

Attachment 1 to CP 387: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument 2026/XXX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2026

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument 2026/XXX*.

2 Commencement

This instrument commences on the later of:

- (a) the day after this instrument is registered on the Federal Register of Legislation; and
- (b) commencement of Schedule 1 to the *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Act 2025*.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsections 671AK(1), 671AO(2), 671AW(1), 671BB(3), 671BG(5), 671F(4), 672DB(2) and 673(1) of the *Corporations Act 2001*.

4 Simplified outline of this instrument

This instrument sets out declarations and requirements for listed entities regarding enhanced beneficial ownership disclosure.

In particular, this instrument:

- (a) provides methods for calculating deemed economic interests and offsetting short positions in securities; and
- (b) determines circumstances in relation to client services and market making in which a person does not have a deemed economic interest; and
- (c) modifies Chapter 6C of the Act so that a person does not have an offsetting short position in certain circumstances; and
- (d) specifies additional requirements for registers of relevant interests; and
- (e) determines various matters in relation to the content of substantial holding disclosures; and
- (f) declares foreign requirements that ASIC is satisfied are equivalent to Australian substantial holding disclosure requirements.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Deemed economic interests and offsetting short positions

Division 1—Preliminary

6 Simplified outline of this Part

This Part determines the method for working out:

- (a) the number of issued securities in which a person has a deemed economic interest because of a non-physically settleable derivative; and
- (b) the number of issued securities in which a person has an offsetting short position because of a derivative.

7 Definitions in this Part

In this Part:

generally accepted standard pricing model in relation to a non-physically settleable derivative means a pricing model that:

- (a) is generally accepted in the Australian financial services industry as a model used to price derivatives of that type; and
- (b) takes into account each of the following matters to the extent they are relevant to the pricing of the derivative:
 - (i) an interest rate;
 - (ii) any dividend payments in relation to the underlying issued securities;
 - (iii) the time to maturity of the derivative;
 - (iv) the price of the underlying issued securities;
 - (v) the volatility of the price of the underlying issued securities.

non-physically settleable derivative means a derivative in relation to which subsection 671AF(1) of the Act applies.

short position derivative means a derivative in relation to which subsection 671AS(1) of the Act applies.

underlying issued security means:

- (a) in relation to a non-physically settleable derivative—a security in the class of securities referred to in paragraph 671AF(1)(c) of the Act; and
- (b) in relation to a short position derivative—a security in the class of securities referred to in paragraph 671AS(1)(c) of the Act.

Division 2—Deemed economic interests

8 Method for working out the number of issued securities in which a person has a deemed economic interest

- (1) For the purposes of subsection 671AF(5) and paragraphs 671AG(2)(a), 671AH(3)(a) and 671AI(2)(a) of the Act, and subject to Division 4, sections 9 to 11 determine a method of working out the number of issued securities of a particular class in a Chapter 6C body in which a person has a deemed economic interest because of a non-physically settleable derivative.
- (2) Sections 9 to 11 apply in relation to a derivative to the extent the derivative provides for a benefit referred to in subparagraph 671AF(1)(d)(i) or (ii) of the Act (as affected by subsections 671AF(2) to (4) of the Act).

9 Deemed economic interest—derivatives with a linear, symmetric payoff profile

The number of issued securities of a particular class in a Chapter 6C body that a person has a deemed economic interest in because of a non-physically settleable derivative with a linear, symmetric payoff profile is equal to the full notional amount of securities underlying the derivative.

10 Deemed economic interest—derivatives without a linear, symmetric payoff profile

- (1) The number of issued securities of a particular class in a Chapter 6C body that a person has a deemed economic interest in because of a non-physically settleable derivative that does not have a linear, symmetric payoff profile is determined in accordance with this section.
- (2) The person must choose a generally accepted standard pricing model for the purposes of working out the number of issued securities in which the person has a deemed economic interest because of the derivative.
- (3) The number of issued securities in which the person has a deemed economic interest is equal to the delta of the derivative as calculated under the generally accepted standard pricing model multiplied by the full notional amount of securities underlying the derivative.

