CLAYTON UTZ

Enhanced Ownership Disclosure for Listed Entities in Australia

ASIC Consultation Paper 387 on enhanced beneficial ownership disclosure: Proposed legislative instrument, form and guidance

Submission by Clayton Utz

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Response to the Consultation Paper 387 on enhanced beneficial ownership disclosure: proposed legislative instrument, form and guidance ('Consultation Paper')

Submission by Clayton Utz

1. Opening Comments

1. Clayton Utz welcomes the opportunity to make this submission in response to ASIC Consultation Paper 387, *Enhanced beneficial ownership disclosure: Proposed legislative instrument, form and guidance*. This Submission seeks to comment on ASIC's proposed legislative instrument, draft substantial holding notice, and proposed updates to Regulatory Guides 5, 9 and 222.

Background

2. It is well recognised that Australia's substantial holding and tracing regimes have not historically captured certain derivative-based economic exposures in listed entities. In our view, the policy objective underlying the reforms, namely improving transparency in relation to economic exposure and beneficial ownership, is both appropriate and justified. ASIC explains that the reforms are directed to improving corporate transparency by showing who ultimately owns, controls and receives profits from listed entities, including by bringing equity-derivative interests into the substantial holding regime.

3. We acknowledge the important role that appropriate disclosure of derivative instruments plays in supporting efficient, competitive and informed Australian financial markets. At the same time, we recognise the importance of preserving the effective use of derivative instruments as a means of enabling market participants and investors to manage risk, acquire economic interests in listed entities, and support acquisitions. To best achieve these objectives simultaneously, implementation of the updated regime will require careful consideration and calibration of the legislative instruments, the form of substantial holder disclosure and guidance to ensure that the disclosure framework is both legally coherent and practically operable. ASIC's consultation paper recognises that these instruments and guides will do substantial work in giving effect to the Amending Act.

Scope of Submission

4. This submission is directed to those aspects of CP 387 on which we consider we can most usefully assist, particularly the proposed calculative methods for deemed economic interests and offsetting short positions, aspects of the substantial holding notice form and associated disclosure mechanics, and elements of the proposed Regulatory Guide updates.

5. We do not make any comment on Section A of CP 387 (Background to proposals).

6. Section B of CP 387 specifically seeks feedback on the calculative methods, the form of substantial holding disclosure, excluded standard form documents, and equivalent foreign requirements, while Section C seeks feedback on the proposed updates to RG 5, RG 9 and RG 222.

7. In relation to the proposed relief for market-makers and client-facing services (Section B), Clayton Utz considers that there are other market participants with greater familiarity and expertise on those matters and accordingly does not make substantive submissions on that aspect of the proposals.

8. In relation to the proposed framework for ASIC tracing notices, Clayton Utz does not make submissions on that topic in this submission.

2. Calculative methods for deemed economic interests

We comment upon matters canvassed in paragraphs B1 to B10 in the consultation paper. Note, these comments are subject to review.

<u>Calculation methodology for deemed economic interests in single-name non-physically settleable derivatives (B1–B3)</u>

1. Section 671AF of the Amending Act establishes the basic rule under which a person is taken to have a deemed economic interest in issued securities when they hold a non-physically settleable derivative. The operative conditions are set out in s 671AF(1). In particular:

   a. s 671AF(1)(b): the arrangement must be a derivative;

   b. s 671AF(1)(c): the consideration payable under, the value of, or the financial benefits receivable under, the arrangement must be determined by, derived from, or vary by reference to the value of issued securities of a particular class in a Chapter 6C body; and

   c. s 671AF(1)(d)(i): the person must have the financial benefits of holding issued securities in the class; or, alternatively, s 671AF(1)(d)(ii): the person must benefit if the value of issued securities in the class increases (rather than decreases).

2. The deemed economic interest that arises under s 671AF(1) is an interest in "the number of issued securities ... determined under section 671AK" — see s 671AF(5). This is the critical

link to the Principal Instrument: s 671AK(1) empowers ASIC, by legislative instrument, to determine the number, or the method of working out the number, of issued securities in which the person is taken to have a deemed economic interest. Accordingly, the Principal Instrument operates within this delegated framework: it is the exercise by ASIC of the s 671AK(1) power, and its provisions must be construed accordingly.

3. Section 671AK(2) provides additional parameters for the exercise of the s 671AK(1) power. By s 671AK(2)(a), ASIC may allow a person to choose between different specified methods, or between methods that meet specified requirements. By s 671AK(2)(b)(ii), ASIC may require recalculation at a specified time.

4. Section 671AF(4) provides that, in determining whether s 671AF(1)(d)(ii) is satisfied, any benefit that would arise if the value of the securities decreases is to be disregarded. Read together with the Act's separate treatment of offsetting short positions, and ASIC's proposal that offsetting short positions are not netted against deemed economic interests, this supports separate calculation and disclosure of long and short economic exposures.

5. ASIC proposes sections 7 to 10 of the Principal Instrument as the primary operative provisions for the single-name calculation methodology.

Full notional for linear, symmetric derivatives (section 9)

6. Section 9 of the Principal Instrument provides that, where a non-physically settleable derivative has a linear, symmetric pay-off profile, the holder's deemed economic interest is the full notional number of underlying securities. The principle is broadly consistent with the approach taken in Article 5(1) of EU Commission Delegated Regulation 2015/761, which treats non-physically settleable instruments with a linear, symmetric pay-off profile as having a delta of 1 for notification purposes. Where the instrument gives economic exposure that moves proportionately with the price of the underlying securities, it is understandable to treat the holder as having a deemed economic interest equal to the full notional amount of the referable issued securities. The difficulty is not with that method itself, but with the criterion that determines when it applies.

7. The expression "linear, symmetric pay-off profile" performs a critical function within the Principal Instrument. Whether a position falls within section 9 or instead requires assessment under section 10 directly determines the reported size of the relevant exposure. Neither the Principal Instrument nor the Consultation Paper defines that expression, nor identifies what features of a derivative are sufficient to take it outside section 9. The apparent policy logic is that section 9 is intended to apply to non-physically settleable derivatives whose economic

exposure moves in a proportionate, share-like manner with the underlying securities, while section 10 is intended to apply where that is not the case. But the draft Instrument does not articulate where that boundary lies. That omission gives rise to a genuine certainty concern.

