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Australian Securities and Investments Commission
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By email: rri.consultation@asic.gov.au

21 April 2026

Enhanced beneficial ownership disclosure: Proposed legislative instrument, form and guidance

To whom it may concern,

The Alternative Investment Management Association[1] ("AIMA") is writing to respond to "Consultation Paper 387 - Enhanced beneficial ownership disclosure: Proposed legislative instrument, form and guidance"[2] ("the Consultation Paper"), published by the Australian Securities and Investments Commission ("ASIC") in March 2026. AIMA is the world's largest membership association for alternative investment managers. Our membership has more firms, managing more assets than any other industry body, and through our 10 offices located around the world, we serve over 2,000 members in 60 different countries.

Background

AIMA previously engaged with the Treasury in the course of if its work to update Australia's beneficial ownership disclosure regime and made clear our concerns that the proposed changes to the Corporation Act 2001 would impose a significant administrative burden on fund managers. We were disappointed in the final outcome of the Treasury Laws Amendment (Strengthening Financial System and Other Measures) Act 2025 ("Amending Act"), which we believe undermines, rather than enhances, the attractiveness of Australian capital markets, for reasons discussed below.

[1] See www.aima.org.
[2] https://download.asic.gov.au/media/zo5jphju/cp387-published-10-march-2026.pdf

While we appreciate that the position enshrined in legislation is outside of ASIC's control, we believe it is important to place on record our concerns about the new regime and, in particular, the approach taken in respect of derivative positions held by our member firms.

Among other things, the Amending Act brings interests arising from equity derivatives into the substantial holding and tracing notice regimes by deeming the person in the bought position of a derivative to have a 'deemed economic interest' in a number of the securities underlying the derivative.

Regrettably, the legislation assumes that economic exposure via derivatives positions signals a level of influence and control that in reality does not exist. A majority of market participants that trade derivatives do so without the need, intent or incentive to influence or control the underlying issuer. In practice, many derivative positions are delta-neutral, hedged, or trading inventory, with no intention or ability to influence or control the underlying firm. A framework that includes derivative positions within substantial holding notifications thus risks overreporting positions that are not relevant to control or takeover dynamics, diluting the usefulness of disclosures.

Extending the regime in this manner also poses a significant challenge in the context of its ultimate purpose. The relevant interest and substantial holding regime is designed to capture accumulation of control or strategic stakes. Extending this to broader economic exposure (without any control), and including trading related positions, shifts the regime beyond its original purpose, reducing the effectiveness of the regime for investors, counter to the transparency objective. This would also result in an outcome that diverges from other key jurisdictions, including the US, EU and UK, where disclosure of derivatives is more limited or conditional and where greater emphasis is placed on control or voting power.

We believe that the end result will be to increase the complexity for global firms operating in Australia, result in a material time and cost impact (due to that complexity) on updating or introducing compliance processes and monitoring systems, and will discourage liquidity provision there.

The Consultation Paper

Schedule 1 of Amending Act permits ASIC to determine several matters by legislative instrument and allows ASIC to approve the manner and form in which substantial holding notices must be given. Among other things, ASIC is empowered to determine: (a) the number, or a method of working out the number, of securities in which a person in the bought position of a non-physically settleable derivative has a deemed economic interest; and (b) the number, or method of working out the number, of securities in which a person who is required to disclose a derivative-based interest has an offsetting short position.

We encourage ASIC to approach this mandate in a manner that recognizes – and addresses – the problems that could arise if Australia ultimately puts in place an unduly expansive substantial holdings regime that unnecessarily includes certain equity derivative positions.

ASIC could, for example, reflect further on how to use its power to determine that certain derivatives exposures should be assigned a value of zero (a point addressed in the context of **section B4 and B8**) to provide a broader exclusion for derivatives – particularly cash-settled ones – given the reasons outlined earlier. ASIC would then have the opportunity to undertake further work to assess the most appropriate treatment for derivatives.

In this context, there are a number of operational considerations that are also relevant (and which suggest that broadly including derivatives would be burdensome and counterproductive):

- Any approach based on delta adjustment will likely lead to volatility in respect of firms' positions, given that the delta of derivatives positions is not static; 'ownership' will fluctuate without any actual changes in the instruments that firms hold (see **section B2**).

- Disaggregation of index exposures to calculate the ultimate exposure to individual issuers will be challenging in practice, due lagged weights (especially for active, non-transparent ETFs) and index rebalancing activity causing issuers to move in and out of scope without any trading activity – potentially leading to passive breaches (see **section B4).**

- There are elements of the calculation provisions which result in burdensome or impractical outcomes (**section B10**).
    - The 1% movement trigger is operationally impractical: This level is too sensitive for high-turnover trading activity and will likely result in frequent, potentially daily (and certainly excessive) reporting. This creates operational burden for firms and results in excessive low-value disclosures that are not meaningful to the market and that do not highlight where real control issues may lie.
    - A daily calculation method is significantly burdensome, particularly for buy-side entities. Such frequent monitoring in circumstances where the date of the strike has a long horizon would be very unusual, and physically settled derivatives would also be unlikely to be monitored. In addition it is unlikely that buy-side entities have existing capability to calculate on a daily basis.

We note that the inclusion of a market maker exemption (**section B11**) is appropriate and aligned with the policy intent underlying the regime, recognising that liquidity providers do not seek control. However, we believe the current formulation of the market maker exemption is too narrow, being limited solely to licensed market makers (and there are a large number of hurdles to be tackled to rely on the exemption). In practice, proprietary trading firms and liquidity providers perform very similar functions (continuous quoting, risk warehousing, hedging) without necessarily holding a formal market maker license. The proposed drafting does not reflect modern market structure, where liquidity provision extends beyond licensed market makers. A principles-based exemption (based on activity) would be more appropriate than a license-based bright line and would ensure that non-control-seeking trading activity is removed from scope.

Finally we note that there is likely a maximum of 6 months from release of the amended instrument, notice and regulatory guides until reforms commence. Given the issues flagged above, and the need to implement large scale changes to (or even introduce for the first time) compliance processes and systems, increases the risk of failures in reporting. We request that commencement is deferred to a longer date to enable participants and stakeholders to properly prepare for compliance once full details of the regime have been confirmed.

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We appreciate that ASIC's approach must reflect the provisions of the Amending Act; however, we equally believe that the framework provides scope for ASIC to approach its mandate with caution, taking into account Australia's position relative to international standard setters and making sure that the final rules do not adversely impact liquidity and price formation in Australian securities markets. We would welcome the opportunity to discuss this matter further.

Should you wish to discuss any aspect of this submission, please contact:

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Managing Director
Head of Australia
AIMA Australia
[redacted]

Yours faithfully

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About AIMA

AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2.5 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. In addition, AIMA has over 150 local based corporate members including managers and key service providers. For further information, please visit AIMA's website, www.aima.org. AIMA's affiliate association, The Alterative Credit Council (ACC) deals specifically with non-bank and private credit.