11 Deemed economic interest—derivatives over a basket or index of securities

- (1) This section applies in relation to a non-physically settleable derivative where the conditions in paragraphs 671AF(1)(c) and (d) of the Act are satisfied in relation to a basket of assets that includes securities or an index of assets that includes securities as well as being satisfied in relation to one or more classes of underlying issued securities.
- (2) Subject to subsection (3), the deemed economic interest must be calculated on the basis of the weight of the security by value in the basket or index out of the total value of securities in the basket or index.
- (3) Despite sections 9 and 10, the number of issued securities in a class of underlying issued securities in which a person has a deemed economic interest is zero if:
 - (a) the number, worked out in accordance with sections 9 and 10, of issued securities in that class in which the person has a deemed economic interest as a result of the basket or index represents less than 5% of the total securities in that class that are on issue; and
 - (b) the securities in that class in the basket or index represent less than 20%, by value, of all securities in the basket or index.

Division 3—Offsetting short positions

12 Method for working out the number of issued securities in which a person has an offsetting short position

- (1) For the purposes of subsections 671AS(3), 671AT(2), 671AU(3) and 671AV(2) of the Act, and subject to Division 4, sections 13 to 15 determine a method of working out the number of issued securities of a particular class in a Chapter 6C body in which a person has an offsetting short position because of a short position derivative.
- (2) Sections 13 to 15 apply in relation to a derivative to the extent the derivative provides for a benefit referred to in paragraph 671AS(1)(d) of the Act (as affected by subsection 671AS(2) of the Act).

13 Offsetting short position—derivatives with a linear, symmetric payoff profile

The number of issued securities of a particular class in a Chapter 6C body that a person has an offsetting short position in because of a short position derivative with a linear, symmetric payoff profile is equal to the full notional amount of securities of that class underlying the derivative.

14 Offsetting short position—derivatives without a linear, symmetric payoff profile

- (1) The number of issued securities of a particular class in a Chapter 6C body that a person has an offsetting short position in because of a short position derivative without a linear, symmetric payoff profile is determined in accordance with this section.
- (2) The person must choose a generally accepted standard pricing model for the purposes of working out the number of issued securities of that class in which the person has an offsetting short position because of the derivative.
- (3) The number of issued securities of that class in which the person has an offsetting short position is equal to the delta of the derivative as calculated under the generally accepted standard pricing model multiplied by the full notional amount of securities of that class underlying the derivative.

15 Offsetting short position—derivatives over a basket or index of securities

- (1) This section applies in relation to a short position derivative where the conditions in paragraphs 671AS(1)(c) and (d) of the Act are satisfied in relation to a basket of assets that includes securities, or an index of assets that includes securities, as well as being satisfied in relation to one or more classes of underlying issued securities.
- (2) Subject to subsection (3), the offsetting short position for securities of a particular class must be calculated on the basis of the weight of the securities of that class in the basket or index out of the total value of securities in the basket or index.
- (3) Despite sections 13 and 14, the number of issued securities of a particular class of underlying issued securities in which a person has an offsetting short position is zero if:
 - (a) the number, worked out in accordance with sections 13 and 14, of issued securities of that class in which the person has an offsetting short position as a result of the basket or index represents less than 5% of the total securities of that class that are on issue; and
 - (b) the securities of that class in the basket or index represent less than 20%, by value, of all securities in the basket or index.

Division 4—General

16 Deemed economic interests and offsetting short positions to be calculated daily

The number of issued securities of a particular class in a Chapter 6C body that a person has a deemed economic interest or an offsetting short position in because of a derivative must be:

- (a) calculated daily; and

- (b) if the derivative does not have a linear, symmetric payoff profile—calculated:
 - (i) using a single generally accepted standard pricing model that is applied consistently; and
 - (ii) based on the most recent closing price of the underlying issued securities as published by the operator of the declared financial market on which the Chapter 6C body is included in the official list as a primary listing.

