



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 389

# Proposed regulatory guide on pre-hedging

June 2026

## About this paper

This consultation paper seeks feedback on a draft regulatory guide for market participants on pre-hedging.

The draft guide aligns with IOSCO's recommendations and builds on guidance we have previously provided in an open letter to CEOs of market participants.

The draft regulatory guide does not introduce new legal requirements.

We are also seeking feedback on whether to include examples of observed better practices in the regulatory guide.

Note: The draft regulatory guide (draft RG 000), which is attached to this paper, is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 389.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on Monday 15 June 2026 and is based on the legislation as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

# Contents

<b>The consultation process .....</b>	<b>4</b>
<b>A Background to the proposals .....</b>	<b>6</b>
Background to our proposed regulatory guidance .....	6
Our proposed regulatory guide .....	6
Purpose of this paper .....	7
<b>B Proposed regulatory guide .....</b>	<b>8</b>
Proposed guidance on pre-hedging .....	8
Observed better practices .....	9
<b>Appendix: Industry standards .....</b>	<b>11</b>
<b>List of proposals and questions .....</b>	<b>13</b>

## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Before finalising the regulatory guide, ASIC will comply with the Australian Government's Policy Impact Analysis requirements, including assessing all feasible options and notifying the Office of Impact Analysis (OIA) where regulatory options are under consideration. Where impacts are more than minor, ASIC will prepare an Impact Analysis for OIA approval. Stakeholders are encouraged to respond to all consultation questions to inform this assessment.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by Monday 27 July 2026 to:

Pre-hedging by market participants—Consultation feedback  
Wholesale Markets, Market Conduct  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne VIC 3001  
email: [markets.consultation@asic.gov.au](mailto:markets.consultation@asic.gov.au)

## What will happen next?

<b>Stage 1</b>	June 2026	ASIC consultation paper released
<b>Stage 2</b>	July 2026	Comments due on the consultation paper
<b>Stage 3</b>	Q4 2026	Regulatory guide released

## A Background to the proposals

### Key points

The purpose of this paper is to seek feedback on proposed guidance for market participants on pre-hedging.

Our draft regulatory guide:

- aligns with the recommendations of the International Organization of Securities Commissions (IOSCO); and
- builds on guidance we have previously provided in an open letter to CEOs of market participants.

The draft guide does not introduce new legal requirements.

We are also seeking feedback on whether to include examples of observed better practices in our guidance.

### Background to our proposed regulatory guidance

#### Previous ASIC guidance on pre-hedging

- 1 On 1 February 2024, we published an [open letter to market participants](#) (PDF 267 KB) (Letter to CEOs). The letter provided guidance for market intermediaries regarding pre-hedging practices. We sent the letter after observing a wide range of pre-hedging practices in the Australian market, with some falling significantly short of our expectations. Differences in pre-hedging practices can disrupt fair competition and the effective functioning of markets.
- 2 The letter highlighted the potential for conflicts of interest and market integrity risks, and the importance of managing confidential client information and client outcomes when undertaking pre-hedging.

#### Our proposed regulatory guide

- 3 We propose to issue a new regulatory guide on pre-hedging: see the attachment to this paper. The guide will supersede the Letter to CEOs.
- 4 The aim of the proposed regulatory guide (draft RG 000) is to:
  - (a) provide greater clarity on the current legal requirements and prohibitions relating to pre-hedging activities—it does not introduce new legal requirements;

- (b) assist market participants in understanding how existing obligations apply in the context of pre-hedging; and
- (c) highlight principles that may assist market participants when considering pre-hedging and in managing associated conduct and market integrity risks.

Note: Draft RG 000 is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 389.

- 5 The guidance in draft RG 000 aligns with the recommendations made in IOSCO's final report on pre-hedging, published in November 2025. The guidance also considers matters determined by the Australian courts in explaining how existing obligations under the *Corporations Act 2001* and the *ASIC Act 2001* apply to pre-hedging conduct.

Note: See IOSCO, [FR/14/2025 Pre-hedging](#) (PDF 538 KB), final report, November 2025 (IOSCO pre-hedging report).

