



ASIC

Australian Securities &
Investments Commission

CONSULTATION PAPER 387

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

March 2026

About this paper

This paper seeks feedback on ASIC's draft:

- *ASIC Corporations (Listed Enhanced Beneficial Ownership Disclosure) Instrument 2026/XXX*;
- 'Substantial Holding Notice'; and
- amended Regulatory Guides 5, 9 and 222.

Note: The draft ASIC Instrument 2026/XXX, draft 'Substantial Holding Notice' and draft amended regulatory guides are available on our Consultations webpage under [CP 387](#).

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Document history

This paper was issued on 10 March 2026 and is based on the legislation as at the date of issue.

Disclaimer

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

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The consultation process

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

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

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

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

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

Your comments will help us develop our policy on enhanced beneficial ownership disclosure. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section D, 'Regulatory and financial impact'.

Making a submission

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

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

Please refer to our [privacy policy](#) for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 21 April 2026 to:

Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
email: rri.consultation@asic.gov.au

What will happen next?

Stage 1	10 March 2026	ASIC consultation paper released
Stage 2	21 April 2026	Comments due on the consultation paper
Stage 3	July 2026	Instrument, notice and regulatory guides released

A Background to the proposals

Key points

Schedule 1 of the *Treasury Laws Amendment (Strengthening Financial System and Other Measures) Act 2025* (Amending Act) amended the *Corporations Act 2001* (Corporations Act) to enhance the beneficial disclosure obligations that apply to entities listed on Australia's financial markets.

The amendments permit ASIC to determine several matters by legislative instrument and allow ASIC to approve the manner and form in which substantial holding notices must be given.

This consultation paper explains the approach ASIC proposes to take in relation to these matters and seeks feedback on the:

- draft *ASIC Corporations (Listed Enhanced Beneficial Ownership Disclosure) Instrument 2026/XXX* (Principal Instrument); and
- draft ASIC 'Substantial Holding Notice'.

The paper also seeks feedback on updated draft regulatory guidance ASIC has prepared in response to the Amending Act.

Enhanced beneficial ownership for listed entities reforms

- 1 The Amending Act amends the Corporations Act to enhance the beneficial disclosure obligations that apply to companies, registered schemes, notified foreign passport funds and other bodies, whether incorporated or formed in Australia or not, that are listed on Australia's financial markets ('listed entities').

Note 1: The Amending Act defines these entities as 'Chapter 6C bodies': see s671A.

Note 2: In this consultation paper, references to chapters (Chs), parts (Pts) or sections (s) are to the Corporations Act (including as notionally modified by ASIC relief, where relevant), unless otherwise specified.

- 2 The purpose of the beneficial disclosure obligations is to improve corporate transparency by showing who ultimately owns, controls and receives profits from listed entities. The obligations include the substantial holding notice obligations in Pt 6C.1 and the tracing notice regime in Pt 6C.2.
- 3 The Amending Act:
 - (a) brings interests arising from equity derivatives into the substantial holding and tracing notice regimes by deeming the person in the bought position of a derivative to have a 'deemed economic interest' in a number of the securities underlying the derivative;

- (b) requires foreign-registered entities listed on Australia's financial markets and their shareholders to disclose interests in securities to the same standard as Australian-registered listed entities and their shareholders;
- (c) clarifies when the former and new substantial holding and tracing notice regime requirements crystallise and introduces greater flexibility to simplify some of the disclosures required;
- (d) improves access to, and usability of, registers of information about relevant interests in listed entities collected via tracing notices under Pt 6C.2; and
- (e) confers on ASIC powers to incentivise compliance with the substantial holding and tracing regimes and protect market participants, including increased penalties for existing offences and new freezing order powers in Ch 6C.

ASIC legislative instrument powers

- 4 The Amending Act empowers ASIC to determine several matters by legislative instrument. These include:
- (a) the number, or a method of working out the number, of securities in which a person in the bought position of a non-physically settleable derivative has a deemed economic interest;
 - (b) the number, or method of working out the number, of securities in which a person who is required to disclose a derivative-based interest has an offsetting short position;
 - (c) circumstances in which transactions entered into by certain financial services entities will not give rise to a deemed economic interest or offsetting short position in securities;
 - (d) additional information that must be provided in a substantial holding notice;
 - (e) standard form documents which do not need to accompany a substantial holding notice;
 - (f) foreign requirements that are considered equivalent to the substantial holding notice requirements (so that a person complying with those requirements does not have to comply with the substantial holding notice requirements);
 - (g) additional information that must be provided in a tracing notice;
 - (h) circumstances in which a person is not required to keep a register of relevant interests; and
 - (i) the form of registers of relevant interests and information that must, or must not be, included in such a register.

