Securities Finance Association
Suite 1602, 16th Floor,
TEC Centre, 28 Stanley Street,
Central, Hong Kong

Australian Securities and Investments Commission
GPO Box 9827
Melbourne
VIC 3001

21st April 2026

Subject: Consultation Paper 387: Enhanced Beneficial Ownership Disclosure

Dear ASIC team,

Thank you for the opportunity to provide you with feedback from our member firms.

To update you, the Association has recently updated its name and brand identity to Securities Finance Association Asia Pacific, with a transitional reference to "formerly PASLA." This change better reflects the full scope of activities, markets, and stakeholders the Association represents today, while maintaining continuity with our established history and brand equity.

The document is structured with (1) covering letter comments, (2) the anonymised content from our membership responding to the 25 items raised in the market consultation, and (3) incorporating additional member commentary and input.

We surveyed our membership of 93 institutions active in the securities financing industry. This response consolidates input from asset managers, alternative asset managers, custodians, investment banks, liquidity providers, global prime brokers, and sovereign wealth funds.

Our Association and member firms are wholeheartedly in favour of regulatory simplification, proportionality, ensuring change is operationally feasible and addressing the requirement to provide consistent transparency to all market participants, alongside a structure that provide legal certainty for market participants.

The scope and impact of the consolidated reporting can be best evaluated with an example, and we encourage ASIC to provide this to market participants at the earliest stage possible.

Member firms have raised concerns that the proposals may capture non-control, transactional, or hedged exposures, which could result in low-value disclosures. The Association membership is keen to understand how the data will be used—specifically, whether and how it will be made public, and the form in which it will be presented in public discourse.

The Association strongly emphasizes the importance of clarifying the distinction between economic interest and economic control. Clear and consistent articulation of this distinction is important for market participants.

Member firms have reflected that increasing disclosure requirements, combined with uncertainty about their utility may:

- Increase the cost of providing liquidity.
- Disincentivize derivatives trading.
- Limit business activity and reduce risk warehousing capacity to avoid reporting triggers.

The Association and its members would like greater clarity on the approach and mechanics for implementing any freezing order. While omnibus account structures offer operational benefits to a wide range of market participants, they also introduce an additional layer of operational complexity that should be clearly explained.

Member firms have also noted that implementing the reporting could create pockets of competitive disadvantage where multiple, distinct business lines are inadvertently aggregated under the new reporting requirements.

Finally, the Association suggests that the implementation timeline be set at 12 months+ from the point at which confirmation is provided, to allow market participants sufficient time to develop the necessary infrastructure.

We look forward to engaging with yourselves on this topic and addressing any questions you may have. Can we ask you to confirm receipt of the response letter.

[redacted]

Regards

[redacted]

Chief Executive Officer
Securities Finance Association

Securities Finance Association Membership Responses:

Proposal, Question & Responses
Proposal B1 We propose that the number of issued securities of a particular class in a listed entity that a person has a deemed economic interest in because of a non-physically settleable derivative with a linear, symmetric pay-off profile—is equal to the full notional amount of securities underlying the derivative.
B1Q1 Do you agree with our proposal? B1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership
Proposal B2 We propose to adopt a principle-based approach to determining the calculative methods for deemed economic interests. Adopting this approach, we propose the number of issued securities of a particular class in a listed entity that a person has a deemed economic interest in because of a non-physically settleable derivative without a linear, symmetric pay-off profile—is equal to the delta of the derivative calculated under a generally accepted standard pricing model multiplied by the full notional amount of securities underlying the derivative.
B2Q1 Do you agree with our proposal to adopt a principle-based approach? Should a prescriptive approach be preferred instead? B2Q2 Do you agree with our proposal regarding calculative methods? B2Q3 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
For non-physically settleable derivatives, we prefer to calculate deemed economic interest using notional instead of delta. This provides consistency with how physically deliverable derivatives and linear cash settled derivatives are calculated.

There are practical limitations using delta. Corporates may experience difficulty calculating delta especially where they do not have a Bloomberg subscription to access option pricing tools.

We also anticipate differences in how delta will be calculated.

In the EU where delta is used, we understand there are financial institutions that will calculate delta for a fee. We are unaware of an equivalent service offered in Australia, and we anticipate challenges using delta without such services.

Furthermore, reporting short derivatives is not required in the EU and we believe most corporate derivative client trading will fall into that bucket.

Concerns that complexity & uncertainty in calculation methodology leading to passive breaches.

The framework introduces complex requirements around netting, aggregation, and valuation of derivatives.

Derivative exposure needs to be delta-adjusted. Option delta is not static, and as a result ownership percentage could change without even trading, leading to passive breaches.