A useful example of the uncertainty is a derivative with a barrier or knock-out features. Broadly, a barrier feature makes the derivative's operation depend on whether the price of the underlying securities reaches a specified level. A knock-out feature goes further where once that level is reached, the derivative terminates or its economic exposure is materially reduced or extinguished. Although such an instrument may initially resemble a standard cash-settled derivative with one-to-one share-like exposure, its pay-off is not linear and symmetric across the entire life of the derivative. As the market price moves closer to the barrier, the derivative's sensitivity to further price movements may cease to resemble ordinary one-for-one equity exposure. That creates uncertainty as to whether the instrument should continue to fall within section 9 or instead be treated under section 10 as a non-linear instrument requiring a delta-based methodology. The absence of a definition of "linear, symmetric pay-off profile" leaves no clear basis for classifying derivatives with contingent features, even though those features may materially affect the extent to which the holder truly benefits from increases in the value of the underlying securities for the purposes of s 671AF(1)(d)(ii).

Total return swaps with financing legs and reset features. A standard total return swap (TRS) has a linear pay-off: the TRS receiver gets the total return on the reference shares (price appreciation plus dividends) in exchange for a periodic financing payment. For a vanilla TRS, full notional under section 9 is appropriate. However, a non-vanilla TRS with reset features, where the notional is periodically adjusted to the then-current market value of the reference shares, changes its economic character on each reset date. At reset, the cumulative gain or loss is settled in cash and the notional is reinitialised. Whether certain instruments have a "linear, symmetric" profile for the purposes of section 9 requires judgment that the instrument currently does not guide. Given the prevalence of TRS in the prime brokerage market, which is precisely the market most directly affected by this disclosure regime.

ASIC should publish guidance on the classification of linear, symmetric derivatives for these purposes.

Delta × notional for non-linear derivatives (section 10)

8. Section 10 of the Principal Instrument provides that for a non-physically settleable derivative that does not have a linear, symmetric pay-off profile, the deemed economic interest is the delta of the derivative multiplied by the notional number of securities. Again, this mirrors Article 5(2) of EU Regulation 2015/761. We submit underlying logic is correct and the

approach taken by ASIC is appropriate. For instruments such as options, whose sensitivity to the underlying price varies across the price range, using the full notional would overstate the economic exposure in a way that could mislead the market and generate compliance obligations that do not correspond to genuine economic interests.

The "generally accepted standard pricing model" (section 7)

9. Section 7 of the Principal Instrument defines a "generally accepted standard pricing model" as a model that is generally accepted in the Australian financial services industry for the type of derivative concerned, and that takes into account relevant factors including the price of the underlying security, time to maturity, interest rates, dividend expectations, and volatility. We generally submit that the principle-based pricing model which has been suggested by ASIC is preferable to a prescriptive approach.

10. This definition is broadly modelled on Article 5(3) of EU Regulation 2015/761, which requires a model "generally used in the finance industry for that financial instrument" and "sufficiently robust to take into account the elements that are relevant to the valuation of the instrument", with five specified mandatory inputs which we submit are broadly acceptable. Section 7 has a similar structure, and the approach is sensible in principle. It avoids mandating a specific pricing model, which would quickly become outdated as market practice evolves, while establishing a minimum standard.

11. Nevertheless, several deficiencies in the current drafting are identified below.

    a. **Absence of the "sufficiently robust" standard.** EU Regulation 2015/761 Article 5(3) requires the model used to be "sufficiently robust to take into account the elements that are relevant to the valuation of the instrument". This is a meaningful standard that imposes a requirement of proportionality between the model's sophistication and the instrument's complexity. The ESMA final report (ESMA/2014/300, paragraphs 104–106) gave example that Black-Scholes model would satisfy the standard for vanilla options but not for exotic derivatives. Section 7 of the Principal Instrument contains no equivalent standard. ASIC should consider whether it is necessary to incorporate an express requirement that the model be sufficiently robust to account for the complexity and risk characteristics of the relevant derivative.

    b. **Model governance and consistency obligations.** EU Regulation 2015/761 Article 5(4) imposes two model governance obligations on holders: (a) the model covers the complexity and risk of each instrument, and (b) the same model is used in a consistent manner for the calculation of the number of voting rights of a given financial instrument. Article 5(5) further requires that the IT systems used to calculate delta ensure "consistent, accurate and timely" reporting. Section 7 of the Principal Instrument and section 16(b)(i) (which requires a "single generally accepted standard pricing model that is applied consistently") collectively do not fully replicate these obligations. The instrument should include, at minimum, an obligation that the holder uses the same model consistently for a given derivative, to prevent the freedom to switch models across the life of the derivative when doing so would produce a lower delta and may therefore produce a lower deemed economic interest (thereby distorting the information that is disclosed to the market). In the absence of a consistency requirement at the instrument level, there is a risk of model-switching that the Australian regime, unlike the EU, provides no mechanism to prevent.

Basket and index derivatives: weighting, thresholds and anti-avoidance design (B4 and B8)

Section 11(3) — the de minimis test (B4)

12. Section 11 of the Principal Instrument provides the calculation methodology for deemed economic interests under basket and index derivatives. Where a derivative references a basket or index, the deemed economic interest in a particular class of securities is determined by multiplying the delta (or notional, as applicable under sections 9 or 10) by the weighting of that class in the basket or index.

13. Section 11(3) provides that the deemed economic interest in a particular class is zero if both of the following conditions are satisfied:
    a. the proportion of total issued securities of the class that is represented by the deemed economic interest is less than 5%; and
    b. the securities of that class represent less than 20% of the value of the basket or index.

14. Both conditions must be satisfied for the interest to be zero — this is a conjunctive test.

15. There is, however, a material inconsistency between CP 387 and Attachment 1 on this point. Proposal B4 in CP 387 states that the number of securities in a class is zero if condition (i) is satisfied *or* condition (ii) is satisfied. By contrast, section 11(3) of Attachment 1 provides for a zero outcome only where paragraph (a) *and* paragraph (b) are both satisfied. Those formulations produce materially different outcomes. Under the CP 387 formulation, a person with a less-than-5% exposure in a class could obtain a zero outcome even where that class

comprises 25% of the basket by value. Under Attachment 1, that same position would not be zero because paragraph (b) would not be satisfied. ASIC should resolve this inconsistency expressly. The anti-avoidance rationale stated in CP 387 supports the Attachment 1 formulation, but it is not completely clear on what ASIC's intention for the test should be.

16. We submit that the conjunctive formulation in section 11(3) is preferable. It ensures that an exposure is reduced to zero only where it is small both relative to the total securities on issue in the relevant class and relative to the composition of the basket or index. ASIC should confirm whether this is the intended test.