- 5 Section B explains ASIC’s proposed approach to these matters and a draft of the Principal Instrument is at Attachment 1.

ASIC’s substantial holding disclosure form power

- 6 Under the substantial holding notice obligations, as amended by the Amending Act, a person must disclose information if the person:
- (a) begins to have, or ceases to have, a substantial holding in a listed entity;
 - (b) has a substantial holding in a listed entity when the listed entity begins to be a listed entity;
 - (c) has a substantial holding in a listed entity and there is a disclosable movement in the person’s holding; or
 - (d) is the bidder for a takeover bid for securities in a listed entity and the bid period for the bid starts (unless the listed entity is a listed notified foreign passport fund).
- 7 The Amending Act removes the requirement to give information in accordance with the prescribed forms in Schedule 2 of the *Corporations Regulations 2001* (Corporations Regulations) and allows ASIC to approve the manner and form in which substantial holding disclosures must be given: see s671BE.
- 8 Section B explains ASIC’s proposal for the form of substantial holding disclosures. For a ‘mock up’ of the draft ASIC Substantial Holding Notice, see Attachment 2.

Regulatory guide updates

- 9 The Amending Act requires consequential amendments to be made to ASIC regulatory guidance. In addition, we propose to use this opportunity to make further changes to streamline and simplify regulatory guidance consistent with the ASIC regulatory simplification objective.

Note: For more information about the ASIC regulatory simplification objective, see [Regulatory simplification](#) on the ASIC website.

- 10 Section C has more information about the updates we propose to make to relevant regulatory guidance. We will also make consequential amendments to other ASIC guidance but, as the changes are not significant, we have not included details of them in this consultation paper.

B Proposed legislative instruments and form

Key points

This section seeks feedback on our proposals in relation to the:

- calculative methods for deemed economic interests and offsetting short positions (see Proposals B1–B10);
- exemption from having deemed economic interests and offsetting short positions for market makers and client facing services (see Proposals B11–B13);
- tracing notices and register of relevant interests requirements (see Proposals B14–B16);
- substantial holding disclosure form, additional substantial holding notice information and excluded standard form documents (see Proposals B17–B21); and
- equivalent foreign requirements exclusion (see Proposal B22).

We do not propose to determine matters under our further legislative powers described in paragraph 4. If you consider we should determine matters under these powers, please provide details in your submission.

Calculative methods for deemed economic interests

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.

Your feedback

B1Q1 Do you agree with our proposal?

B1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 11 The Amending Act requires the deemed economic interest for physically settleable derivatives to be reported in respect of the number of issued securities in which a person may acquire a relevant interest under a derivative. This generally reflects the full notional amount in the underlying securities and, as such, no calculation method is required under the Amending Act.

- 12 For all non-physically settleable (e.g. cash-settled) derivatives, under s671AK, ASIC may prescribe a calculation method for determining the deemed economic interest that arises under the derivative in respect of a number of securities in the listed entity.
- 13 For non-physically settleable derivatives *with* a linear, symmetric pay-off profile with the underlying securities, our proposed approach is intended to:
- (a) reflect the full notional amount of the underlying securities in respect of the derivative; and
 - (b) remain broadly consistent with deemed economic interests arising in respect of physically settleable derivatives.

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.

Your feedback

- 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.

Rationale

- 14 ASIC proposes that interests in non-physically settleable derivatives *without* a linear, symmetric pay-off profile should be equal to the delta of the derivative, calculated using a generally accepted standard pricing model, multiplied by the full notional amount of securities underlying the derivative.

Note: For the proposed definition of a ‘generally accepted standard pricing model’, see Proposal B3.

- 15 The proposed calculative method is similar to that set out in Article 5 of the [Commission Delegated Regulation \(European Union\) 2015/761](#) (dated 17 December 2014).

