daily basis (especially if there is some distance in the prevailing price from the strike). Except in the case of the investment banks, it is very unlikely that such the person has existing capability to calculate delta and even less so on a daily basis.

75. It is likely such persons will reach out to the derivative writer for such calculation. Provided such calculation uses a “generally accepted standard pricing model”, it would benefit and provide certainty to the industry if ASIC confirms the providers of such calculations are not liable for providing such determinations. In the absence, sell-side entities may be reluctant to provide such information creating a further burden on the buy-side/institutional client.

3. Short derivative positions

76. The requirement to disclose offsetting short derivative position is, of course, a requirement imposed by the Amending Act.

77. However, there is one aspect of the disclosure approach we wish to take issue with, which is the approach proposed by ASIC that for calculating the delta for a non-linear, symmetric payoff derivative the calculation method should separately determine a long value where a benefit is received from the increase in value or

securities (see CP 387.19) and a short value where a benefit is received from a decrease in value of securities (CP 387.33).

78. The Committee believes a presentation in this way would give a misleading impression of the actual economics on non-linear symmetric payoff derivative in many situations. It is only the net position that is relevant here and gross values would artificially represent the underlying positions referenced.

79. To promote disclosure of complex derivatives transactions (including without limitation, collars) in a way that achieves the objectives of the Amending Act, we request that ASIC allow market participants to disclose the "effective" position created by a relevant complex cash-settled derivatives transaction in a manner consistent with the approach in Hong Kong. The Committee notes the following from the SFC Part XV Outline on disclosure of interests in the context of structured derivatives:

> *"2.6.3.2 For a structured derivative (i.e. a single transaction) involving a combination of option positions over the same lot of shares, you can either report the long and short positions by adding individual option positions together or report the effective long and short positions of the structured derivative. For example, if you sell a call and purchase a put, both in respect of 1,000,000 of the same underlying shares you will have a short position under both options. Since both options are over the same block of 1,000,000 shares you would disclose your "effective" short interest i.e. in 1,000,000 shares—not 2,000,000 shares. However, long and short positions should be not netted off against each other. A digital option can be counted as 1 share."*

4. Investment bank exemption

4.1 Overview

80. The Committee strongly agrees with the policy observation at CP 387.41 that market making and client serving activities should be exempted as those activities may otherwise be subject to unnecessary reporting that would not ultimately advance the market's understanding of ownership and control over a listed company.

81. The Committee has reservations that some aspects of the regime proposed by ASIC would undermine the effectiveness of achieving that policy objective as outlined above.

82. The Committee notes that in terms of financial impacts and economic costs of the Amending Act, disproportionate costs will be borne by investment banks if the policy objective of the exception is imperfectly implemented.

83. Prime brokerage and derivative desks of investment banks support very significant trading activities that are important to the efficient operation of the securities market.

84. It would impede the efficiency of Australia's securities markers if unreasonable compliance costs were imposed on those activities where there is no regulatory advantage in doing so.

4.2 Disclosure obligation when holding a disclosable interest

85. CP 387.49 provides that ASIC proposes that where a market maker or client facing service provider, or foreign equivalent licensee (together, **exempt licensees**) acquires more than a 20% interest in voting securities of a listed entity, the licensees should provide a statement identifying its exempt interests. CP 387.52 notes an alternative threshold that might be considered of say 5% or 10%.

86. Principal Instrument paragraph 22(3)(e) includes an example note that indicates the aggregate exempt interests would need to be disclosed. In addition, subsequent exempt movements of more than 1% would need to be disclosed (Principal Instrument paragraph 22(2)(b)(ii)).

87. The Committee considers this disclosure is unnecessary and would impose unreasonable systems and compliance burdens on exempt licensees against a background where any client with a disclosable interest (which is the derivative information of interest to investors) would have disclosed that information.

88. CP 387.53 suggests that the circumstances that would require an exempt licensee to disclose this information would be rare. However, we are not so certain of this proposition.