- 6 We acknowledge the work of industry and standard-setting bodies to improve conduct and raise standards on pre-hedging through publishing codes, standards and guidance. We have provided a non-exhaustive list of relevant industry standards in the appendix.
- 7 The proposed regulatory guide is relevant to market participants that undertake pre-hedging, including Australian financial services (AFS) licensees and other entities engaging in pre-hedging in connection with anticipated client transactions. It also provides guidance on conduct that clients should expect of those market participants.

## Purpose of this paper

- 8 The purpose of this paper is to seek feedback on draft RG 000.
- 9 We are also seeking feedback on whether to include examples of observed better practices in the regulatory guide. The draft regulatory guide does not currently include these practices.

Note: For a list of terms and definitions used in this paper, see the 'Key terms' in draft RG 000.

## B Proposed regulatory guide

### Key points

We are proposing to give guidance that:

- explains what market participants should do to comply with key obligations; and
- aligns with IOSCO's recommendations, as set out in its final pre-hedging report.

## Proposed guidance on pre-hedging

### Proposal

- B1** We propose to give guidance that:
- (a) explains what market participants should do to comply with key obligations;
  - (b) sets out conduct that clients should expect of those market participants; and
  - (c) aligns with the recommendations in the [IOSCO pre-hedging report](#) (PDF 539 KB).

### *Your feedback*

- B1Q1 Is our guidance sufficiently clear to promote a common understanding of pre-hedging?
- B1Q2 How can our guidance better support a level playing field?
- B1Q3 Are there circumstances where the guidance may create uncertainty or unintended consequences?
- B1Q4 Are there any changes we should make to our proposed guidance? If so, please provide details with reasons.

### Rationale

- 10 ASIC supports the work undertaken by the International Organization of Securities Commissions (IOSCO) on pre-hedging. Our proposed guidance is intended to support a clearer and more consistent understanding of pre-hedging practices across jurisdictions, while remaining grounded in Australian law as applied by the courts. It does not introduce new legal requirements.

## Observed better practices

### Proposal

- B2** We have identified three observed better practices that extend beyond IOSCO's recommendations: see page 10. We are seeking feedback on whether to include these practices in our guidance.

#### *Your feedback*

- B2Q1 What are the costs, benefits and utility of including these better practices in the proposed regulatory guide?
- B2Q2 Are there situations in which their inclusion might lead to confusion or unforeseen circumstances?
- B2Q3 Will their inclusion support a level playing field?
- B2Q4 What (if any) amendments to the better practices would you suggest if they are included in our proposed regulatory guide?
- B2Q5 What other better practices (if any) should be included in our proposed regulatory guide?

### Rationale

- 11 These practices may provide additional value to market participants by supporting stronger governance, clearer client communication and more effective supervision of pre-hedging activity.
- 12 These practices are not framed as additional legal obligations. Rather, they are examples of measures that may assist market participants in managing conduct and market integrity risks in circumstances where pre-hedging can raise heightened risks for clients, execution quality or market functioning.
- 13 We selected these three practices because they address recurring areas of risk highlighted by ASIC's supervisory work and relevant court findings: post-trade review of higher-risk transactions, client consent where execution risks are greater, and internal controls that distinguish pre-hedging from other trading activity. We have provided further details of our rationale for each practice on page 10.
- 14 We are seeking feedback on whether including these practices could create uncertainty, be impractical in some markets or transaction types, or otherwise lead to unintended consequences. This feedback will help us assess whether and how they should be included in the regulatory guide.

### Better Practice 1

#### **Conduct internal post-trade reviews of pre-hedging for large, complex transactions**

This better practice enhances compliance and supervisory oversight of higher-risk transactions. The practice helps market participants to demonstrate management of conflicts of interest and to minimise market impact of pre-hedging.

This better practice responds to issues identified in the court's decision in *Australian Securities and Investments Commission v Westpac Banking Corporation (Penalty Hearing)* [2024] FCA 52. In this case, inadequate trading review mechanisms and the absence of a formal review after the transaction was executed contributed to the Court's declaration that Westpac had contravened s912A(1)(a) of the Corporations Act.

### Better Practice 2

#### **Seek explicit and informed trade-by-trade client consent where practical and where pre-hedging poses greater risks to execution quality or pricing, such as in relatively low-liquidity markets.**

Explicit and informed trade-by-trade consent may be impractical in some high-frequency markets. Implied consent may be sufficient where upfront disclosure is robust. However, for larger complex transactions negotiated over time, explicit and informed trade-by-trade consent may be more appropriate.