Economic interest is not control:

a. The proposal assumes that economic exposure 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.
b. Many derivative positions are delta-neutral, hedged, or trading inventory, with no intention or ability to influence or control the underlying firm.
c. The proposals thus risk overreporting positions that are not relevant to control or takeover dynamics, diluting the usefulness of disclosures.

Policy objectives may not be achieved with this approach:

a. Relevant interest and the substantial holding regime is already designed to capture accumulation of control or strategic stakes.
b. Extending this to broader economic exposure (without any control), and including trading related positions, shifts the regime beyond its original purpose.

c. This reduces the effectiveness of the regime for investors, counter to the transparency objective.
Assuming the same approach as is used in calculating relevant interests through share acquisitions will be used to calculate deemed economic interest—using trade date for acquisitions and settlement date for disposals— this is likely to generate significant reporting noise by capturing short-term and intra-day trading activity, including positions that are entered into and exited on the same day. Such activity does not meaningfully enhance the quality or usefulness of disclosures and would materially increase the reporting burden. In particular, this methodology risks flooding disclosures with counterparties that have no enduring economic exposure, thereby diluting the signal that the regime is intended to provide. This issue is likely to be most acute for products such as cash-settled OTC derivatives and certain exchange-traded derivatives, where timing concepts borrowed from the substantial shareholding regime may not translate cleanly. Excluding intra-day positions from the deemed economic interest calculation would materially reduce unnecessary noise without undermining the overall transparency objectives of the regime.
The requirement to calculate delta on a daily basis will be onerous, specifically for buy-side clients. As an example, where an institution acquires a 1-year cash settled call option which may start out-of-the-money but fluctuate over the term of the option. While such clients will monitor whether the option is in/out of the money during the term, it is unlikely they do so on a daily basis (especially if some distance from the strike). It is very unlikely that such client has existing capability to calculate delta and even less so on a daily basis. It is likely such buy-side client 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. We however accept the delta calculation is the road ASIC has consistently taken and where we are likely to end up.

Proposal B3 We propose to define a 'generally accepted standard pricing model' as a model that: (a) is generally accepted in the Australian financial services industry as a model used to price the type of derivative; and (b) takes into account each of the following matters to the extent that 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; and (v) the volatility of the price of the underlying issued securities.
B3Q1 Do you agree with our proposal? B3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership

Proposal B4 We propose that: (a) where the benefit under a derivative is determined in reference to a basket or index of assets that includes securities, subject to section 11(3) of the Principal Instrument, 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; and (b) the number of securities in a class of underlying issued securities in which a person has a deemed economic interest is zero if: (i) the number of issued securities in that class in which the person has a deemed economic interest represents less than 5% of the total securities in that class that are on issue; or (ii) the securities in that class in the basket or index represent less than 20%, by value, of all securities in the basket or index.
B4Q1 Do you agree with our proposal? B4Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
Complexity & uncertainty in calculation methodology leading to passive breaches.

The reform requires look-through of ETF & index exposures to underlying issuers (subject to 5%/20% tests). Key challenges for this include lagged weights (especially for active, non-transparent ETFs), and index rebalance activity causing issuers to move in & out of scope without any trading activity – again leading to the passive breaches.
Even if the Market Maker rule applied, the member firms as part of RG196 will omit them from disclosing they will still be required to calculate to adhere to the 5% / 20% reporting thresholds/structures.
We would appreciate further guidance on what constitutes a "deemed economic interest," particularly regarding the appropriate methodology to calculate economic exposure in relation to index-related derivatives. Additionally, we seek clarification on whether there is a requirement to always look through indices to the constituent level, or whether it would be permissible to adopt prudent rule-based approaches. For example, could a lower minimum threshold be applied under the main rule, or could a factor be applied to account for the maximum expected holding of an Australian security within an index? We would welcome confirmation on whether the expectation is that all indices holding Australian stocks must be analyzed at the constituent level, even where the client's notional value may not be material enough to result in a breach of the lower threshold.
Proposal B5 We propose not to prescribe a specific exception for volatility or variance derivatives.
B5Q1 Do you agree with our proposal? B5Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership

Proposal B6 We propose that the number of issued securities of a particular class in a listed entity that a person has an offsetting short position in because of a short position derivative with a linear, symmetric pay-off profile—is equal to the full notional amount of securities underlying the derivative.
B6Q1 Do you agree with our proposal? B6Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
We note that the consultation does not contemplate the wholesale exclusion of short positions from the deemed economic interest framework, nor is such an outcome likely to be within ASIC's remit. Rather, our concern is that the inclusion of related offsetting short positions—particularly where they are short term or mechanical in nature—risks introducing significant noise into disclosures without materially improving transparency outcomes. In many cases, these positions reflect risk management, hedging or client facilitation activity and result in non-directional exposures that are transient and not informative. Against this backdrop, careful consideration should be given to how such positions are calculated and reported, including whether aggregation methodologies or netting concepts could be applied to mitigate unnecessary reporting complexity. In addition, where the inclusion of offsetting short positions is required, disclosures should avoid revealing confidential or commercially sensitive client information that is not relevant to the policy objectives. A more proportionate approach to the treatment of offsetting short positions would improve the clarity and usefulness of disclosures while remaining consistent with the transparency aims of the regime.