Note: A person will not be required to report the daily changes unless a situation described under subsection 671AB(1) of the Act has occurred (for example, a disclosable movement of more than 1% or the person beginning or ceasing to have a substantial holding).

Part 3—Market makers and client services exclusion

17 Simplified outline of this Part

This Part determines circumstances in relation to client services and market making in which a person does not have a deemed economic interest in a number of securities in a Chapter 6C body.

18 Meaning of *foreign equivalent licensee*

For the purposes of this Part, *foreign equivalent licensee* means a person that:

- (a) is incorporated or formed outside this jurisdiction; and
- (b) has its principal place of business outside this jurisdiction; and
- (c) holds a licence or authorisation issued by an overseas regulatory authority that authorises the person to do any of the following:
 - (i) deal in derivatives;
 - (ii) make a market in derivatives or securities;
 - (iii) operate a clearing and settlement facility in relation to derivatives; and
- (d) does not hold, and is not required to hold, an Australian financial services licence or an Australian CS facility licence.

19 Deemed economic interest exclusion—client services

A financial services licensee, or a foreign equivalent licensee, that is authorised to deal in derivatives does not have a deemed economic interest in a number of securities in a Chapter 6C body as a result of dealing in a derivative in circumstances where all the following apply:

- (a) the licensee deals in the derivative in the ordinary course of its business of dealing in derivatives;
- (b) the licensee deals in the derivative for the purpose of:
 - (i) facilitating the obtaining by a client, at the client's request, of economic exposure to changes in the value of securities in the Chapter 6C body; or
 - (ii) 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; or

- (iii) otherwise managing a risk of the licensee that has resulted from the licensee facilitating the obtaining of such an economic exposure by the client;
- (c) the client must provide to, or at the direction of, the licensee any consideration that the licensee is required to provide under the derivative if:
 - (i) the licensee deals in the derivative for the purpose referred to in subparagraph (b)(i); and
 - (ii) the client is not a party to the derivative;
- (d) 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 Chapter 6C body;
- (e) the licensee has adequate systems for the purposes of identifying derivatives to which this section applies;
- (f) if the licensee is a foreign equivalent licensee—the dealing in the derivative is covered by the licence or authorisation held by the licensee and is regulated by the overseas regulatory authority that issued the licence or authorisation.

20 Deemed economic interest exclusion—market makers

A financial services licensee, or a foreign equivalent licensee, that is authorised to make a market for derivatives or securities does not have a deemed economic interest in a number of securities in a Chapter 6C body as a result of dealing in a derivative in circumstances where all of the following apply:

- (a) the licensee deals in the derivative:
 - (i) in the ordinary course of its business of making a market in derivatives in relation to the securities of the Chapter 6C body; or
 - (ii) for the purposes of hedging an economic position of the licensee that has resulted from the licensee making a market in derivatives or securities;
- (b) 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 Chapter 6C body;
- (c) the licensee has adequate systems for the purposes of identifying derivatives or transactions to which this section applies;

- (d) if the licensee is a foreign equivalent licensee—the dealing in the derivative is covered by the licence or authorisation held by the licensee and is regulated by the overseas regulatory authority that issued the licence or authorisation.

21 Deemed economic interest exclusion—clearance and settlement facilities

A CS facility licensee, or a foreign equivalent licensee, that is authorised to operate a clearing and settlement facility in relation to derivatives (or a class of derivatives) does not have a deemed economic interest in a number of securities in a Chapter 6C body as a result of entering into a derivative in the course of operating the facility in circumstances where all of the following apply:

- (a) the licensee enters into the derivative for the purposes of facilitating the obtaining by a client who is a participant in the facility, at the participant's request, of economic exposure to changes in the value of securities in the Chapter 6C body;
- (b) the entering into 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 Chapter 6C body;
- (c) the licensee has adequate systems for the purposes of identifying derivatives to which this section applies;
- (d) if the licensee is a foreign equivalent licensee—the entry into the derivative is covered by the licence or authorisation held by the licensee and is regulated by the overseas regulatory authority that issued the licence or authorisation.