89. In a fairly straightforward collar derivative transaction, an investment bank will manage its economic exposure through stock borrowing. Where the economic exposure exceeds 5% by a margin under the derivative, the stock borrowing undertaken by the bank (and therefore substantial shareholding position of the bank) will in our experience exceed 5%. For example, we note the following significant public collar transactions where the investment bank had a disclosable physical exposure exceeding 5%:

    - Galipea Partnership notices in AGL in 2022
    - Diamond Infraco notices in ATLAS Arteria in 2022
    - Spark Infrastructure notices in DUET in 2014
    - Consolidated Press notices in Echo in 2012

90. CP 387.56 suggests that the Proposed Notice include a tick-box to be completed when an exempt licensee has a reportable interest and are also relying on the exemption. In our submissions that should be the full extent of the exempt licensees disclosure obligation in this situation.

4.3 Condition concerning capacity to influence affairs

91. Principal Instrument paragraph 21(b) imposes a condition on the availability of the exemption where the entering of 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 a Chapter 6C body.

92. The difficulty with this condition is that in many cases where a derivative is written, the investment bank will likely hold physical hedge securities in the Chapter 6C body to manage its economic exposure under the derivative. It is axiomatic that if physical hedge securities are held the investment bank will at the very least have the

"capacity" to influence the affairs of the Chapter 6C body. It therefore follows that the existence of this condition means the availability of the exemption is in practice illusory.

93. Another approach is required to ensure the practical availability of an exemption to achieve the policy objective.

4.4 Condition regarding client provision of consideration

94. Paragraph 19(c) of the Principal Instrument introduces a condition relating to consideration that does not appear in section 671AO of the Amending Act. It is not apparent that there is a clear policy basis for limiting zero-value treatment under the regime to circumstances where the client must provide to, or at the direction of, the licensee consideration that the licensee is required to provide under a relevant derivative to which the client is not a party.

95. In our view, that requirement is not necessary to give effect to the policy underlying section 671AO. Rather, it appears to impose an additional constraint that is not reflected in the Amending Act itself and that may unnecessarily narrow the operation of the exception. For that reason, we consider that paragraph 19(c) should be removed from the Principal Instrument.

96. Removing that condition would better align the Principal Instrument with the text and apparent purpose of the Amending Act, while also avoiding unnecessary complexity in the application of the amended disclosure regime.

4.5 Condition regarding adequate systems

97. Paragraphs 19(e), 20(c) and 21(c) of the Principal Instrument appear to make the availability of the relevant zero-value treatment contingent on a licensee having adequate systems to identify the derivatives or transactions to which those provisions apply. As drafted, the consequence appears to be that, if a licensee's systems were later considered not to be "adequate", the relevant derivatives would fall outside the exception altogether. In our view, that approach creates unnecessary uncertainty for entities seeking to rely on the exemption, because it requires them to make an evaluative judgment about the sufficiency of their own systems as a precondition to the substantive operation of the relief. That is difficult to apply in practice, particularly where regulated entities are already subject to broader compliance and supervisory obligations that may address the same matters.

98. The Committee therefore considers that the systems-based condition should be removed from the exceptions contemplated by Proposal B11. If ASIC does not adopt that approach, a preferable alternative would be to separate the systems requirement from the operation of the zero-value treatment itself. In that case, the Principal Instrument could impose a standalone obligation on an entity relying on paragraphs 19(e), 20(c) and 21(c) to maintain adequate systems, without providing that any deficiency in those systems retrospectively disqualifies all relevant derivatives from zero-value treatment. It would also be helpful for ASIC to provide more detailed guidance on what will constitute adequate systems for these purposes, building on the discussion in draft ASIC RG 5.193 and including practical examples of the measures ASIC considers sufficient.

4.6 Exempt foreign licencees

99. CP 387.45 quite properly proposes that foreign persons performing the same exempt function as an Australian licensee have the exemption available to them, regardless of jurisdiction of incorporation. Our experience is that many derivatives of this nature are written by foreign licensees even where a global investment bank has a derivative business in Australia. There are a variety of business, prudential and regulatory reason why derivatives are written in this way.