This better practice better enables clients to make considered and informed decisions about pre-hedging and their execution options for anticipated transactions. See *Australian Securities and Investments Commission v Westpac Banking Corporation (Penalty Hearing)* [2024] FCA 52 at [29].

### Better Practice 3

#### **Implement internal controls to identify pre-hedging and distinguish it from other trading activities, including inventory management.**

Effective internal controls support front-office supervision of trading behaviours and monitoring of compliance with transaction terms, policies, and financial services laws. Where controls and record keeping of trading data can identify pre-hedging and distinguish it from other trading activity, this supports effective front office supervision and compliance monitoring.

## Appendix: Industry standards

### FX Global Code

15 Principle 11 of the [FX Global Code](#) states:

A market participant should only pre-hedge client orders when acting as a principal, and should do so fairly and with transparency ... Market participants may pre-hedge for such purposes and in a manner that is not meant to disadvantage the client or disrupt the market. Market participants should communicate their pre-hedging practices to their clients in a manner meant to enable clients to understand their choices as to execution.

Note: See p. 18 of the FX Global Code, which is maintained by the Global Foreign Exchange Committee.

### FMSB standard for the execution of large trades in FICC markets

16 The FICC Markets Standards Board (FMSB) standard outlines that pre-hedging:

- (a) should not be undertaken when acting as agent;
- (b) should only occur where the dealer (market participant), acting as principal, legitimately expects to take on market risk and is undertaken at the dealer's own risk;
- (c) should be reasonable relative to the size and nature of the anticipated transaction taking into account prevailing market conditions (such as liquidity);
- (d) should aim to minimise the impact of the activity on the market and be designed to facilitate the transaction; and
- (e) should be designed to benefit the client and executed in a manner that is not meant to disadvantage the client.

Note: For further detail on FMSB's guidance, see the [Standard for the execution of large trades in FICC markets](#) (PDF 346 KB).

### Global Precious Metals Code

17 Overseen by the London Bullion Market Association (LBMA), Business Conduct: Pre-Trade and Execution (PTE) Principle 5 of the [Global Precious Metals Code](#) extends a framework similar to the *FX Global Code* to the over-the-counter bullion markets for gold, silver, platinum and palladium.

## AFMA's Guidance on pre-hedging

- 18 The Australian Financial Markets Association (AFMA) *Guidance on pre-hedging* provides that pre-hedging is acceptable when it supports orderly execution and is not intended to disadvantage the client. AFMA's guidance emphasises clear communication, proper handling of confidential information and that the sole intention of pre-hedging should be risk mitigation.

Note: For further detail on AFMA's guidance, see [Guidance on pre-hedging](#) (PDF 178 KB).

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to give guidance that:</p> <ul style="list-style-type: none"> <li>(a) explains what market participants should do to comply with key obligations;</li> <li>(b) sets out conduct that clients should expect of those market participants; and</li> <li>(c) aligns with the recommendations in the <a href="#">IOSCO pre-hedging report</a> (PDF 539 KB).</li> </ul>	<p>B1Q1 Is our guidance sufficiently clear to promote a common understanding of pre-hedging?</p> <p>B1Q2 How can our guidance better support a level playing field?</p> <p>B1Q3 Are there circumstances where the guidance may create uncertainty or unintended consequences?</p> <p>B1Q4 Are there any changes we should make to our proposed guidance? If so, please provide details with reasons.</p>
<p>B2 We have identified three observed better practices that extend beyond IOSCO's recommendations: see page 10. We are seeking feedback on whether to include these practices in our guidance.</p>	<p>B2Q1 What are the costs, benefits and utility of including these better practices in the proposed regulatory guide?</p> <p>B2Q2 Are there situations in which their inclusion might lead to confusion or unforeseen circumstances?</p> <p>B2Q3 Will their inclusion support a level playing field?</p> <p>B2Q4 What (if any) amendments to the better practices would you suggest if they are included in our proposed regulatory guide?</p> <p>B2Q5 What other better practices (if any) should be included in our proposed regulatory guide?</p>