22 Market makers and client services exclusion—requirement to give information

- (1) This section is made for the purposes of subsection 671AO(5) of the Act.
- (2) A financial services licensee or a foreign equivalent licensee that does not have a deemed economic interest in a number of securities in a Chapter 6C body because of section 19 or 20 must give the information referred to in subsection (3) to each relevant market operator for the Chapter 6C body if either of the following situations arise:
 - (a) the licensee's holding percentage in the Chapter 6C body would, if determined on the basis that sections 19 and 20 did not apply, increase above 20% or decrease to 20% or below;

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- (b) both the following apply:
- (i) the licensee's holding percentage in the Chapter 6C body would, if determined on the basis that sections 19 and 20 did not apply, be above 20%; and
 - (ii) there is an increase or decrease by 1 or more percentage points from the last percentage disclosed under any of subparagraphs (3)(e)(i), (ii) and (iii).
- (3) The information that a licensee must give the relevant market operator is:
- (a) the licensee's name and licence number; and
 - (b) if applicable—a statement that the licensee does not have a deemed economic interest in a number of securities in a Chapter 6C body because of section 19 or 20, including details of which of section 19 and 30 is applicable; and
 - (c) if applicable—a statement that the licensee does not have an offsetting short position in a number of securities in a Chapter 6C body because of subsection 671AY(4) of the Act (as notionally inserted by this instrument), including details of how the subsection is applicable; and
 - (d) information about which situation referred to in subsection (2) applies in relation to the licensee; and
 - (e) the increase in each of the following percentages that would result if sections 19 and 20 and subsection 671AY(4) of the Act (as notionally inserted by this instrument) did not apply:
 - (i) the licensee's deemed physically settleable derivative-based holding percentage in the Chapter 6C body;
 - (ii) the licensee's deemed non-physically settleable derivative-based holding percentage in the Chapter 6C body;
 - (iii) the licensee's offsetting short position percentage in the Chapter 6C body; and
- Note: For example, if a licensee's deemed physically settleable derivative-based holding percentage in the Chapter 6C body were 8%, but would be 10% if sections 19 and 20 and subsection 671AY(4) of the Act did not apply, the licensee would disclose that its deemed physically settleable derivative-based holding percentage would increase by 2% if those provisions did not apply.
- (f) the number of securities in the Chapter 6C body that each increase in percentage in paragraph (e) relates to.

- (4) A licensee who must give information because of a situation referred to in subsection (2) must give the information:
 - (a) if paragraph (b) of this subsection does not apply—within 2 business days after the situation occurs;
 - (b) by 9.30 am on the next trading day of the relevant financial market after the situation occurs, if:
 - (i) the bid period for a takeover bid for voting securities in the Chapter 6C body starts; and
 - (ii) the situation occurs during the bid period.
- (5) Paragraph (4)(b) does not apply if the Chapter 6C body is a listed notified foreign passport fund.

Part 4—Declaration

23 Simplified outline of this Part

This Part modifies Chapter 6C of the Act so that a person does not have an offsetting short position in certain circumstances.

24 Offsetting short positions

Chapter 6C of the Act applies to all persons as if Chapter 6C were modified or varied by inserting after section 671AX:

“671AY Additional exclusions

Money lending and financial accommodation

- (1) A person does not have an offsetting short position in a number of securities merely because of a security interest (including a negative pledge) taken or acquired by the person in the circumstances specified in paragraphs 671AL(1)(a) and (b).