Proposal B7 We propose that the number of issued securities of a particular class in a listed entity that a person has an offsetting short position in because of a short position derivative without a linear, symmetric pay-off profile—is equal to the delta of the derivative, as calculated using a generally accepted standard pricing model, multiplied by the full notional amount of securities underlying the derivative.
B7Q1 Do you agree with our proposal? B7Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
For non-physically settleable derivatives, we prefer to calculate deemed economic interest using notional instead of delta. This provides consistency with how physically deliverable derivatives and linear cash settled derivatives are calculated. There are practical limitations using delta. Corporates may experience difficulty calculating delta especially where they do not have a Bloomberg subscription to access option pricing tools. We also anticipate differences in how delta will be calculated. In the EU where delta is used, we understand there are financial institutions that will calculate delta for a fee. We are unaware of an equivalent service offered in Australia, and we anticipate challenges using delta without such services. Furthermore, reporting short derivatives is not required in the EU and we believe most corporate derivative client trading will fall into that bucket.
Re-reference to B2 Response: The requirement to calculate delta on a daily basis will be onerous, specifically for buy-side clients. As an example, where an institution acquires a 1-year cash settled call option which may start out-of-the-money but fluctuate over the term of the option. While such clients will monitor whether the option is in/out of the money during the term, it is unlikely they do so on a daily basis (especially if some distance from the

strike). It is very unlikely that such client has existing capability to calculate delta and even less so on a daily basis. It is likely such buy-side client 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. We however accept the delta calculation is the road ASIC has consistently taken and where we are likely to end up.
Proposal B8 We propose that: (a) where the benefit under a derivative is determined by reference to a basket or index of assets that includes securities, subject to section 15(3) of the Principal Instrument, the offsetting short position 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 the securities in the basket or index; and (b) the number of securities in a class of underlying issued securities in which a person has an offsetting short position is zero if: (i) the number of issued securities in that class in which a person has an offsetting short position represents less than 5% of the total securities in that class that are on issue; or (ii) the securities in that class in the basket or index represents 20% or more, by value, of all securities in the basket or index.
B8Q1 Do you agree with our proposal? B8Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
We seek clarification on the treatment of exposure to short indices, including short futures contracts, short options, and short equity OTC instruments or indices. Specifically, we request guidance on whether the exposure to such short positions should be treated on a gross or net basis for the purposes of calculating offsetting short positions in a basket or index context.

Proposal B9

We propose to replicate the situations which do not give rise to deemed economic interests as set out in s671AL, 671AM, 671AN and 671AP for offsetting short positions.

B9Q1 Do you agree with our proposal?
B9Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Member Response (s)

No response from the Association Membership

Proposal B10

We propose the following general calculation rules that apply to both deemed economic interests and offsetting short position calculations: (a) A person's offsetting short position must not be netted against a person's deemed economic interest. (b) The number of issued securities of a particular class in a listed entity that a person has a deemed economic interest or an offsetting short position in because of a derivative must be calculated daily. (c) Where the derivative does not have a linear, symmetric pay-off profile, the deemed economic interest or offsetting short position must be calculated: (i) using a single generally accepted standard pricing model that is applied consistently; and (ii) based on the most recent closing price for the underlying issued securities published by the operator of the financial market on which the listed entity has a primary listing.

B10Q1 Do you agree with our proposal?
B10Q2 Are there any other general calculation rules you consider we should apply to improve integrity of the calculative methods?

Member Response (s)

Daily calculations – as noted, while this may be less of an issue for sell-side derivative writers (calculating delta for risk management purposes is a common occurrence), it will be a significant burden on buy-side who are unlikely to have the systems, processes etc to calculate daily. It is likely a buy-side client will request such calculations from the derivative writer and as noted above, request for ASIC to provide confirmation that the writer is not liable for providing such calculation provided determination is from a "generally acceptable standard pricing model".

We do have a query for ASIC on the requirement to base calculations on “recent closing prices”. Is there the ability to make adjustments from the recent closing price where, for example, the underlying share has been in suspension/trading halt for a period of time. Another example is when shares are in halt while a corporate action event takes place e.g. stock split, where the recent closing price would not be accurate. As you will be aware, it is common for the Calculation Agent to make reasonable adjustments and suggest there should be the ability to use other valuations than recent closing price where such would give misleading calculations.