<u>Section 11(3) as a substantive exemption — is it within s 671AK power?</u>

17. The note to s 671AK(1) contemplates that the number, or method of working out the number, of issued securities in which a person has a deemed economic interest in, may be zero. However, s 671AK(1) is directed to determining the number, or a method of working out the number, of issued securities in which a person has a deemed economic interest, whereas the existence of the deemed economic interest itself is determined by s 671AF(1) and s 671AF(5). There is therefore a question whether section 11(3), in setting the number to zero where the de minimis conditions are met, is merely determining a number for the purposes of s 671AK(1), or is operating in substance as a de minimis exclusion from the ordinary operation of s 671AF. ASIC should clarify the intended basis on which s 671AK supports section 11(3).

18. Section 11(3) may cause a deemed economic interest to move from nil to a positive amount solely because the de minimis conditions cease to be satisfied on a daily recalculation, even where the derivative itself has not changed. ASIC should clarify the disclosure consequence where, on a daily recalculation, section 11(3) ceases to apply and the calculated deemed economic interest moves from zero to a positive amount even though the derivative itself has not changed, including whether that event is to be treated as the person beginning to have a substantial holding for the purposes of s 671B(1)(a), or as a disclosable movement for the purposes of s 671B(1)(c) and s 671BK.

<u>Accessibility to basket and index data</u>

19. We are generally supportive of the policy objectives of Proposal B4, in particular, the use of the 5% and 20% thresholds to confine mandatory disclosure to circumstances in which a basket or index derivative gives rise to a meaningful economic exposure to a particular Chapter 6C entity's securities. We also support the anti-avoidance rationale reflected in

section 11(3)(b) of the draft Instrument, which is directed to preventing concentrated exposures from being obscured within a basket or index structure.

20. However, there are concerns as to the practical operation of the methodology in section 11(2), particularly when read with the daily recalculation requirement in section 16. Section 11(2) requires the deemed economic interest attributable to a basket or index derivative to be allocated by reference to the value-weight of the relevant constituent security or class of underlying issued securities within the basket or index. Section 16 requires that calculation to be performed daily and, where the derivative does not have a linear, symmetric payoff profile, by reference to the most recent closing price of the underlying issued securities. The practical consequence is that a person must, for each relevant day, be able to identify the composition of the relevant basket or index and obtain sufficient data to determine the value-based weighting of each relevant constituent security or class represented in it.

21. That requirement may be straightforward in the case of a bespoke basket derivative where the composition at any time is readily known to the holder, but materially less straightforward in the case of certain widely used commercial indices. For a derivative referencing an S&P/ASX index, for example, compliance with section 11(2) would require access to official constituent composition and float-adjusted weighting data or to sufficient underlying data to calculate those weights accurately, on an ongoing basis. Official constituent-level weighting data does not appear to be freely available in the form required to perform section 11(2) calculations but instead appears to be available only under commercial licencing subscriptions. Depending on the extent of a participant's basket or index derivative holdings, the cost and complexity involved in providing accurate disclosure may be substantial.

22. Comparable concerns were raised in the European regulatory context. In response to equivalent EU proposals on index-based disclosure thresholds, a participant in Eumedion, an asset manager with approximately €185 billion in assets under management, estimated it would need to perform daily calculations across 25 indices, with data costs for constituent composition and weights of up to €250,000 per year for those indices alone.

23. We submit that it should be further considered in the case of derivatives referencing indices or baskets of securities whether the burden in some cases is disproportionate to the regulatory benefit obtained.

<u>The B8 drafting error in section 15(3)(b)</u>

24. Proposal B8 extends the basket and index methodology to offsetting short positions. However, the defect here should be characterised carefully. Section 15(3)(b) correctly provides that the

offsetting short position is zero only where the securities of that class in the basket or index represent less than 20% by value of all securities in the basket or index.

25. The error appears in CP 387 Proposal B8(b)(ii), which states that the offsetting short position is zero where the securities in the class represent 20% or more by value of all securities in the basket or index. That formulation is the inverse of the correct anti-avoidance logic. A class that makes up 20% or more of the basket is precisely the case in which the exposure should be included, not excluded. The consultation paper therefore misstates the intended threshold test for offsetting short positions. ASIC should correct CP 387 so that Proposal B8 mirrors section 15(3)(b) of Attachment 1 and uses the formulation "less than 20%".

<u>Anti-avoidance and accumulation issue</u>

26. Section 11 appears to apply on a basket-by-basket or index-by-index basis. Subsections 11(2) and 11(3) require the exposure to be worked out by reference to the weight of the relevant security in "the basket or index", and subsection 11(3)(a) refers to the number of securities in which the person has a deemed economic interest "as a result of the basket or index". On its face, the provision does not require exposures to the same issuer arising under multiple baskets or indices to be aggregated before the thresholds in subsection 11(3) are tested.

27. That gives rise to a potential avoidance concern. A person may be able to obtain a material aggregate economic exposure to a single issuer through multiple basket or index derivatives, while keeping each individual basket exposure below the subsection 11(3) thresholds. ASIC should clarify whether that outcome is intended. If it is not, ASIC should consider whether it would be appropriate to include a rule addressing aggregation across multiple baskets or indices referencing the same issuer.

<u>Treatment of variance and volatility derivatives (B5)</u>

<u>The statutory gateway question</u>

28. Proposal B5 proposes not to prescribe a specific exception for volatility or variance derivatives. ASIC's working assumption appears to be that variance and volatility derivatives technically fall within the definition of s 671AF(1) but will generally produce an immaterial deemed economic interest under the proposed calculation methodology. This submission suggests the analysis requires greater depth, because the preliminary question, whether variance and volatility derivatives satisfy the statutory gateway conditions in s 671AF(1) at all, is separate from, and logically prior to, the calculation question under section 10.

29. Section 671AF(1)(d) provides, in the alternative, two conditions. The first (s 671AF(1)(d)(i)) is that the person has "the financial benefits of holding issued securities in the class". The second (s 671AF(1)(d)(ii)) is that the person "benefits if the value of issued securities in the class increases (rather than decreases)".

30. A variance swap is a derivative under which one party (the variance buyer) pays a fixed "variance strike" in exchange for receiving the realised variance of the underlying over the term of the contract. The payoff is determined by the difference between realised variance and implied variance, a purely statistical quantity measuring the dispersion of returns, not the direction of price movement. The variance buyer benefits from increased volatility regardless of whether the price of the underlying securities is rising or falling. A large, sustained upward price movement contributes to realised variance, as does a large, sustained downward price movement.