Nominees and other trustees

- (2) A person who would otherwise have an offsetting short position in a number of securities as a bare trustee does not have an offsetting position in the number of securities if a beneficiary under the trust has an offsetting short position in the number of securities because of a presently enforceable and unconditional right of the kind referred to in section 671AV.

Note: This subsection will often apply to a person who holds derivatives as a nominee.

Directors of bodies corporate

- (3) A person does not have an offsetting short position in a number of securities merely because:
 - (a) the person is a director of a body corporate; and
 - (b) the body corporate has an offsetting short position in a number of those securities.

Client services and market making

- (4) A person does not have an offsetting short position in a number of securities in a Chapter 6C body in the circumstances determined by ASIC under subsection 671AO(2) for the purposes of subsection 671AO(1).

- (5) If the determination by ASIC requires a person who would have a deemed economic interest apart from the determination to give specified information or documents to a specified person, a person who would have an offsetting short position apart from subsection (4) must also comply with the requirement.

Arrangements between related bodies corporate

- (6) Section 671AS, 671AT, 671AU or 671AV does not apply in relation to a derivative if:
- (a) in the case of:
 - (i) section 671AS—the person mentioned in paragraph 671AS(1)(a); and
 - (ii) sections 671AT, 671AU or 671AV—the first person mentioned in that section; and
 - (b) the other person mentioned in that section; and
 - (c) all other persons (if any) who would, apart from this section, have deemed economic interests because of the derivative;
- are bodies corporate that are related to each other.”.

Part 5—Registers of relevant interests

25 Simplified outline of this Part

This Part sets out additional requirements for registers of relevant interests. In particular, this Part specifies the form in which the register must be kept and additional information it must contain for the purposes of subsection 672DA(3) of the Act.

26 Requirements for registers of relevant interests

- (1) This section is made for the purposes of subsection 672DA(3) of the Act.
- (2) The register that a key person for a Chapter 6C body is required to keep under subsection 672DA(3) of the Act must be kept in a delimited file format.

Note: The key person may also keep copies of the register in additional formats.

- (3) For each disclosure of information made to the key person under Part 6C.2 of the Act in relation to disclosable securities in a Chapter 6C body, the register must, to the extent applicable, include the following information:

Notice and record particulars

- (a) the disclosure notice identifier;
- (b) the date of the disclosure;
- (c) the member identifier;
- (d) the class of disclosable securities;
- (e) the number of disclosable securities the subject of the disclosure;

Details of relevant interest

- (f) details of the nature and extent of a person's relevant interest in the disclosable securities;
- (g) details of the circumstances that give rise to a person's relevant interest in the disclosable securities;

Name of person with relevant interest

- (h) if a person with a relevant interest in the disclosable securities is not a natural person—the name of the person;

- (i) if a person with a relevant interest in the disclosable securities is a natural person—the person’s:
 - (i) last name; and
 - (ii) first name; and
 - (iii) other given names (if any);

Address of person with relevant interest

- (j) the address of a person with a relevant interest in the disclosable securities, including, where applicable:
 - (i) the unit or apartment number; and
 - (ii) the level or floor; and
 - (iii) the building name or number; and
 - (iv) the street address; and
 - (v) the locality or suburb; and
 - (vi) the state; and
 - (vii) the postcode; and
 - (viii) the country;

Details of instructions

- (k) the details of any instructions that a person has given about:
 - (i) the acquisition or disposal of the disclosable securities; or
 - (ii) the exercise of any voting or other rights attached to the disclosable securities; or
 - (iii) any other matter relating to the disclosable securities;

Name of person who has given instructions

- (l) if a person who has given instructions referred to in paragraph (k) is not a natural person—the name of the person;
- (m) if a person who has given instructions referred to in paragraph (k) is a natural person—the person’s:
 - (i) last name; and
 - (ii) first name; and
 - (iii) other given names (if any);