- 16 This principle-based approach allows investors to choose a generally accepted standard pricing model to calculate deemed economic interests for non-physically settleable derivatives. This is as opposed to a prescriptive approach that would prescribe the model that must be used, and the inputs to be used in that model, for each type of non-physically settleable derivative.
- 17 The principle-based approach allows disclosing parties to choose between more than one method while also allowing ASIC to monitor industry practice over time and adjust requirements as necessary in response to emerging practices.
- 18 In our view, developing a prescriptive approach has limitations due to the existence of non-standard financial instruments and the evolution of financial products.
- 19 As only long positions should be captured, the calculation method for deemed economic interests should account for derivatives where a person receives a benefit if the value of the underlying securities increases (rather than decreases).
- 20 We expect any delta-adjustments to be made on the basis of a person's exposure to underlying issued securities and not merely calculated in respect to the delta of the derivative in isolation. That is, a person that has sold a non-physically settleable put option (i.e. short a put) would be required to report a deemed economic interest on the basis of their positive delta position for that derivative.
- 21 Inversely, a person that has sold a non-physically settleable call option (i.e. short a call), would not report a deemed economic interest in respect to that option. Instead, the person would refer to reporting an offsetting short position, which is discussed below.

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.

Your feedback

B3Q1 Do you agree with our proposal?

B3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 22 For deemed economic interests arising from non-physically settleable derivatives *without* a linear, symmetric pay-off profile, we propose to require use of a generally accepted pricing model that is appropriate for the derivative.
- 23 This principle-based approach is intended to set out minimum criteria that must be met when selecting a pricing model while giving market participants sufficient flexibility to accommodate the different equity derivatives that may exist.
- 24 We expect that, for the majority of non-physically settleable derivatives (including vanilla cash-settled options, swaps and market traded futures), determining the generally accepted pricing model will remain uncontroversial and be assisted by established industry practices.
- 25 Market participants seeking to depart from typical pricing models to account for more complex financial instruments should consider whether their proposed model complies with the requirements of the Principal Instrument in light of industry practice.

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.

Your feedback

B4Q1 Do you agree with our proposal?

B4Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 26 In a situation where a derivative is determined by reference to a basket of securities or an index, the deemed economic interest is calculated based on the weight of the underlying security in the basket or index.
- 27 In relation to the first condition, there is no requirement to report a deemed economic interest in an entity that arose because of a derivative determined by reference to a basket or index where that interest would otherwise represent less than 5% of the total securities in the class.
- 28 We consider this appropriate as it aligns with the existing substantial holding threshold and will ensure consistency across the new reporting regime. Further, we anticipate that occasions where a party to a derivative will hold a deemed economic interest of more than 5% in a particular entity through a basket or index will be rare.
- 29 In cases where a deemed economic interest above 5% does arise through a derivative referencing a basket or index, the benefit of substantial holding disclosure being provided to the market outweighs any potential benefit of a concessional reporting threshold in relation to baskets or indices.
- 30 The second condition operates as an anti-avoidance provision by ensuring that deemed economic interests must be reported where securities in the class constitute 20% or more of the value of securities in the basket or index. We consider this will uphold the purpose of the enhanced beneficial ownership disclosure reforms by ensuring economic exposure cannot be concealed in relation to a particular entity by constructing a derivative that references a tailored basket or index over a limited number of entities.

Proposal

- B5** We propose not to prescribe a specific exception for volatility or variance derivatives.

Your feedback

- B5Q1 Do you agree with our proposal?
- B5Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 31 We recognise that the economic exposure a person attains from entering into variance or volatility derivatives is unlikely to materially influence the underlying securities of a listed entity and would not result in a significant deemed economic interest under the proposed calculation method.
- 32 We therefore consider that a specific exception for variance and volatility derivatives is currently unnecessary.

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.

Your feedback

B6Q1 Do you agree with our proposal?

B6Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

33 Sections 671AS–671AX define when a person has and does not have an offsetting short position in securities because of a derivative. We consider that the proposed method for calculating an offsetting short position should remain consistent with the proposal for calculating a deemed economic interest under s671AK. However, the proposed method should account for derivatives where a person receives a benefit if the value of the underlying securities decreases (rather than increases).

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.

Your feedback

B7Q1 Do you agree with our proposal?

B7Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

34 Under s671AW, ASIC may, by legislative instrument, determine the number of securities, or the method of working out the number of securities, in which a person has an offsetting short position.

35 The number of underlying securities a person is taken to have an offsetting short position in must be determined according to the calculative method set out in the Principal Instrument. The rationale for prescribing a generally accepted standard pricing model mirrors that of the deemed economic interest calculative method set out above: see paragraphs 22–25.

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.

Your feedback

B8Q1 Do you agree with our proposal?

B8Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 36 In a situation where a derivative is determined by reference to a basket of securities or an index, an offsetting short position must be calculated based on the weight of the security in the basket or index to align with the proposed method for calculating deemed economic interests.