100. CP 387 offers two possible formulations for foreign exemptions:

- a functional approach to equivalence, where the activities are authorised and regulated by an overseas regulator and where the entity is subjected to the same safeguards as for an Australian license (CP 387.46); or
- where ASIC has assessed the foreign jurisdiction as having regulatory regimes equivalent to the Australian framework (CP 387.47).

101. For simplicity, we prefer the first formulation as sufficient protections are afforded through the requirement of similar safeguards.

102. Whichever formulation is adopted, the Principal Instrument should also recognise that a derivative written by an overseas related body corporate of an Australian AFSL holder authorised to write derivatives business in Australia is exempted. The obligations imposed on the Australian licensee should be considered adequate to support ASIC supervision of licensee conduct.

5. Other Submissions

5.1 Regulatory and financial impact

103. There is no doubt that regulatory requirements around disclosure of beneficial ownership of securities of listed entities is one of the more important aspects of the efficient and transparent operation of the securities markets in Australia and involves a significant number of reporting events every day.

104. As such, it is clear to us as experienced corporate law advisors that reforms that simplify and streamline that disclosure obligation will be beneficial to Australian investors and are worth pursuing with some rigor as part of the implementation of the Amending Act.

105. In terms of regulatory and financial impacts that we believe may have negative impacts we note the following in order of our assessment of significance:

- additional costs to investment banks if the financial licensee exemption does not properly exempt licensees from disclosure obligations for their routine derivative business activities, particularly if new systems are required that are not required in other parts of their global derivatives businesses (see Section 4 of our Submission above);
- additional costs imposed on the market more generally from the more complex disclosure now required, this being of particular importance to entities which are frequently obliged to lodge substantial holder notices, for example, investment

entities, given these entities have existing compliance systems which will require significant modification to comply (and noting that in some cases the derivative disclosure required under the new substantial holding notice rules will overlap with derivative exposure reporting requirements applicable to financial sector companies); and

- additional costs and red tape impediments if web-based portal and registration requirements impede efficient lodgement by all disclosing entities.

106. Noting the foregoing, we point to the benefits if the Proposed Notice can be refined to remove reporting fields for derivative based holding percentages where no derivative positions are held and if the notice can be further simplified in the ways we have suggested.

5.2 Physically settleable derivatives and inference of association

107. The Committee submits that regulatory guidance should clarify the interaction between the new derivative-based holding disclosure obligations and the potential inference of association under section 12(2) of the Corporations Act, particularly in relation to physically settleable derivatives.

108. The "relatable derivative-based holding percentage" concept introduced by the Amending Act applies to physically settleable derivatives and requires the taker to ascertain the extent to which the counterparty has a relevant interest in underlying securities (for example, as a hedge). For non-physically settleable (cash-settled) derivatives, by contrast, the taker's deemed economic interest is calculated based on their economic exposure under the derivative, irrespective of the counterparty's hedge positions.

109. The requirement to disclose the relatable derivative-based holding percentage may necessitate inquiry into the counterparty's hedge positions. This creates a potential tension with the established understanding that the taker to an equity derivative who has no knowledge of, control over, or involvement in the writer's hedging strategy, would not (without more) result in that taker becoming an associate of the writer for the purposes of section 12(2) of the Corporations Act.

110. The Committee submits that ASIC should clarify in its regulatory guidance that the mere visibility by a taker of the writer's hedge positions, obtained for the purpose of complying with the relatable derivative-based holding disclosure requirements for physically settleable derivatives, does not (without additional indicia of shared purpose or concerted action) give rise to an association between the writer and the taker. Such clarification would be consistent with the exclusion in section 16(1) of the Corporations Act.

5.3 More time for transitioning

111. The Committee appreciates that a longer than normal implementation period has been allowed under the Amending Act to transition to the new regime by 4 December 2026.

112. While we suggest that the situation should be monitored as ASIC continues its consultation in coming months and develops its policy settings, we do see a scenario

where more time may be required to implement at least some of the reforms in the Amending Act. Settlement of ASIC's guidance is critical for market participants to be in a position to implement the reforms, as system builds can only begin in earnest once the ASIC guidance is finalised. This will leave participants less than 6 months to implement the reforms.