Address of person who has given instructions

- (n) if a person has given instructions referred to in paragraph (k)—the address of the person, including, where applicable:
 - (i) the unit or apartment number; and
 - (ii) the level or floor; and
 - (iii) the building name or number; and
 - (iv) the street address; and
 - (v) the locality or suburb; and
 - (vi) the state; and
 - (vii) the postcode; and
 - (viii) the country.
- (4) The register must:
 - (a) include each item of information referred to in subsection (3) in a separate data field; and
 - (b) be set out and organised in a way that is consistent with the ordering of the items of information in subsection (3).
- (5) In this section:

disclosure notice identifier means, in relation to a disclosure of information made under Part 6C.2 to the key person for a Chapter 6C body, a unique identifier for the disclosure.

member identifier means, in relation to a disclosure of information made under Part 6C.2 to the key person for a Chapter 6C body that relates to specified disclosable securities, a unique identifier that corresponds to an entry in the Chapter 6C body’s register of members that identifies the member who holds the disclosable securities.

Note: A unique identifier could include a combination of a member’s name and address that is unique.

27 Declaration—provision of copies of registers of relevant interests

Chapter 6C of the Act applies to all persons as if section 672DD were modified or varied by inserting the following after subsection 672DD(5):

“(5A) The copy must be easily downloadable and readable and in a delimited file format.”.

Part 6—Substantial holding notices

28 Simplified outline of this Part

This Part:

- (a) determines additional particulars that must be provided as part of substantial holding information; and
- (b) determines that substantial holding information does not need to be accompanied by copies of certain standard form documents that contributed to the need to provide the information; and
- (c) declares certain foreign requirements for the purposes of the substantial holding requirements under Part 6C.1 of the Act. Subject to various requirements being satisfied, a listed foreign body that complies with these foreign requirements does not have to comply with the substantial holding requirements in Part 6C.1 of the Act.

29 Additional particulars about substantial holdings in Chapter 6C bodies

For the purposes of paragraph 671BB(1)(g) of the Act, the following particulars are determined:

- (a) details of the situation referred to in subsection 671B(1) of the Act that has arisen in relation to the Chapter 6C body, including:
 - (i) which of the situations in paragraphs 671B(1)(a) to (d) of the Act is applicable; and
 - (ii) the date the situation arose; and
 - (iii) the date (if any) the last situation for which the person has provided information in relation to the Chapter 6C body arose;
- (b) the total votes attached to all voting securities in the Chapter 6C body;
- (c) whether any details of the person's relevant interests, deemed economic interests and offsetting short positions have changed since the person last gave information under subsection 671B(3) of the Act in relation to the Chapter 6C body;
- (d) whether the person does not have a deemed economic interest or offsetting short position in a number of securities in the Chapter 6C body because of subsections 671AO(1) or 671AY(4) (as notionally inserted by this instrument) of the Act.

30 Provision of standard form documents

For the purposes of paragraph 671BG(4)(a) of the Act, each of the following documents as published at the date of this instrument, is determined:

- (a) International Swaps and Derivatives Association (ISDA) Master Agreement including the Schedule to the Master Agreement;
- (b) Futures Industry Association (FIA)—ISDA Cleared Derivatives Execution Agreement;
- (c) FBF Master Agreement relating to Transactions on Forward Financial Instruments;
- (d) DRV German Master Agreement for Financial Derivatives Transactions.

31 Declared foreign equivalent substantial holding notice requirements

For the purposes of paragraph 671F(1)(b) of the Act, the following requirements as in force as at the date of this instrument are declared:

- (a) the requirements of Subpart 5 of Part 5 of the Financial Markets Conduct Act 2013 of New Zealand;
- (b) the requirements of DTR 5 Vote Holder and Issuer Notification Rules of the Disclosure Guidance and Transparency Rules sourcebook in the Listing, Prospectus and Disclosure module of the Financial Conduct Authority Handbook of the United Kingdom;
- (c) the requirements of subsections (d) and (g) of section 13 of the Securities Exchange Act 1934 of the United States of America.