Another example (and not sure exactly which proposal this is best under) how would you calculate the deemed economic exposure for a “worst-of” basket type of derivative. This is where there may be a basket of say 6 stocks, but final exposure is only determined at maturity and it is linked to the “worst of” (based on performance over the derivative).

Daily calculation is onerous particularly given all other derivative transactions (physical and linear cash) are based on notional and do not require further reporting unless the transaction is amended or matures.

We seek clarification on what constitutes an "offsetting short position" in practical terms. Specifically, we request guidance on whether short positions — both physical and/or via derivatives — form part of the overall substantial position for reporting purposes, or whether they are reported separately.

For example, if physical securities are held at 6% and a short position is created via equity options totaling 4%, we would appreciate confirmation on whether the holder would still be considered substantial under the proposed framework.

We would also welcome clarification on the treatment of securities lending arrangements in the context of the daily testing requirements. Specifically: (i) where securities are lent out, are they still to be included in the daily calculation, or are they removed for the duration of the lending period? (ii) where securities are received as collateral, should these be included in the client's holdings for substantial reporting purposes?

Proposal B11 We propose to exempt licensed client facing service providers, market makers, and operators of clearing and settlement (CS) facilities from reporting deemed economic interests and offsetting short positions in the following circumstances: (a) for Australian financial services (AFS) licensees authorised to deal in derivatives, where the licensee deals in derivatives in the ordinary course of its business for the purpose of: (i) facilitating a client obtaining economic exposure, at the client's request, to changes in the value of securities in a listed entity; (ii) hedging (on an aggregate basis) an economic position of the licensee that has resulted from the licensee facilitating the obtaining of 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, on the condition that the client must provide to, or at the direction of, the licensee, any consideration the licensee is required to provide under the derivative; (b) for AFS licensees authorised to make a market in derivatives or securities, the AFS licensee deals in derivatives in the ordinary course of its business of making a market, or for the purposes of hedging an economic position of the licensee that has resulted from the licensee making a market in derivatives or securities; or (c) for CS facility licensees, the licensee enters into a derivative in the course of operating the clearing and settlement for the purposes of facilitating a client who is a participant in the facility, at the participant's request, obtaining economic exposure to changes in the value of securities in a listed entity; and (d) for each circumstance in B11(a)–B11(c), all of the following conditions must be satisfied: (i) the licensee has adequate systems for the purposes of identifying derivatives to which the exempt transaction relates; and (ii) the dealing in the derivative does not have, and is not reasonably capable of having, the effect of giving the licensee any capacity to determine, influence or attempt to influence the affairs of the listed entity. The exemption operates to exclude deemed economic interests and offsetting short positions from arising.
B11Q1 Do you agree with our proposal? B11Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
Market Maker (MM) exemption in its current form is too narrow: a. The inclusion of an MM exemption is appropriate and aligned with policy intent, recognising that liquidity providers do not seek control.

b. However, the current MM formulation is too narrow, being limited solely to licensed MMs. c. In practice, proprietary trading firms and liquidity providers perform very similar functions (continuous quoting, risk warehousing, hedging) without necessarily holding a formal MM license. d. The current proposal drafting does not reflect modern market structure, where liquidity provision extends beyond licensed MMs. e. 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.
There is a risk of reducing market liquidity & raising transaction costs: a. The increased disclosure burden and regulatory uncertainty add to the risks of liquidity provision. This disincentivises derivative trading and liquidity provision in Australia through additional frictions and leads to firms artificially limiting activity and risk warehousing to avoid the reporting triggers. b. The consequence of this is lower liquidity and higher trading costs for participants, with no appreciable upside.
Confirmation on what ASIC considers a definition of a 'Market Maker' for the exemption. Will this be the same criteria as ASIC use for RG196?
We support the market making and client facing services exclusions. However, our view is that paragraph B11(d)(ii) should be removed as it is unclear as to its purpose and could have significant unintended consequences. For example – a client requests a cash settled swap over 15% of a company. Derivative writer acquires 15% as delta 1 hedge for the swap. Given the large holding of 15%, is the licensee "reasonably capable" of influencing the affairs of the entity ? The writer holds such position to perfectly hedge its exposure, does not vote such holding but the fact they hold such a large holding, does that influence the affairs ?

We do not understand the consideration requirement for the market making exemption. Requiring impacted transactions to be tagged will require system changes. The implementation timeframe will need to be pushed back to accommodate these changes.
Proposal B12 We propose to exempt foreign equivalent licensees from reporting deemed economic interests and offsetting short positions in the same circumstances described in Proposal B11. The exemption would operate for persons that: (a) are incorporated or formed, and have their principal place of business in a jurisdiction outside of Australia; (b) are licensed or authorised by an overseas regulatory authority and whose activities (including those referred to in Proposal B11) are regulated by the overseas regulatory authority; and (c) does not hold and is not required to hold an AFS licence or a CS facility licence.
B12Q1 Do you agree with our proposal? 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? B12Q3 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership
Proposal B13 We propose that: (a) where the holding percentage that a licensed market maker, client facing service provider, or foreign equivalent licensee, would otherwise have been required to report increases above 20% or decreases to 20% or below of the voting securities in a particular listed entity—the exempt licensee is required to provide a statement of its exempt deemed economic interests and offsetting short positions to the market of the listed entity; and (b) where an exempt licensee is required to provide a substantial holding notice they must indicate whether they have an interest in other securities of the listed entity that are subject to the exemption.