31. Applying the s 671AF(1)(d)(ii) test: does the variance buyer "benefit if the value of issued securities in the class increases"? The answer is: not necessarily, and certainly not because of the increase itself. The variance buyer benefits from large movements in either direction, not from directional price appreciation. A period of significant price decline accompanied by high volatility would benefit the variance buyer more than a stable period of price appreciation.

32. The same analysis applies to s 671AF(1)(d)(i): the variance buyer does not have "the financial benefits of holding issued securities". A variance swap's payoff is wholly decoupled from the direction of price movement and is derived instead from the statistical properties of the price time series.

33. On a careful reading of s 671AF(1)(d), there is a substantial question whether a vanilla variance or volatility swap satisfies either limb of the statutory gateway at all. If it does not, no deemed economic interest arises under the Act and section 10 of the Principal Instrument is inapplicable. The Principal Instrument, as an exercise of the s 671AK(1) power to determine the number of securities in which a person has a deemed economic interest, cannot itself create a deemed economic interest where the gateway conditions in s 671AF(1) are not met.

<u>Appropriate regulatory treatment</u>

34. Despite the analysis above, there exists hybrid instruments that combine volatility exposure with directional equity exposure. For example, a structured note that pays a return tied to both the total return of a reference stock and the realised variance of that stock. For such instruments, the directional component may satisfy s 671AF(1)(d)(ii), even though another

component of the payoff is volatility-based. In that circumstance, the instrument may fall to be assessed under section 10.

35. We submit that:

    a. a derivative whose payoff is solely determined by reference to the realised or implied volatility or variance of the price of the relevant securities, without any directional equity exposure, should be treated as falling outside s 671AF(1)(d), and therefore as not giving rise to a deemed economic interest; and

    b. where an instrument combines directional equity exposure with volatility-based features, ASIC should clarify that the section 10 methodology is to be applied by reference to the instrument's sensitivity to changes in the price of the underlying securities, rather than by reference to value attributable solely to volatility exposure.

36. This approach would avoid regulatory overreach by excluding instruments with no genuine directional equity exposure, while also avoiding under-capture in relation to hybrid instruments that combine volatility exposure with genuine directional exposure to the underlying securities.

<u>Calculation methodology for offsetting short positions in single-name derivatives (B6, B7 and B9)</u>

<u>Statutory framework — s 671AS and s 671AW</u>

37. Section 671AS of the Amending Act establishes the basic rule for offsetting short positions. Section 671AS(1) provides that a person has an offsetting short position in issued securities of a class if:
    a. s 671AS(1)(b): the arrangement is a derivative;
    b. s 671AS(1)(c): the consideration, value, or financial benefits are determined by, derived from, or vary by reference to the value of issued securities of that class; and
    c. s 671AS(1)(d): under the derivative, a person might benefit if the value of issued securities in the class decreases.

38. This mirrors the structure of s 671AF(1) but inverts the directionality (where s 671AF requires a benefit from price increase, s 671AS requires a benefit from price decrease). The structure reflects a conscious legislative choice to create separate reporting lines for long economic exposure (deemed economic interests) and short economic exposure (offsetting short positions), without any netting between them.

39. Section 671AS(3) provides that the number of securities in which the person has an offsetting short position is "determined under section 671AW". Section 671AW mirrors s 671AK in conferring on ASIC the power, by legislative instrument, to determine the number or method of working out the number of securities. Sections 13 and 14 of the Principal Instrument are proposed as the exercise of this power: section 13 applies the full notional for linear derivatives, and section 14 applies the relevant formula for non-linear derivatives.

<u>B6 and B7 — sections 13 and 14</u>

40. Sections 13 and 14 replicate, in mirror form, sections 9 and 10 for the offsetting short position calculation. The methodology is substantively appropriate: a linear short position (such as a short-side total return swap or a short forward) gives rise to a full-notional offsetting short position, and a non-linear short position (such as a long put option) gives rise to a delta-adjusted offsetting short position.

41. One issue specific to section 14 is the sign convention for delta. The delta of a long put option is negative (the option's value increases as the underlying price falls). Section 14 presumably intends the offsetting short position to be the absolute value of the delta multiplied by the notional, but this is not expressed. The Instrument should make clear that for non-linear instruments giving rise to an offsetting short position, the relevant delta is taken as its absolute value. This is necessary to produce a positive number of securities in which the person has an offsetting short position, and to ensure that the number can be incorporated into the s 671BK(1)(c) calculation (which tracks movements in the "offsetting short position percentage").

42. Further, there appears to be an apparent drafting error in proposed s 671AY(2), inserted by section 24 of the Principal Instrument. The provision states that a bare trustee who would otherwise have an offsetting short position “does not have an *offsetting position*” in the number of securities if the beneficiary has the relevant position. For consistency with the rest of Part 4, this should refer to "offsetting short position".

<u>Section 22 — information requirements for the s 671AY exception</u>

43. The proposed s 671AY, notionally inserted by section 24 of the Principal Instrument, is intended to extend the client services and market maker exclusion to offsetting short positions. Proposed s 671AY(4) does so by providing that a person does not have an offsetting short position in the circumstances determined by ASIC under s 671AO(2) for the purposes of s 671AO(1). Proposed s 671AY(5) then provides that, if the ASIC determination requires a person who would otherwise have a deemed economic interest to give specified information

or documents under s 671AO(5), a person who would otherwise have an offsetting short position apart from s 671AY(4) must also comply with that requirement. The evident intention is therefore that the information-giving regime in section 22 should operate not only for persons relying on sections 19 and 20, but also for persons relying on proposed s 671AY(4).

44. The difficulty is that section 22 is not drafted in a way that makes that extension clear. Section 22(1) is expressed to be made for the purposes of s 671AO(5) of the Act, and section 22(2) is triggered only where a licensee "does not have a deemed economic interest" because of section 19 or 20 of the Instrument. By contrast, a person relying only on the offsetting short position exclusion would be relying on proposed s 671AY(4), not on sections 19 or 20 as such. Although section 22(3)(c) expressly refers to a statement that the licensee does not have an offsetting short position because of proposed s 671AY(4), and section 22(3)(e)(iii) requires disclosure of the increase in the licensee's offsetting short position percentage on a no-exclusion basis, those provisions concern the content of the disclosure once section 22 has been engaged. They do not clearly solve the threshold question created by section 22(2). On the current drafting, there is a real question whether a licensee who relies only on proposed s 671AY(4), and not on section 19 or 20, is ever brought within section 22 at all. ASIC should therefore amend section 22 so that its trigger expressly captures reliance on proposed s 671AY(4), and not only reliance on sections 19 and 20.