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.

Your feedback

B9Q1 Do you agree with our proposal?

B9Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 37 Sections 671AL, 671AM, 671AN and 671AP provide a number of exceptions for situations that do not give rise to a deemed economic interest relating to money lending and financial accommodation, nominees and other trustees, directors of bodies corporate and related bodies corporate. We propose to replicate these exceptions for offsetting short positions such that in the same circumstances where these exceptions deem that no deemed economic interest arises, an offsetting short position will also not arise.

Calculative methods—general calculation rules

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.

Your feedback

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?

B10Q3 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 38 In accordance with s671AF(4), for the offsetting short position provisions to operate correctly, the effect or benefit of any derivatives that contribute to a person's short position in relation to a class of underlying securities should not be netted against a person's long position reported for the purposes of calculating their deemed economic interest in the same class of securities under s671AK.
- 39 Sections 671AK and 671AW empower ASIC to determine, by legislative instrument, the number of issued securities to be recalculated at a specified time. Daily calculation ensures disclosures reflect the most current information about a person's exposure. To balance transparency with regulatory burden, reporting is only triggered by movements of more than 1%.
- 40 We consider the most recent closing price for the Ch 6C securities on the market on which the entity has a primary listing will generally be the most appropriate price to use for the purposes of determining the current price of underlying securities in a generally accepted pricing model.

Market makers and client facing services exclusion

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.

Your feedback

B11Q1 Do you agree with our proposal?

B11Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 41 We do not consider market making and client serving activities to be the focus of the enhanced beneficial ownership disclosure reforms and recognise that without an appropriate exception those activities may otherwise be subject to unnecessary reporting that would not ultimately advance the market's understanding of ownership and control over a listed entity.
- 42 Our proposed exemption is available to AFS licensees that are appropriately authorised to deal in derivatives. We consider that the existing AFS licensing framework provides an appropriate safeguard ensuring entities that may avail themselves of the proposed exemption are appropriately resourced and subject to robust auditing and monitoring.
- 43 We also consider that CS facility licensees authorised to provide services in relation to any class of derivatives should not have a deemed economic interest in securities merely through providing facilities for the settlement of transactions.
- 44 We anticipate entities that do not hold an AFS licence, or cannot otherwise rely on an exemption, and wish to apply for relief from the beneficial ownership provisions for client serving activities will be required, at a minimum, to address the matters contemplated by s671AO(4) as part of the application process.

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 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.

Your feedback

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.

Rationale

- 45 Our proposed exemption for foreign persons is intended to ensure that persons undertaking substantively the same activities as AFS licensees and CS facility licensees are treated consistently, regardless of the jurisdiction of incorporation. The rationale described in Proposal B11 applies equally where these persons' dealings in derivatives arise in the ordinary course of client-facing, market making, or clearing and settlement activities, and which do not give rise to any capacity to determine, influence, or attempt to influence the affairs of a listed entity.
- 46 The proposal adopts a functional approach to equivalence. The exemption is available where the activities of a foreign entity are authorised and regulated by an overseas regulator, and where the entity operates in the same circumstances and subject to the same safeguards as set out in Proposal B11.
- 47 As an alternative approach, we are considering whether the scope of this exemption should be limited to persons operating in foreign jurisdictions that ASIC has assessed as having regulatory regimes that are sufficiently equivalent to the Australian framework. The exemption would be available only to persons operating in jurisdictions that ASIC has previously identified as having comparable regulatory outcomes, including in relation to licensing, supervision, and enforcement. For example, this may include the jurisdictions identified in Regulatory Guide 176 *Foreign financial services providers* ([RG 176](#)).
- 48 By confining the exemption to circumstances where comparable regulatory oversight applies, this approach seeks to balance the reduction of regulatory burden against the need to maintain market integrity and investor protection.

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.

Your feedback

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.