B13Q1 Do you agree with our proposal? 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? 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? B13Q4 Should licensees who rely on this exception be required to disclose 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.
Member Response (s)
No response from the Association Membership
Proposal B14 We propose that the content of the ASIC issued tracing notice reflects legislative requirements only in s672AD. We do not propose to determine, by legislative instrument, any further information that needs to be disclosed.
B14Q1 Do you agree with our proposal? B14Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
We would welcome clarification on the treatment of foreign entities listed in Australia for substantial reporting purposes. Per the Information Memorandum Section 1.242, listed entities that are not incorporated or formed in Australia are included in the definition of "Chapter 6C bodies"; however, the tracing notice provisions apply only with respect to shares in foreign-incorporated or formed entities that are quoted on Australian markets. We seek confirmation as to whether, for such foreign bodies listed in Australia where only foreign listed securities are held, these entities should be included for Australian substantial reporting purposes.

SECURITIES FINANCE ASSOCIATION
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Proposal B15 We propose to prescribe minimum specifications in relation to the form of register that the key person for a listed entity must keep under s672DA(3). The register must: (a) be kept in a delimited file format and be provided in that format when providing a copy under s672DDB(4); (b) to the extent applicable, include a separate data field for each item of information mentioned in section 26(3) of the Principal Instrument; and (c) be set out and organised in a way that is consistent with the ordering of items of information in section 26(3) of the Principal Instrument. The content of a register must reflect legislative requirements as contained within new s672DB. We do not propose to prescribe any additional information that must be kept in the register.
B15Q1 Do you agree with our proposal? B15Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership
Proposal B16 We propose not to specify any exemptions from the obligation to keep a register of relevant interests under s672DA(3).
B16Q1 Do you agree with our proposal? B16Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership
Proposal B17 We propose that substantial holders will need to complete a single form to meet their substantial holding disclosure obligations, in place of the current requirement to submit one of three separate forms: see a draft of the ASIC Substantial Holding Notice at Attachment 2. We are also considering whether a simplified version of the form should be provided for substantial holders that do not hold any interests in derivatives. A simplified version of the form at Attachment

2 would involve omitting the shaded sections and including a corresponding proforma declaration.
B17Q1 Do you agree with our proposal to consolidate the existing forms into a single form? 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? B17Q3 Do you consider we should provide a simplified form for substantial holders that do not have any interest in derivatives? B17Q4 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
B17Q1-Q4: We are comfortable with using a single form for all 3 types of disclosure. In relation to the format of the form, we would frequently expect to exceed the number of rows provided under Section 3. “Details of disclosable movement and transactions” – we would need to attach a separate appendix in order to capture the full trade population as per our current market practice.
B17Q1-Q4: Yes, as custodians are generally not registered holders of derivatives and may have no visibility of ownership structures. Sufficient lead time is required for operational team to implement suggest a transitional period where both old and new forms are supported.
We recommend that substantial holding notices focus on the disclosure of **key summary information**, rather than requiring the submission of full transaction documentation or detailed client position data. This would bring the Australian regime more closely into alignment with established disclosure practices in other major jurisdictions, including the US, UK, EU, Hong Kong and Singapore, while avoiding unnecessary operational complexity.
We note that for countries such as the UK the information required are simplified and do not require ‘trade, contract’ details.

Is this something ASIC would consider removing?

Proposal B18
We are exploring replacing the existing image-based substantial holding notice forms with a machine-readable web-based version. This version would require substantial holders to submit their holding information online.

B18Q1 Are there any features that should be considered for inclusion as part of a web-based substantial holding notice form?
B18Q2 What registration requirements (if any) should be imposed on users of a web-based substantial holding notice form?
B18Q3 Would you suggest any changes to our proposed approach? If so, please provide details.

Member Response (s)

In order to facilitate the above, we would require the ability to download the form and complete it outside of a web-based upload.

We would also require functionality to attach supporting documentation which may be required (e.g. pdf's or additional excel documents).

With the associated technology build requirements do ASIC have any plans to reduce or extend the deadline from December 2026?

Functionality should be limited to uploading substantial holding form only. Access controls should be in line with custodians' technology approved standard controls.