45. There is also an apparent drafting error in section 22(3)(b). That provision requires the licensee to identify which of "section 19 and 30" is applicable. In context, that should plainly be a reference to section 19 or 20. Section 30 is in Part 6 of the Instrument and concerns standard form documents; it has no connection with the client services and market maker exclusions in Part 3. ASIC should correct the cross-reference accordingly.

General calculation rules, valuation timing and system integrity (B10)

46. There is an apparent drafting error in the note to section 16 of the Principal Instrument. The note states that daily changes need not be reported unless a situation described in "subsection 671AB(1)" of the Act has occurred and gives as examples a disclosable movement of more than 1% or a person beginning or ceasing to have a substantial holding. Those examples correspond to the reporting triggers in s 671B(1), not s 671AB(1). This cross-reference should be amended as appropriate.

Daily recalculation and the disclosure obligation — passive threshold crossings

47. Section 16's daily calculation obligation interacts in a potentially problematic way with the disclosure timetable under s 671BA(1)(a). Section 671BA(1)(a) requires a person who must give information under s 671B(3) because a situation in s 671B(1) has arisen to do so within 2 business days after the person becomes aware of the situation. Section 671BA(2) provides that a person who ought reasonably to be aware of the situation is taken to be aware of it.

48. If a person is required by section 16 to calculate its deemed economic interest daily, ASIC should clarify whether that daily calculation obligation means that the person will ordinarily be taken under s 671BA(2) to be aware of a threshold crossing identified by that day's calculation, even where no transaction has occurred and the change is solely attributable to a change in delta or another model input

49. ASIC should clarify:

    a. whether the existence of a section 16 daily calculation obligation means that a person will ordinarily be taken under s 671BA(2) to be aware of a threshold crossing identified by that day's calculation;

    b. whether a passive threshold crossing, in the absence of any underlying transaction, triggers the disclosure timetable under s 671BA(1)(a), and if so whether the relevant trigger is s 671B(1)(a) or s 671B(1)(c); and

    c. whether, and in what circumstances, the exception in s 671BC is available where such a crossing is missed because of an isolated model input or systems error in an otherwise well-governed daily calculation framework.

<u>Section 671BC and system-based compliance failures</u>

50. Section 671BC is potentially important where disclosure is generated through automated systems. The section focuses on whether the person took all reasonable steps to ensure that, if a disclosure obligation arose, the person would know or be reasonably able to know the required information by the time for disclosure.

51. In our view, ASIC should clarify how that test applies where an entity operates a well-governed automated calculation and reporting framework, but a specific disclosure error nonetheless occurs because of an isolated input or systems error. In particular, ASIC should explain the extent to which documented model governance, reliable market data, exception reporting, and prompt error investigation and correction will be relevant in assessing whether the person took all reasonable steps for the purposes of s 671BC.

3. Substantial holding disclosure

Comments on ASIC's Proposed Combined Substantial Holding Notice (Relevant Interests and Deemed Economic Interests)

Our comments on ASIC's proposed substantial holding notice are as follows.

General Observations

ASIC proposes to combine notices relating to substantial holdings of relevant interests and deemed economic interests into a single form, to be used across three distinct points of time: when a person first becomes a substantial holder, where there is a notifiable change in interests, and where a person ceases to be a substantial holder.

It is important that substantial holding notices clearly disclose the matters to which they are required to relate and provide certainty to the market. We believe there should be clear disclosure of the circumstances in which a person becomes a substantial holder of relevant interests or deemed economic interests, the nature and extent of any change in that holding and when a person ceases to be a substantial holder.

We submit that the objective of ensuring complete and clear disclosure would be better achieved by maintaining separate notices for each of the three distinct points in time referred to above, with each notice tailored to the specific disclosure required in the relevant circumstances.

It is unclear whether after the provisions relating to deemed economic interests become effective, the most prevalent form of substantial holding notice will cover both relevant interests and deemed economic interests. A conservative view is that this is unlikely. We suggest that, at the outset, it would be appropriate to provide a separate form relating only to disclosure concerning relevant interests, and a second form which combines both relevant and deemed economic interests.[1]

Disclosure of relatable derivative-based holding percentages is complicated by the subtle difference between a relevant interest, which may be attributable to certain securities by virtue of sections 608(8) and 608A of the *Corporations Act 2001* (Cth), and relatable derivative-based relevant interests. There is also the possibility that the same relatable interests can move between conferring conventional

[1] Simplicity and clarity are important. There is a strong imperative that the forms provide for clear and straightforward disclosure to the greatest extent possible.

relevant interests and being relatable derivative-based relevant interests. This is discussed further below.

We suggest that the concepts relevant to these two interests give rise to circumstances where there is a genuine risk of material uncertainty and incorrect disclosure.

The proposed notice appears to capture information typically included in Form 603, such as relevant interests, the current registered holder of the securities, consideration provided, and some details relating to changes in associates' interests. However, the notice does not appear to include disclosure of the associate relationships themselves, which is useful information.

Specific comments on the draft form

Note: *The numbering of these comments corresponds directly to the numbered points on the attached form. Each comment should be read in conjunction with the point of the same number on the form. For example, Comment 1 corresponds to Point 1, Comment 2 corresponds to Point 2, and so forth.*

1. The form appears to assume that the same corporate entity will be the primary holder of conventional relevant interests and deemed economic interests. This will not necessarily be the case.

   In our experience, substantial holding notices are generally drafted in two alternative ways, reflecting the fact that the interests are typically held within a group of companies. In the first alternative, the primary substantial holder nominated is the company that directly holds the relevant interests, or, in the case of deemed economic interests, the party that has entered into the relevant instrument under which the deemed economic interest arises. Disclosure then proceeds on the basis that other entities in the group which hold relevant interests or deemed economic interests in the securities are disclosed elsewhere in the form, for example, interests arising under the tracing provisions in section 608(3). The second alternative is to disclose, as the primary substantial holder, the ultimate holding company in the relevant group, and to include a reference in the introductory disclosure or elsewhere to the other entities that hold interests. Details of those entities may be included either in the relevant box on the form or by way of an attachment. The proposed form leaves both approaches open. The first approach will only be feasible in the form currently contemplated where both the relevant interest and deemed economic interest are primarily held by the same entity within the group. The form assumes this would be the case, but that is not necessarily so. This should inevitably lead to the conclusion that the second approach is the more appropriate way to proceed in relation to the proposed notice

2. Paragraph 2 in the draft notice aggregates the total number of votes attached to all voting securities held by the substantial holder or an associate by reason of relevant interests, that is, voting power under section 610 of the *Corporations Act 2001* (Cth), which reflects actual voting power, and votes attached to shares in which the person and their associates are deemed to have an economic interest, which is not voting power. The latter includes votes in respect of securities over which the substantial holder and its associates have no right to exercise or control the exercise of the vote. The inclusion of these 'deemed votes' can therefore be misleading when the total number is entered in the box marked 'Person's votes' in both the previous and current notice sections. It should be made clear that the substantial holder does not, in fact, have any votes attached to securities in which there is a deemed economic interest.