Rationale

- 49 We propose that where a market maker or client facing service provider, or foreign equivalent licensee, acquires more than 20% of the voting securities of a listed entity, the licensee should provide a statement identifying its exempt interests to the market. This approach reflects the policy rationale underlying the exemption, which recognises that market making and client facing service activities should not generally be subject to substantial holding disclosure. At the same time, where those activities result in a material level of exposure to a particular listed entity, a limited disclosure to the market is appropriate to support transparency without undermining the operation of the exemption.
- 50 A statement would be required where the holding percentage exceeded 20%, or subsequently decreased below 20%, as well as for changes in exempt deemed economic interests by 1% while the holding percentage exceeds 20%.
- 51 We consider the reporting burden on market makers and client facing service providers will be minimised with the majority of institutional hedging transactions proceeding without additional reporting requirements.
- 52 As an alternative approach, we are considering whether the exemption should instead be subject to a threshold based on net economic exposure to a particular listed entity rather than a holding percentage. Under this approach, a licensee would be required to advise the financial market operator and the market whenever its net economic exposure to underlying securities in a particular listed entity exceeds a specified threshold, for example 5% or 10%.

- 53 For this purpose, net economic exposure would be calculated as the licensee's exempt deemed economic interests in the listed entity, less any exempt offsetting short positions in relation to that entity. The disclosure would take the form of a statement to the market identifying the net economic exposure of the licensee to the listed entity. We expect that such circumstances will be rare.
- 54 A statement would be required in similar circumstances to those identified in paragraph 50 using a relevant threshold of 5% or 10%.
- 55 Market makers and client facing service providers will have to ensure they have adequate processes in place to be able to distinguish between transactions entered into for client serving or market making activities and activities to advance their direct interests.
- 56 We propose to include a tick-box in the Substantial Holding Notice where exempt licensees must indicate that they are relying on the exemption: see Attachment 2. This will require licensees to disclose they have not reported interests in a substantial holding notice that are subject to the exemption where they are also required to report a holding to which the exemption does not apply.
- 57 We believe this approach supports transparency where a licensee may be simultaneously holding a proprietary position and exempt interests in a listed entity.

ASIC issued tracing notice

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.

Your feedback

B14Q1 Do you agree with our proposal?

B14Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 58 Under s672AD(2), ASIC may determine, by legislative instrument, any additional information that must be disclosed in a tracing notice. We consider that prescribing any additional information for tracing notices is not required at this time.

Register of relevant interests

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.

Your feedback

B15Q1 Do you agree with our proposal?

B15Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 59 Under s672DB(2), ASIC may determine, by legislative instrument, the specified form of the register of relevant interests and additional specified information that must be included in the register.
- 60 We consider it would be appropriate to include minimum specifications for a register that the key person for a listed entity must keep under s672DA(3). Prescribing the minimum specifications will help to standardise the information included in a register and support the usability of registers of relevant interests.
- 61 The proposed minimum specifications include that the register be kept in a delimited file format that is easily downloadable and readable, as well as minimum data fields. We consider it is appropriate that registers are made available in this format with the minimum set of data fields to make them more easily accessible and usable.
- 62 We consider it is also appropriate for the register to cross-reference the members' register to ensure that a person inspecting the register or a copy of the register, who also has access to the members' register—for example, a member of the entity—can determine to which holding the information contained in the register of relevant interests relates.

- 63 We do not consider it appropriate to prescribe any additional specified information to be included in a register of relevant interests other than those required to give effect to the prescribed form of the register: see s672DB(1)(a)–(e).

Proposal

- B16** We propose not to specify any exemptions from the obligation to keep a register of relevant interests under s672DA(3).

Your feedback

B16Q1 Do you agree with our proposal?

B16Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 64 Under s672DA(4), ASIC may determine, by legislative instrument, specified circumstances where the obligation to keep a register of relevant interest under s672DA(3) does not apply.
- 65 We do not consider that there are currently any specified circumstances for which an exemption from the obligation to keep a register of relevant interests should be afforded to any additional key persons.

Substantial holding disclosure

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 pro-forma declaration.

Your feedback

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.

Rationale

- 66 Under new s671BE, ASIC has the power to determine the manner and form in which substantial holding notices are given. This is a change from the current requirement for substantial holding notices to accord with [Form 603 Notice of initial substantial holder](#), [Form 604 Notice of change of interests of substantial holder](#) and [Form 605 Notice of ceasing to be a substantial holder](#) as prescribed in Schedule 2 of the Corporations Regulations. We propose one form in place of the three current forms to simplify substantial holding disclosure obligations.
- 67 The current forms are ‘static’ image-based documents that are submitted to the market operator electronically as PDFs or faxed as a scanned copy. As noted in Report 813 *Regulatory simplification* ([REP 813](#)), we have received valuable feedback about the difficulty navigating these forms and concerns that their format increases inconsistencies in the information being provided.
- 68 In approving a new form, we will seek to balance the new, additional disclosure obligations related to derivatives with strategies aimed at simplifying the reporting process. These strategies include updating and consolidating the current image-based forms while exploring avenues for introducing a web-based portal to submit substantial holding information. (See Proposals B18 and B20.)
- 69 We recognise that many substantial holders will not hold any interests in derivatives and will only be reporting disclosable movements in respect to a relevant interest. To support simplified disclosure, we are considering whether it is preferable to provide a streamlined format for substantial holders without derivative interests, in addition to a comprehensive form to be used by substantial holders that are reporting derivative-based interests in securities.