113. Due to the complexity of the reform, with the application of the law and regulation requiring interpretation, time will be required to build or substantially revise and test the systems to accommodate the requirements. The failure to properly implement the reform could have serious consequences, both in terms of market integrity (in the event of misreporting) and liability for those who fail to comply.

114. Consequently, we submit that it would be helpful if ASIC would consider allowing a longer period to implement these reforms and indicate it will not pursue enforcement action for an additional period on certain aspects of transition activities that are causing compliance difficulties.

115. The Committee would appreciate the opportunity to continue a dialogue with ASIC over the coming months on this issue.

Concluding observations

116. The Committee is supportive of the approach adopted by ASIC in CP 387 and its commitment to move quickly on the Amending Act requirements for implementation before 4 December 2026.

117. If there is any way our members can assist ASIC in its work, we would be very happy to do so.

118. For further information or assistance, please contact [redacted], Chair of the Committee on [redacted] or [redacted], or [redacted] on [redacted] or [redacted].

Yours sincerely

[redacted]

[redacted]
Chair, Business Law Section

Schedule—CP 387 Consultation Questions

Question	Response
Proposal B1 (Linear, symmetric pay off profile)	
B1Q1—Do you agree with our proposal?	Yes. See Section 2.1 of our Submission.
B1Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal B2 (Principle-based approach)	
B2Q1—Do you agree with our proposal to adopt a principle-based approach? Should a prescriptive approach be preferred instead?	We agree with a principle-based approach. We do not support a prescriptive approach.
B2Q2—Do you agree with our proposal regarding calculative methods?	See Section 2.2 of our Submission
B2Q3—Would you suggest any changes to our proposed approach? If so, please provide details.	See Section 2.2 of our Submission.
Proposal B3 (Generally accepted standard pricing model)	
B3Q1—Do you agree with our proposal?	Yes.
B3Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	See Section 2.2 of our Submission
Proposal B4 (Basket/ index derivatives)	
B4Q1—Do you agree with our proposal?	Yes. See Section 2.3 of our Submission.

B4Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No, however it would be helpful if ASIC could provide in the revised ASIC RG 5 practical or worked examples of how to calculate a deemed economic interest for a derivative over an index. We have identified an apparent inconsistency between the description of Proposals B4 and B8 in CP 387 and the wording used in paragraphs 11(3) and 15(3) of the Principal Instrument. In particular, CP 387 appears to use “or” at the end of paragraph (i), whereas the Principal Instrument uses “and”. That difference creates uncertainty as to whether the relevant conditions are intended to operate alternatively or cumulatively in determining when the number of issued securities in a class of underlying issued securities in which a person has a deemed economic interest is taken to be zero. In our view, ASIC should clarify the intended operation of these provisions in the final materials. In particular, it would be helpful to confirm whether satisfaction of either condition is sufficient, or whether both conditions must be met before zero treatment is available. Given the practical significance of that distinction, corresponding clarification in ASIC RG 5 would also assist market participants in applying the regime consistently.
Proposal B5 (volatility/ variance derivatives)	
B5Q1—Do you agree with our proposal?	No
B5Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	See section 2.3 of our Submission.
Proposal B6 (Offsetting position linear, symmetric pay off profile)	
B6Q1—Do you agree with our proposal?	Yes. See Section 3 of our Submission

B6Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No.
Proposal B7 (Delta disclosure)	
B7Q1—Do you agree with our proposal?	No.
B7Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	See section 3 of our Submission.
Proposal B8 (Offsetting basket/ index derivatives)	
B8Q1—Do you agree with our proposal?	Yes
B8Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal B9 (Offsetting exemptions)	
B9Q1—Do you agree with our proposal?	Yes
B9Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal B10 (General calculation rules)	
B10Q1—Do you agree with our proposal?	No.
B10Q2—Are there any other general calculation rules you consider we should apply to improve integrity of the calculative methods?	See section 3 of our Submission.
B10Q3—Would you suggest any changes to our proposed approach? If so, please provide details.	See section 3 of our Submission.