3. The line disclosing the non-derivative based holding percentage (B), and the statement that this disclosure is not a legislative requirement and is included only as a guide, is misconceived. The statement that disclosure is not strictly required is presumably based on the assumption that section 671BB of the *Corporations Act 2001* (Cth) does not specifically mandate such disclosure, on the basis that this percentage does not fall within the terms of paragraphs (i), (ii), (iii) or (iv) of subsection 1(B). We note, however, that the list of items with respect to which disclosure is required is an inclusive list, and the information that must be provided, as specified in the section, includes "details of the person's relevant interests and deemed economic interests in voting securities in the Chapter 6C body including". The securities which constitute a person's non-derivative based holding percentage are those in respect of which the person has conventional relevant interests, and we submit that disclosure is therefore required. Even if this argument is technically incorrect, disclosure of the non-derivative based holding percentage is necessary, as it forms part of the person's votes as disclosed in the notice and may be the only percentage included if the person has no deemed economic interests.

   Finally, the amended Act makes it quite clear that where there is a movement of greater than 1% in a person's interest, for example where there is a reduction in the person's deemed economic interest by more than 1% and corresponding increase in a person's conventional relevant interest by more than 1%, disclosure of that movement is required. Therefore, there needs to be a line which shows a person's conventional relevant interest percentage so that this movement can be disclosed.

4. As previously foreshadowed, the disclosure of a relatable derivative-based holding percentage requires a very technical understanding and interpretation of the relevant agreement or instrument under which the interest might arise. To fall within this category, the interest must arise under a derivative as defined under section 671D of the *Corporations Act*

2001 (Cth). Interests that might otherwise be considered relatable under the application of sections 608(8) and 608A give rise to relevant interests, not relatable derivative-based interests, and accordingly should be disclosed as relevant interests held by the substantial holder. The proposed amended ASIC Guidance Note 5, paragraph RG 5.212 under the heading F notes that an interest may move in and out of the status of a relatable derivative-based interest from time to time. See also the commentary in RG 5.218. This would suggest that where there is a movement which is greater than 1% between a person's relevant derivative-based interests and a persons conventional relevant interests arising under sections 608(8) and 608A, disclosure is required of the same. We note that the Explanatory Memorandum relating to the Amending Act recognises that the circumstances in which such a change would occur, arises where a taker (person in the long position) becomes aware that the writer (person in the short position) has acquired underlying securities and that takers should ensure that there are systems or arrangements put in place to address this. We submit that it would be unnecessarily burdensome to require an amended notice each time such a change occurs.

5. This box is intended to require disclosure of the person whose holding has changed. If that is intended to be the corporate entity, that is, the direct holder of the relevant interests under section 608(1) of the *Corporations Act 2001* (Cth), or the person who is the party to the instrument under which the deemed economic interest arises, and no other entity, this should be clarified. It must be recognised that once there is a change in the holding of either such person at that level, equivalent changes will result for other entities that have interests, for example, by application of the tracing provisions. As presently drafted, it appears that disclosure is required for all consequential changes as well.

6. Paragraph 4 of the notice is the section where there is specific disclosure of relevant interests only, in the circumstances addressing changes in relevant interests. The disclosure contemplated in paragraph 4, as presently drafted, is appropriate and required in the context of a notice relating to a change, but not in a notice relating to an initial substantial holding. We submit that specific disclosure should be required in a notice relating to an initial holding. See the comments in paragraph 3 above. Note that the references to B and D do not appear to be correct, as B states that disclosure is not required and D relates to relatable derivative-based holdings, which are not relevant interests.

7. These paragraphs relate only to the disclosure of deemed economic interests and offsetting short positions, not relevant interests. It should be confirmed whether the disclosure required, in addition to noting whether the interest arises pursuant to a physically settleable derivative or a non-physically settleable derivative, should also include disclosure with respect to the

terms and nature of the particular derivative arising under the relevant instrument and the basis on which each person holds a deemed economic interest.

8. It is not clear what is intended to be achieved by the inclusion of this box in the notice. The box appears to apply in cases where a person is exempt from reporting deemed economic interests or offsetting short positions, and will only be required to be ticked where a person who is exempt from notifying those interests, is nevertheless required to disclose conventional relevant interests. It therefore contemplates that service providers and market makers, who may be exempt from disclosing their deemed economic interests and offsetting short positions, are required to disclose any conventional relevant interests arising in the course of transactions in respect of which disclosure is otherwise exempt. If so, this disclosure is likely to inform the market that the person has undertaken such a transaction without providing details of the actual transaction and results in incomplete disclosure and uncertainty.
9. Our responses to the numbered questions are as follows:
    a. B17Q1: No, see submission above.
    b. B17Q2: Yes, see submission above.
    c. B17Q3: Yes, see submission above.
    d. B17Q4: Yes, see submission above.
    e. B18Q1: We suggest that web-based substantial form should only be considered after the base forms have been found to be satisfactory.
    f. B18Q2: The essential feature which must be retained is that the web-based substantial holding notice is a disclosed on the ASX Announcements Platform and is therefore readily available.
    g. B18Q3: It is fundamental that the formal notice can be readily searched by all market participants or interested parties.
    h. B19Q1: No comment.
    i. B19Q2: No comment.
    j. B20Q1: No comment.
    k. B20Q2: No comment.
    l. BQ21: No comment.
    m. BQ22: No comment.

4. Proposed regulatory guide updates

We have limited comments to make in relation to this.

C1Q1: Yes, in principle, The proposed updates to RG 5 are appropriate, as bringing together guidance on deemed economic interests (for both physically and non-physically settleable derivatives) and offsetting short positions, alongside conventional relevant interests, will improve usability of RG 5. In particular, streamlining RG 5 by moving substantial holding notice mechanics to a consolidated RG 222 is sensible, as it keeps RG 5 focused on the conceptual tests that underpin voting power and disclosure thresholds, while RG 222 handles operational disclosure requirements.

Overall, the approach advances transparency around economic exposure from derivatives without overburdening RG 5 with procedural content better housed in RG 222.