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.

Your feedback

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.

Rationale

- 70 We recognise that implementing a web-based version of the substantial holding notices would support information consistency, assist with simplifying reporting obligations and enable integration with existing data standards (see Proposal B19 below).
- 71 However, we understand that any web-based form may need to reside behind a new or existing portal, for example, that may be run by the relevant market operator. This may require a method of registering users.
- 72 We are giving further consideration to the registration requirements for substantial holders (or their advisers) who use an online portal to submit their notice—for example, being prompted to provide an email address or contact details, or complete basic validation checks to create an account.

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.

Your feedback

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?

Rationale

- 73 We understand open data standards already used by market participants may be capable of being tailored for storing and submitting substantial holding information. For example, ASIC has previously required [ISO 20022 Universal financial industry message scheme](#) to be used to report derivative transactions and maintained a financial reporting taxonomy based on eXtensible Business Reporting Language (XBRL) to allow entities to voluntarily lodge financial reports using the standard.

74 We consider that adopting a digital file format for storing and submitting substantial holding information which draws on existing data standards would:

- (a) align substantial holding disclosure obligations with other reporting obligations; and
- (b) facilitate upload of such information to a web-based form if implemented.

75 We also consider that adopting a recognised data standard could support transparency and improve how market participants fulfil their reporting obligations by better integrating into their existing platforms.

76 However, we recognise that not all digital formats and data standards are easily ‘human-readable’ and may require third-party software to view. We therefore consider that for the purposes of reporting substantial holding information the advantages of adopting a simpler ‘human-readable’ file format, such as delimited file formats, may outweigh the benefits of more sophisticated standards.

77 Simple ‘human-readable’ alternatives may include delimited files that can be readily viewed as plain text using computers without specialty software and be easily exported from commonly used software packages such as Microsoft Excel.

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.

Your feedback

B20Q1 Do you agree with our proposal?

B20Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

78 Under s671BE, ASIC has the power to determine the manner and form in which substantial holding notices are given. We do not propose to prescribe any substantive additional information for disclosure beyond the legislative requirements for substantial holding notices. The object of this approach is to simplify substantial holding disclosure obligations.

79 However, under s671BB(3), ASIC may determine additional particulars that must be given in a substantial holding notice. To the extent our final

approved substantial holding notice requires additional information of a minor nature that is not already covered by 671BB(1), we propose to prescribe those as additional particulars under s671BB(3).

80 For instance, requiring a person to provide basic details of the listed entity, disclose the number of securities used to calculate percentages, mark certain tick-boxes or select pre-defined transaction types from pull-down menus may be regarded as additional particulars.

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.

Your feedback

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?

Rationale

- 81 Under s671BG(5), ASIC may determine, by legislative instrument, a standard form of document that does not need to accompany a substantial holding notice. We propose to determine master agreements commonly used in derivative transactions as standard form documents. For example, over-the-counter derivative transactions are typically governed under the terms of the ISDA Master Agreement.
- 82 We recognise that accompanying substantial holding notices with such master agreements would otherwise result in lengthy notices that may not provide additional useful information to the market.
- 83 For master securities lending agreements, we will continue to require a summary of the key terms to accompany the substantial holding notice as prescribed under [ASIC Instrument 2021/821](#). We are considering whether a similar summary for agreements relating to derivatives would be appropriate or if an adequate level of information would be conveyed by attaching the trade confirmation in relation to the derivative contract.

Equivalent foreign requirements exclusion

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.

Your feedback

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.

Rationale

- 84 Section 671F allows ASIC to declare foreign legal requirements to be equivalent to the substantial holding disclosure requirements. The result is that listed entities subject to those requirements are exempt from the substantial holding disclosure requirements. This exemption reduces time, effort and compliance costs for those entities without affecting the integrity of the substantial holding and tracing notice regimes.