Proposal B19
We are considering specifying a digital file format for storing and submitting substantial holding information that draws on existing data standards already tailored to exchanging holding or financial reporting information.

B19Q1 Are there any specific data standards we should consider for the purpose of storing and submitting substantial holding information?
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?

Member Response (s)
Utilizing industry standard platforms ensures standardization of responses across all Custodians. We strongly support the adoption of international ISO standards or those introduced as part of the European Shareholder Rights Directive II (SRD II) which has enabled participants to automate the disclosure process. Adoption of these standards in Australia may also increase the response times and quality of information provided by entities based in the EU. If businesses need to design, implement, and maintain registers they would require a standard format of information required which has been directed by the relevant government agency, especially considering the inclusion of a machine readable format lodgment process.
Proposal B20 We propose that the content of the new substantial holding notice form should substantively reflect legislative requirements only. However, to the extent that any additional information in the new substantial holding notice does not reflect legislative requirements, we propose to prescribe that information as additional particulars that are required. Member Response (s)
No response from the Association Membership
Proposal B21 We propose to prescribe by legislative instrument the following standard form documents that do not need to accompany a substantial holding notice: (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; and (e) master securities lending agreement as defined in ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821, where the prescribed information under that instrument is provided, including: (i) Australian Master Securities Lending Agreement as published by the Australian Securities Lending Association; (ii) Global Master Securities Lending Agreement as published by the International Securities Lending Association; (iii) Global Master Repurchase Agreement as

published by the Securities Industry and Financial Markets Association and the International Capital Market Association; and (iv) written agreements commonly known as prime broking agreements or prime brokerage agreements between a service provider and a wholesale client.
B21Q1 Do you agree with our proposal? B21Q2 Would you suggest any changes to our proposed approach? If so, please provide details. B21Q3 For which additional agreements would you suggest this standard form exemption could apply, especially with respect to derivatives agreements? 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?
Member Response (s)
We strongly prefer a summary table for derivative positions instead of providing confirmations as this is a more digestible format. As confirmations are negotiable between parties, these may be difficult to produce within the required timeframe.
We propose that the standard form exemption be extended to include the Master Securities Lending Agreement (**MSLA**) as published by the Securities Industry and Financial Markets Association (**SIFMA)** — the predominant standard-form agreement used for securities lending transactions in the United States.
Proposal B22 We propose to declare that relevant requirements in New Zealand, the United Kingdom and the United States impose substantial holding disclosure requirements equivalent to those under Australian law so that entities that are subject to those requirements that hold shares listed on Australian markets will be exempt from the substantial holding disclosure requirements.
B22Q1 Do you agree with our proposal? 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.
Member Response (s)

Disagree where freezing orders are concerned. These jurisdictions do not have freezing orders by the regulator: United Kingdom: Under Section 793 of the Companies Act 2006, a public company can issue a notice requiring information about interests in its shares. If a recipient fails to comply, the company (not the regulator) can apply to the court for an order imposing restriction on the shares (Sections 794–797). New Zealand: Under the Companies Act 1993, specifically in relation to disclosing beneficial ownership, if a disclosure tracing notice is not complied with, a company may apply to the court for orders, which can include a "freezing" or restriction on the shares. United States: The U.S. approach is more focused on reporting requirements under the Corporate Transparency Act (CTA), which aims to record beneficial owners. While there are penalties for non-compliance, they are generally focused on fines and criminal liability for the owners rather than an automatic "freezing" by the company itself.
Proposal C1 We propose to update RG 5 to: (a) provide guidance on deemed economic interests, including guidance about: (i) when a person is considered to have a deemed economic interest under s671AA and 671AQ; (ii) the basic rule for deemed economic interests for physically settleable derivatives in s671AA and nonphysically settleable derivatives in s671AF; (iii) other requirements for calculating deemed economic interests; (iv) the extensions to the basic rule for deemed economic interests in s671AB–671AE and s671AG–671AI; and (v) the exceptions where a person is not taken to have a deemed economic interest in s671AL–671AQ; (b) provide guidance on offsetting short positions, including guidance about: (i) when a person is considered to have an offsetting short position under s671AS–671AX; (ii) the basic rule for offsetting short positions in s671AS; and (iii) exceptions and extensions to the basic rule for offsetting short positions under s671AX; (c) incorporate consequential amendments to reflect new sections updated or inserted by the Amending Act, including new s608A; (d) reduce or, where appropriate, remove guidance dedicated to substantial holding notices (as we propose to move this guidance to RG 222); and (e) rename the guide Relevant interests and deemed economic interests to reflect its expanded scope, which is focusing on the concepts of relevant interests and deemed economic interests.
C1Q1 Do you agree with our proposal?