We have the following specific observations in relation to the proposed update to RG 5.

1. Item 1: Table 1 Pt. 6C.2

The previous section 672DA was included in Part 6C.2 and the replacement section likewise is included in that Part. That Part only relates to information received pursuant to tracing notices including tracing notices issued by ASIC, but it does not include information received under substantial holding notices. The wording should reflect that.

2. Item 2: Table 7.1 The Basic Rule:

It should be made clear that the securities to be excluded should also include any securities in which the person has a relatable derivative based relevant interest.

3. Item 3 Paragraphs RG 5 212 , 223 ,226 , 228

These paragraphs state certain circumstances in which a person in the long position will have a relatable derivative-based relevant interest in securities which may be held by the person in the short position. The Explanatory Memorandum to the Amending Act made it quite clear that a relatable derivate-based relevant interest would only arise in circumstances where the person in the long position was aware of the interests held by the person in the short position. This concept does not appear at all in any of these paragraphs. If the principle outlined in the Explanatory Memorandum is to be treated as applicable, then the paragraph should be amended to reflect this. The proposition that a person in the long position should make arrangements to monitor the interests of the person in the short position is likely to be unworkable in most cases, unless the person in the short position has filed substantial holding notices in relation to conventional relevant interests which it might have as a consequence of entering into the derivative-based in question, it will be impossible for the person in the short position to be aware of the relevant interests which may be held by the person in the short position unless specifically advised.

4. Item 4: Generally

In the paragraphs in this submission which relate to the form of substantial holder notice, we have expressed our concerns with the concept that a person's interest may move in and out of a relatable derivative based interest from time to time.

C1Q2: We support the approach and recommend a small number of refinements to maximise clarity and practical utility:

1. Clarify interaction with voting power and takeover thresholds - although the draft RG 5 already distinguishes Chapter 6 voting power (relevant interests) from disclosure of deemed economic interests and offsetting short positions, we recommend a brief, boxed "Key distinction" call out near the front of the guide (and at the start of the takeovers section) to consolidate this message. The call out would state that section 606 and voting power calculations rely on relevant interests only and deemed economic interests and offsetting shorts which are disclosure concepts and be included in Table 1, Takeovers in RG 5. If ASIC considers the existing treatment sufficiently prominent, this could be adopted as optional polish rather than a substantive change.

2. Provide targeted worked examples for derivatives - as included in Section B (Relevant interests in securities) of RG 5, it would be helpful to include some worked examples in Section D (Derivatives: Deemed economic interests in securities), Section E (Offsetting short positions in securities) and Section F (Applying the deemed economic interest and offsetting short position concept).

3. Structure and navigation aids - the reforms introduce novel, operationally intensive concepts (deemed economic interests and offsetting short positions, with daily calculation, movement thresholds and basket/index tests to be fleshed out in an ASIC instrument). Even with existing tables (e.g., the "Summary of this guide" and the concept to law table), practitioners will often need to jump between:

    a. the basic rule, extensions and exceptions in RG 5;

    b. the calculation methodologies and exclusions in the instrument; and

    c. the disclosure mechanics in RG 222.

4. A single visual that aggregates those pathways at the start of RG 5 would make navigation faster and lower the risk of misapplying tests split across guides and instruments.

C3: Regarding the draft RG 222, the draft includes guidance on ASIC's new freezing order powers but expressly does not provide guidance on the circumstances in which ASIC may exercise those powers. While the decision to preserve enforcement flexibility is understandable, it would be beneficial to at least include some illustrative examples of the types of conduct that might give rise to a freezing order.

Substantial Holding Notice

Corporations Act 2001 Section 671BE(2)

To Company/registered scheme/notified foreign passport fund/listed body (**Chapter 6C body**) name

ACN/ARSN/APFRN/NFPFRN (if applicable)

1. Details of substantial holder [1]

1

Name:

ACN/ARSN/APFRN/NFPFRN (if applicable)

2. Previous and present holding percentage

2

The total number of votes attached to all the voting securities in a Chapter 6C body that the substantial holder or an associate[2] had a relevant interest or deemed economic interest [3] in when last required, and when now required, to give a substantial holding notice to the Chapter 6C body, are as follows:

Reason for notice

Initial notice ☒ Change of interest ☐ Ceasing to be a substantial holder ☐

	Previous notice (Leave blank if initial notice)		Present notice		Disclosable movement
Date of change:					
Person's votes:		(%)		(%)	
Total votes attaching to ***all*** securities in the Chapter 6C body:		100%		100%	
Holding percentage (A) = (B) + (C)	000,000,000,000,000	00.00%	000,000,000,000,000	00.00%	±00.00%
***Non-derivative-based* holding percentage^ (B)**	3				
Derivative-based holding percentage (C) = (D) + (E) + (F)					
Relatable derivative-based holding percentage **(D)**	4				
Deemed **physically** settleable holding percentage **(E)**					
Deemed **non-physically** settleable holding percentage **(F)**					
Offsetting short position **(G)**					

You must always report a Holding percentage (A).

If your interest is not in relation to a *derivative* as defined under section 761D, you do not have a deemed economic interest or offsetting short position. Where your derivative-based holding percentage is nil, do not complete any of the shaded sections of this form (holdings B-G or Parts 5 and 6).

^It is not a legislative requirement to report the *Non-derivative-based holding percentage* and this holding is included as a guide only. 3

3. Details of disclosable movement and transactions

Particulars of each transaction giving rise to a *disclosable movement* of the substantial holder or an associate in voting securities of the Chapter 6C body since the substantial holder was last required to give a substantial holding notice to the body are as follows:

Class of securities:	ORD / PREF PARTLY / FULLY PAID	Other than exactly **1 vote** attaching to each security?	☐**Yes:**____

Type of holding (A - G)	Date of disclosable movement	Person whose holding changed	Transaction category	Details of transaction	Consideration given in relation to the transaction# [7] Cash	Consideration given in relation to the transaction# [7] Non-cash	Number of securities affected
A	01/01/2026		On-market purchase				
B			Choose an item.				
C		5	Choose an item.				
D			Choose an item.				
D			Choose an item.				
D			Choose an item.				
D			Choose an item.				

\# Both the **highest** value and **lowest** value of consideration paid per security or financial product under the transaction should be reported here where a person gives details of 2 or more on-market transactions on an aggregate basis under which resulted in a disclosable movement.