- 85 We have declared requirements of New Zealand, the United Kingdom and the United States to be equivalent to the substantial holding disclosure requirements. This is because we are satisfied that those requirements:
- (a) have a similar reporting threshold at which a holder must disclose their interest in a listed entity;
 - (b) require a holder to disclose holdings within a timeframe similar to the obligation under s671BA; and
 - (c) require a holder to include derivative-based interests in their disclosure, similar to the requirements under s671BB(1)(b).

C Proposed regulatory guide updates

Key points

We propose to update regulatory guidance in response to reforms that the Amending Act makes. We also propose to simplify updated guidance consistent with ASIC's commitment to regulatory simplification.

The draft updated guidance we release with this consultation paper consists of updated:

- Regulatory Guide 5 *Relevant interests and deemed economic interests* ([RG 5](#)) (see Attachment 3);
- Regulatory Guide 9 *Takeover bids* ([RG 9](#)) (see Attachment 4); and
- Regulatory Guide 222 *Substantial holding disclosure and tracing notices* ([RG 222](#)) (see Attachment 5).

Regulatory Guide 5

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 non-physically 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.

Your feedback

C1Q1 Do you agree with our proposal?

C1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 86 The current Regulatory Guide 5 *Relevant interests and substantial holding notices* ([RG 5](#)) is a guide for investors who acquire an interest in the securities of a listed entity and their advisers. The Amending Act expands the existing disclosure obligations to ensure greater transparency for investors and the market, particularly in relation to equity derivatives.
- 87 To give full effect to the reforms, ASIC is also required to determine some matters by legislative instrument such as calculation methods for determining the number of securities in which a person has a deemed economic interest and offsetting short position, and exclusions.
- 88 We propose to update RG 5 to include guidance about:
- (a) the concept of deemed economic interests, as well as explaining the calculation methodology, the exclusions and modifications to the relevant provisions that we propose to make by legislative instrument; and
 - (b) the concept of offsetting short positions, as well as explaining the calculation methodology, the exclusions and modifications to the relevant provisions that we propose to make by legislative instrument.
- 89 The Amending Act also introduces new sections that bring about significant changes to the substantial holding notice regime. We propose to remove the guidance on substantial holding notices from RG 5 and consolidate all guidance about substantial holding disclosure into a single regulatory guide (see Proposal C3 below).

Regulatory Guide 9

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.

Your feedback

C2Q1 Do you agree with our proposal?

C2Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 90 The Amending Act sets out the obligation to disclose substantial holding information in an entity when the entity is listed on a declared financial market: see new s671B(1)(b). We propose to update RG 9 to reflect this change and make further minor updates to align the guidance with any updated wording in the Amending Act.
- 91 We also propose to simplify guidance in RG 9 so that it is more targeted and omits unnecessary guidance. Our updates include amendments to clarify citations of ASIC modifications of the primary law and edits so that RG 9 is up to date and accords with the latest ASIC style.

Regulatory Guide 222

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.

Your feedback

C3Q1 Do you agree with our proposal?

C3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

- 92 The Amending Act amends the content requirements for substantial holding notices and makes ASIC responsible for approving their manner and form rather than the prescribed forms ([Form 603](#), [Form 604](#) and [Form 605](#)). The Amending Act also includes powers for ASIC to make a freezing order in response to a contravention of the substantial holding disclosure, tracing notice and register of relevant interest requirements.
- 93 We have consolidated the substantial holding disclosure guidance from RG 5 with the guidance from RG 222 and included guidance about our new freezing order powers. We have also incorporated guidance on tracing notices from RG 86, which we propose to withdraw.
- 94 We have consolidated guidance on substantial holding disclosure in updated RG 222 so that this guidance is in one regulatory guide. We include the guidance on tracing notices and the register of relevant interests from RG 86 because of the overlap in information required to be in a substantial holding notice and the information that may be sought in a tracing notice or included in a register of relevant interests.
- 95 We include the guidance on our freezing order powers to explain statutory considerations that we must take into account before exercising them and procedural requirements. We do not provide guidance about circumstances when we may exercise our powers as this will depend on the nature of misconduct involved. For guidance on our approach to enforcement, see Information Sheet 151 *ASIC's approach to enforcement* ([INFO 151](#)).

D Regulatory and financial impact

96 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) ensuring the same level of regulatory oversight, and penalties for misconduct, apply with respect to all interests in securities that are required to be disclosed to financial markets; and
- (b) introducing greater flexibility to simplify some of the disclosures required to be made, including clarifying when some existing and new disclosure requirements must be met.