C1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
C1Q1-Q2: Custodians are recognized as the largest shareholders of Australian listed (and some unlisted) companies - these shareholdings are held as a nominee or bare trustee and not as the beneficial owner. The custodian has no beneficial rights to the shares it holds and as a bare trustee act's on the authorized instructions of its clients pursuant to the contractual arrangements agreed between custodian and client. The custodian cannot vote, sell, or seek to influence the company's business or participate in any corporate event without instruction from its client (who has control of their actions as owner of the shares). Custodians act purely as a clients' agent in the local market and support clients through connectivity to market infrastructure, expertise in laws and regulations, and a general understanding of the market environment and how to navigate it. When it comes to substantial shareholder declarations, custodians and nominees are not considered to have a relevant interest in the securities they hold on behalf of their clients for the purpose of determining a substantial shareholding. Section 609 of the CORPORATIONS ACT 2001 states that "A financial services licensee (including custodians) does not have a relevant interest in securities merely because they hold securities on behalf of someone else in the ordinary course of their financial services business. This means custodians are not considered substantial holders for disclosure purposes." ASIC Regulatory Guide 5 RG 5 explicitly recognizes that custodians and nominees, when acting as bare trustees or agents for clients, do not have a relevant interest in the securities they hold for clients. Therefore, they are not required to make substantial holding disclosures in their own name. There is no circumstance in which a custodian's holding in a company will meet the definition of beneficial ownership by the custodian in its own right. The laws and regulations put in place to support the public beneficial owner register should not require a custodian to provide its list of owners or shareholders for a public beneficial owner register as the custodian does hold an interest recognized as a beneficial owner.

With regards to derivatives, custodians are generally not registered holders of derivatives and may have no visibility of ownership structures. We would welcome a standard interpretation from ASIC regarding the treatment of CHESS Depositary Interests (CDIs), American Depositary Receipts (ADRs), dual-listed securities, and similar instruments under the enhanced disclosure regime. Clarity on whether and how these instruments are to be captured for substantial holding reporting purposes — and whether any specific conversion or look-through methodology is expected.
Proposal C2 We propose to update RG 9 to: (a) amend legislative references and guidance to reflect sections updated or inserted by the Amending Act; and (b) simplify and shorten the guidance consistent with ASIC's commitment to regulatory simplification.
C2Q1 Do you agree with our proposal? C2Q2 Would you suggest any changes to our proposed approach? If so, please provide details.
Member Response (s)
No response from the Association Membership
Proposal C3 We propose to update RG 222 to: (a) incorporate substantial holding disclosure guidance from RG 5; (b) incorporate guidance on tracing notices from Regulatory Guide 86 Tracing beneficial ownership (RG 86), and withdraw RG 86 after RG 222 has been published; (c) amend legislative references and guidance to reflect sections updated or inserted by the Amending Act; (d) include guidance about the new ASIC freezing order powers under the Amending Act; and (e) rename the guide Substantial holding disclosure and tracing requirements to reflect its broadened scope.
C3Q1 Do you agree with our proposal? C3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Member Response (s)
C3Q1-Q2: Custodians provide essential asset safekeeping and related services to the financial services sector, including institutional superannuation funds and investment managers. Omnibus accounts support this objective and enable new investors—both domestic and offshore—to access the market efficiently and in a timely manner. Custodians do not (and cannot) second-guess client investment decisions or override proper instructions; therefore, any framework designed to identify beneficial owners must reflect the custodian's role in the market. In considering enforcement actions, the regime should recognize the layers that may exist between a custodian and the ultimate beneficial owner. Enforcement should not unfairly penalize shareholders or unit holders who have complied where others have not, as this can create market inefficiencies and unintended financial impacts for compliant beneficial owners. Information-collection systems should account for the nature of custody relationships and the high volume of daily transactions processed by custodians' clients. The regulated entity should be responsible for gathering the information and required to follow the custody chain to determine beneficial owners. Because a single beneficial owner may directly or indirectly use multiple custodians, only the regulated entity can consolidate a complete view of who may meet beneficial ownership criteria. Freezing or blocking positions could generate significant negative press and lead to a reassessment of the risk of investing in the Australian market if the regime is perceived to allow assets to be frozen despite full compliance with the law. ACSA recommends that custodians, nominees, and bare trustee structures are explicitly catered for in the legislation regarding freezing powers. The legislation should distinguish beneficial from legal ownership and recognize the specific role of licensed custodians in Australia, including how freezing notices are applied and how information requests regarding related parties/associates are treated. Where a custodian has complied with a tracing notice, but an underlying party does not, any freezing notice affecting custodial holdings should be applied by the party servicing the non-complying party, not via the company, registry, CSD, or similar venue. A licensed custodian's holdings should not be frozen through a registry; instead, the intermediary facing the non-complying party should freeze the relevant holdings on its own books and records. This limits the impact to the non-complying party and avoids contagion to other investors. Freezing at the registered holder level due to non-compliance "down the custody chain" risks unintentionally