Proposal B11 (Exempt client facing service providers)	
B11Q1—Do you agree with our proposal?	Yes
B11Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	See Sections 4.2 and 4.3 of our Submission.
Proposal B12 (Foreign equivalent licensees)	
B12Q1—Do you agree with our proposal?	See Section 4.3 of our Submission
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?	We prefer the functional approach
B12Q3—Would you suggest any changes to our proposed approach? If so, please provide details.	Yes. See Section 4.3 of our submission
Proposal B13 (20% threshold)	
B13Q1—Do you agree with our proposal?	No. See Section 4.2 of our Submission.
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?	No. See section 4.2 of our submission
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?	No. See Section 4.2 of our Submission
B13Q4—Should licensees who rely on this exception be required to disclose	Yes. See section 4.2 of our Submission

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.	Yes. See section 4.2 of our Submission and Section 4.3 of our Submission
Proposal B14 (Tracing notices)	
B14Q1—Do you agree with our proposal?	Yes. We agree with the comment in the second sentence of CP387.58
B14Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal B15 (Registers)	
B15Q1—Do you agree with our proposal?	Yes, subject to the observation we make in Section 1.4 of our Submission
B15Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	Yes. See section 1.4 of our Submissions concerning disclosure of the "member identifier."
Proposal B16 (Register exemptions)	
B16Q1—Do you agree with our proposal?	Yes
B16Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal B17 (Single notice)	
B17Q1—Do you agree with our proposal to consolidate the existing forms into a single form?	Yes. See Section 1.1 of our Submission.
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?	Yes. See Sections 1.2, 1.3 and 1.4 of our Submission.
B17Q3—Do you consider we should provide a simplified form for substantial	Yes. See Section 1.1 of our Submission.

holders that do not have any interest in derivatives?	
B17Q4—Would you suggest any changes to our proposed approach? If so, please provide details.	Yes. See Sections 1.2, 1.3 and 1.4 of our Submission.
Proposal B18 (Machine-readable web-based form)	
B18Q1—Are there any features that should be considered for inclusion as part of a web-based substantial holding notice form?	Yes. See Section 1.5 of our Submission.
B18Q2—What registration requirements (if any) should be imposed on users of a web-based substantial holding notice form?	We do not consider that there should be a registration requirement for users.
B18Q3—Would you suggest any changes to our proposed approach? If so, please provide details.	Yes. See Section 1.5 of our Submission
Proposal B19 (Digital file format)	
B19Q1—Are there any specific data standards we should consider for the purpose of storing and submitting substantial holding information?	We do not have views on this topic
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?	We do not consider ASIC should prioritise 'human readable' file formats. We submit ASIC should avoid formats that require specialty software.
Proposal B20 (Reflect legislative requirement only)	
B20Q1—Do you agree with our proposal?	Yes. We agree that the items referenced in CP 387.80 are appropriate for inclusion.
B20Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No, subject to the points we make in Section 1.4 of our Submission

Proposal B21 (Standard form documents)	
B21Q1—Do you agree with our proposal?	Yes
B21Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	Yes See Section 1.7 of our Submission.
B21Q3—For which additional agreements would you suggest this standard form exemption could apply, especially with respect to derivatives agreements?	See Section 1.7 of our Submission.
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?	A summary of key terms would be preferable. See Section 1.7 of our Submission.
Proposal B22 (Equivalent jurisdictions)	
B22Q1—Do you agree with our proposal?	Yes
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.	Yes. See Section 1.8 of our Submission.
Proposal C1 (RG 5)	
C1Q1—Do you agree with our proposal?	Yes
C1Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal C2 (RG 9)	
C2Q1—Do you agree with our proposal?	Yes

C2Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No
Proposal C3 (RG 222)	
C3Q1—Do you agree with our proposal?	Yes
C3Q2—Would you suggest any changes to our proposed approach? If so, please provide details.	No

14 July 2026

Australian Securities and Investments Commission
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MELBOURNE VIC 3001

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CC:

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Beneficial Ownership and Transparency Unit
Market Conduct and Digital Division
Treasury
Langton Crescent
PARKES ACT 2600

By email: beneficialownership@treasury.gov.au

Dear Colleagues

Implementation of the enhanced beneficial ownership regime

1. In April 2026, the Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) responded to the Australian Securities and Investments Commission's (**ASIC**) release of Consultation Paper 387, draft ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument and draft Substantial Shareholding Notice with a submission, which can be accessed here.