4. Present relevant interests (B, D)

6

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Class of securities:		ORD / PREF PARTLY./ FULLY PAID	Other than exactly 1 vote attaching to each security?	☐Yes:_____	Change?
Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Nature of relevant interest (6)	Number of securities affected	
			Section 608(1)(a) - direct holding :		☐
			Choose an item. :		☐
			Choose an item. :		☐

5. Present deemed economic interests (E, F)

Particulars of each deemed economic interest of the substantial holder in voting securities after the change are as follows:

Class of securities:	ORD / PREF PARTLY./ FULLY PAID	Other than exactly 1 vote attaching to each security?	☐Yes:_____	Change?
Holder of deemed economic interest	Nature of deemed economic interest (6) 7	Number of securities affected		
	Section 671AA – physically settleable derivatives - basic rule :			☐
	Section 671AF – non-physically settleable derivatives - basic rule :			☐
	Choose an item. :			☐

6. Present offsetting short positions (G)

Particulars of each offsetting short position of the substantial holder in voting securities after the change are as follows:

Class of securities:	ORD / PREF PARTLY./ FULLY PAID	Other than exactly 1 vote attaching to each security?	☐Yes:_____	Changed?
Holder of offsetting short position	Nature of offsetting short position 7	Number of securities affected		
	Section 671AS – offsetting short positions – basic rule :			☐
	Choose an item. :			☐
	Choose an item. :			☐

7. Changes in association

The persons who have become associates(2) of, ceased to be associates of, or have changed the nature of their association(10) with, the substantial holder in relation to voting securities in the Chapter 6C body are as follows:

Name and ACN/ARSN/APFRN and NFPFRN (if applicable)	Nature of association

8. Addresses

The addresses of persons named in this form are as follows:

Name	Address

9. Client services and market making (11)

8

Is the substantial holder a person exempt from reporting deemed economic interests or offsetting short positions under section 671AO in relation to any class of securities in the Chapter 6C body? ☐ Yes

Signature

PRINT NAME CAPACITY

DIRECTIONS

(1) If there are a number of substantial holders with similar or related interests (e.g. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members, is clearly set out in paragraph 8 of the form.

(2) See the definition of "associate" in section 9 of the *Corporations Act 2001*.

(3) See the definition of "relevant interest" and "deemed economic interest" in section 9 of the *Corporations Act 2001*.

(4) The voting shares of a company constitute one class unless divided into separate classes.

(5) The person's votes divided by the total votes in the body corporate, scheme or fund multiplied by 100.

(6) Include details of:

a. any relevant agreement or other circumstances because of which the change in relevant interest or deemed economic interest occurred. If subsection 671B(4) of the *Corporations Act 2001* applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and

b. any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

(7) See the definition of "relevant agreement" in section 9 of the *Corporations Act 2001*.

(8) Details of the consideration must include any and all benefits, money or otherwise, that any person from whom an interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the interest was acquired.

If the substantial holder is unable to determine the identity of the person (e.g. if the relevant interest arises because of an option) write "unknown".

(9) If the form is used to lodge a notice of ceasing to be a substantial holder, paragraphs 4, 5 and 6 do not need to be completed and details of the present notice under paragraph 2 do not need to be included. If the form is used to lodge a notice of becoming a substantial holder, details of the previous notice under paragraph 2 do not need to be included.

(10) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice, including details of any agreement through which the associate has the relevant interest or deemed economic interest.

(11) A substantial holder exempt from reporting certain deemed economic interests under section 671AO should indicate they may have additional deemed economic interests not included in this substantial holding notice by ticking the box.

Proposed standardised drop-down options

Transaction categories (paragraph 3):

- Market transactions
  - On-market purchase
  - On-market sale
  - Off-market purchase
  - Off-market sale (disposal)
  - In specie transfer
- Lending
  - Lent securities
  - Borrowed securities
  - Collateral securities received
  - Return of borrowed securities
- Prime broking
  - Prime broking or rehypothecation
- Corporate Actions
  - Issue: rights issue
  - Issue: placement
  - Issue: Initial offer
  - Issue: vesting under ESS
  - Dividend reinvestment plan
  - Dilution
  - Buy-back
  - Cancellation
  - Capital reduction
  - Split
  - Consolidation
  - Beginning to be Ch. 6C Body
- Takeovers and schemes
  - Acquisition under takeover bid
  - Acquisition under scheme of arrangement
- Escrow
  - Entry into escrow
  - Release from escrow
- Succession
  - Transfer due to death or succession
- Derivative transactions
  - Entry into derivative
  - Exchange traded option
  - Exchange traded futures
  - OTC contract
  - Hedging or acquisition by writer of derivative
  - Exercise of options
  - Conversion of convertible security
  - Close derivative position
- Restructures
  - Transfer between associates or related bodies corporate
  - Changes in association
- Generic
  - Disposal of securities
  - Receipt of securities
- Orders
  - Transfer pursuant to Court order
  - Transfer pursuant to Takeovers Panel order

Relevant interest provisions (paragraph 4):

- Section 608(1)(a) - direct holding
- Section 608(1)(b) - power to exercise, or control a right to vote
- Section 608(1)(c) - power to dispose, or control the disposal of securities
- Section 608(2) - control exercisable through a trust, agreement or practice
- Section 608(3)(a) - held through bodies corporate or managed investment scheme in which person has above 20% voting power
- Section 608(3)(b) - held through bodies corporate or managed investment scheme that person controls
- Section 608(8) - control in anticipation of performance of agreements
- Section 608(9) - body corporate has a relevant interest in its own securities
- Section 608(10) - relevant interest in listed notified foreign passport funds

Deemed economic interest provisions (paragraph 5):

- Section 671AA - physically settleable derivatives - basic rule
- Section 671AB - physically settleable derivatives - power to control disposal of derivatives
- Section 671AC - physically settleable derivatives - deemed economic interests held through bodies corporate
- Section 671AD - physically settleable derivatives - control in anticipation of performance of agreements
- Section 671AF - non-physically settleable derivatives - basic rule
- Section 671AG - non-physically settleable derivatives - power to control the disposal of derivatives
- Section 671AH - non-physically settleable derivatives - deemed economic interests held through bodies corporate
- Section 671AI - non-physically settleable derivatives - control in anticipation of performance of agreements
-

Offsetting short position provisions (paragraph 6):

- Section 671AS - offsetting short positions - basic rule
- Section 671 AT - offsetting short positions - power to control disposal of derivatives
- Section 671 AU - offsetting short positions held through bodies corporate
- Section 671 AV - offsetting short positions - control in anticipation of performance of agreements

Subject to the final implementation of the form, it is contemplated a list of standardised options as outlined above will be selectable via a pull-down menu while retaining the ability and requirement to provide further particulars as free text for each interest or transaction.