freezing assets held for Australian superannuation funds and foreign sovereign funds, creating broader market and sovereign risk. It would be beneficial for ASIC to explain how freezing notices will be enforced in practice, using specific examples or scenarios, particularly given that developed-market nominee account jurisdictions do not generally apply freezing orders to assets to such a degree in cases of non-compliance. Further clarity is needed on how "uninvolved parties" are protected in omnibus accounts, given the operational difficulty of isolating specific holdings within a pooled position, especially where multiple layers of ownership exist. There remains limited practical guidance from ASIC on applying freezing orders in omnibus accounts, notwithstanding the updated language in RG222 and Information Sheet 151. Could ASIC please define "uninvolved parties" in its regulatory guidance to ensure nominee companies and similar entities are appropriately protected. If custodians are required to establish a process of freezing a specific % of holdings for a specific client in their systems, this may require a tech build, and sufficient time for budgeting, analysis of downstream impact, and implementation should be granted, i.e. an extension of the 4th December 2026 effective date should be considered with regards to freezing orders.
The current proposal regarding Freezing Orders and derivative-based interests causes significant uncertainty and economic risk to derivative participants. Where there is no fault of the derivative participant, they should not be restricted from dealing in any underlying hedge positions connected to a derivative they have written. The consequences of not being able to do so creates significant market and credit risk given the speed markets and prices move and the inability to liquidate a hedge position. Our suggestion is that a freezing order should be limited to proceeds of a derivative or specifically excluding a derivative writer from conducting its hedging activity acting in the ordinary course of business. i.e. the failure of a derivative taker to properly disclose should not prevent the derivative writer managing its hedge/risk position in the ordinary course of business, to do otherwise would be unjust.

Additional Member(s) Comments

Market Structure, Competitive Disadvantage

There are currently a number of market participants with significant agency lending businesses in Australia (which are independent agency businesses acting for clients).

As proposed, agency lending transactions would still be included in relevant interest calculations and the increased Holding Percentage (based on the relevant interests plus the deemed economic interests) is likely to increase the amount of reporting that is done causing these firms to breach reporting thresholds more quickly that counterparts without an agency lending business.

This risk's creating competitive disadvantages for a range of market participants; as clients who prefer not to be disclosed may choose to transact with alternative providers solely due to the disclosure consequences, rather than any change in economic exposure.

It is important for disclosure to the market not to include such confidential data such as client names, to reduce the impact of such a competitive disadvantage based only on disclosure consequences.

Enforcement Measures

ASIC should provide clearer guidance on how enforcement measures, particularly freezing orders, are expected to operate in custody and omnibus account structures. In practice, custodians may hold large, pooled positions across multiple underlying clients, and isolating a specific beneficial holder's interest can be operationally complex.

Greater clarity is needed on how ASIC expects affected positions to be identified and restrained without prejudicing other account holders who are not involved. We also believe regulatory guidance should more clearly define "uninvolved parties" so that nominee companies and similar intermediated holding structures are appropriately protected.

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, nor highlight where real control issues may lie.
Reporting Formats If ASIC proceeds with machine-readable substantial holding forms, sufficient implementation lead time and an appropriate transition period will be critical. Current market practice remains largely email-based, and operational teams will need time to assess system impacts, confirm that all required data fields can be sourced, and test any new submission process. It would be sensible for ASIC to support both legacy and new formats for a period during transition. Any electronic lodgement solution should align with internationally compatible standards and be workable for global custodians.
Tracing Notice Timeline The 48-hour timeframe for tracing notices appears unchanged, practical issues remain where notices are passed down the custody chain. Account naming conventions and limited identifying information can make it difficult to determine the correct underlying business unit or client relationship in a timely way. Additional guidance from ASIC on tracing notice handling in custodial chains would therefore be helpful.
Timing We are strongly of the view there is insufficient time to properly build, test, implement a brand-new industry reporting system by December 2026. Provided ASIC releases the completed updated guidance and updates by end of July, only 5 months remain which will be insufficient.

While other market participants have suggested longer time periods, we suggest 12 months from when ASIC release the final guidance as that period is required to conduct the tech and systems build.
Timing Given the scale of system development, process change and governance uplift required, a **12-month implementation period appears insufficient**. We recommend requesting timing relief or a phased implementation approach to ensure changes can be adopted in a controlled and compliant manner. We recommend 18 months from the time the ASIC rules are finalized.
Out of sync with major international frameworks: The proposed breadth of "economic interest" appears broader than comparable regimes in other key markets (US, EU, UK) where: i. Disclosure of derivatives is more limited or conditional, and ii. Greater emphasis is placed on control or voting power. This increases the complexity for global firms operating in Australia and discourages liquidity provision there.

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