2. In addition to that submission, the Committee wishes to make a more general submission relating to the timing of the implementation of the regime, and its impact on the quality and comprehensibility of information provided to investors, and on compliance costs.

Submissions

3. As noted in the earlier submission, it is imperative, given the significant changes proposed to listed entity beneficial ownership disclosure practices that have existed for decades, that market participants, investors and their advisers have sufficient time to adapt to the new regime.

4. ASIC was given limited time to develop the details that will underpin compliance with the new regime (in terms of "how to count" rules, associated guidance and the proposed form for disclosure) and, as we said in our earlier submission, we commend ASIC for the work it has undertaken to consult on draft materials.

5. However, given that, as at the date of this submission, ASIC has not yet released finalised materials following the consultation process, we believe that market participants, investors and advisers will have insufficient time to adapt if the current intended date for implementation (December 2026) is maintained.

6. The Committee urges ASIC to consider deferring the implementation of these reforms—by at least one year, or longer if necessary—to mitigate the impact of the changes.

7. The new regime will require system design changes to be made by investment entities which may hold both derivative and physical positions, and this may involve them incurring significant costs. Clients have generally not yet been able to start meaningful work on such system changes, given the complexity of the new regime and the fact that some areas remain to be finalised.

8. One industry participant advised us that it could take up to 12 months to make the necessary changes to adapt to the new regime (including systems development and testing) from the point at which ASIC settles on the content of the substantial holder notice form and the calculation methodology. That participant expects that they will require an additional full-time equivalent employee in connection with design and implementation of the changes and to support ongoing maintenance.

9. In addition, as outlined below, we are concerned about the impact of the new form on market users and consider that further consultation is appropriate to ensure that important information made available to investors, issuers and others is simple and comprehensible.

10. Members of the Committee who are legal practitioners have consulted with clients on the new regime and believe that these concerns are held widely in the market and that a delay would be welcomed.

11. This would also have the benefit of deferring the imposition of a new layer of business costs at a time when, as discussed further below, one of the Government's priorities is to critically assess the need for current high levels of regulation and proposed regulation, and associated compliance costs, in circumstances where the economy faces productivity challenges.

12. We appreciate that the form of a proposed revised substantial holding notice was appended to CP 387, and that certain questions were raised about the new form, including whether a simplified version should be made available. However, in the context of such complex and extensive changes, we also think that further targeted consultation would be appropriate to ensure that the form and its underlying concepts can be readily understood and used by investors, issuers and other market users.

13. More broadly, the Committee notes that the Productivity Commission's public inquiry in 2025 found that businesses were increasingly spending their resources on regulatory compliance, rather than productivity-increasing measures. The results of that inquiry included a call from the Productivity Commission for increased scrutiny of new regulations from the perspective of the trade-off between their regulatory objectives and their impact on broader economic growth.[1]

14. In this context, the Committee queries whether the additional complexity of regulation that will come with the new regime is necessary or to the benefit of issuers, investors and other market users. We are strongly of the view that changes this extensive and complex should be further tested before implementation through further consultation as outlined above. At the very least (and appreciating that the substance of the reforms has already been legislated), a material delay to the implementation of this regime will allow investment entities and practitioners time to adapt and for the regulatory burden of the reforms to be better understood.

15. A delay would not leave disclosure of derivative positions unregulated, since the Takeovers Panel's current guidance would continue to apply.

16. We also note that a delay would be very easily implemented, through an ASIC instrument.

Further contact

17. The Committee would be pleased to discuss any aspect of this submission.

18. Please contact the Committee Chair, [redacted] ([redacted]) if you would like to discuss this submission with representatives of the Committee.

Yours sincerely

[redacted]

[redacted]
Chair, Business Law Section

[1] The final report is available [here](#).