97 Before settling on a final policy, we will comply with the Australian Government's Policy Impact Analysis (PIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Impact Analysis (OIA); and
- (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an Impact Analysis (IA) or an IA equivalent (Independent Review).

98 All IAs are submitted to the OIA for approval before we make any final decision, or if an IA equivalent—to the OIA for agreement. Without an approved IA or agreed IA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

99 To ensure that we are in a position to properly complete any required IA or IA equivalent, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

List of proposals and questions

Proposal	Your feedback
<p>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.</p>	<p>B1Q1 Do you agree with our proposal?</p> <p>B1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B2 We propose to adopt a principle-based approach to determining the calculative methods for deemed economic interests.</p> <p>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.</p>	<p>B2Q1 Do you agree with our proposal to adopt a principle-based approach? Should a prescriptive approach be preferred instead?</p> <p>B2Q2 Do you agree with our proposal regarding calculative methods?</p> <p>B2Q3 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B3 We propose to define a 'generally accepted standard pricing model' as a model that:</p> <p>(a) is generally accepted in the Australian financial services industry as a model used to price the type of derivative; and</p> <p>(b) takes into account each of the following matters to the extent that they are relevant to the pricing of the derivative:</p> <p>(i) an interest rate;</p> <p>(ii) any dividend payments in relation to the underlying issued securities;</p> <p>(iii) the time to maturity of the derivative;</p> <p>(iv) the price of the underlying issued securities; and</p> <p>(v) the volatility of the price of the underlying issued securities.</p>	<p>B3Q1 Do you agree with our proposal?</p> <p>B3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<p>B4 We propose that:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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. 	<p>B4Q1 Do you agree with our proposal?</p> <p>B4Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B5 We propose not to prescribe a specific exception for volatility or variance derivatives.</p>	<p>B5Q1 Do you agree with our proposal?</p> <p>B5Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>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.</p>	<p>B6Q1 Do you agree with our proposal?</p> <p>B6Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>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.</p>	<p>B7Q1 Do you agree with our proposal?</p> <p>B7Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<p>B8 We propose that:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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. 	<p>B8Q1 Do you agree with our proposal?</p> <p>B8Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>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.</p>	<p>B9Q1 Do you agree with our proposal?</p> <p>B9Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B10 We propose the following general calculation rules that apply to both deemed economic interests and offsetting short position calculations:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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. 	<p>B10Q1 Do you agree with our proposal?</p> <p>B10Q2 Are there any other general calculation rules you consider we should apply to improve integrity of the calculative methods?</p> <p>B10Q3 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<p>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:</p> <p>(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:</p> <p>(i) facilitating a client obtaining economic exposure, at the client's request, to changes in the value of securities in a listed entity;</p> <p>(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</p> <p>(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,</p> <p>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;</p> <p>(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</p> <p>(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</p> <p>(d) for each circumstance in B11(a)–B11(c), all of the following conditions must be satisfied:</p> <p>(i) the licensee has adequate systems for the purposes of identifying derivatives to which the exempt transaction relates; and</p>	<p>B11Q1 Do you agree with our proposal?</p> <p>B11Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<p>(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.</p> <p>The exemption operates to exclude deemed economic interests and offsetting short positions from arising.</p>	
<p>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:</p> <p>(a) are incorporated or formed, and have their principal place of business in a jurisdiction outside of Australia;</p> <p>(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</p> <p>(c) does not hold and is not required to hold an AFS licence or a CS facility licence.</p>	<p>B12Q1 Do you agree with our proposal?</p> <p>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?</p> <p>B12Q3 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B13 We propose that:</p> <p>(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</p> <p>(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.</p>	<p>B13Q1 Do you agree with our proposal?</p> <p>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?</p> <p>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?</p> <p>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?</p> <p>B13Q5 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>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.</p>	<p>B14Q1 Do you agree with our proposal?</p> <p>B14Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<p>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:</p> <ul style="list-style-type: none"> (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. <p>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.</p>	<p>B15Q1 Do you agree with our proposal?</p> <p>B15Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B16 We propose not to specify any exemptions from the obligation to keep a register of relevant interests under s672DA(3).</p>	<p>B16Q1 Do you agree with our proposal?</p> <p>B16Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>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.</p> <p>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 pro-forma declaration.</p>	<p>B17Q1 Do you agree with our proposal to consolidate the existing forms into a single form?</p> <p>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?</p> <p>B17Q3 Do you consider we should provide a simplified form for substantial holders that do not have any interest in derivatives?</p> <p>B17Q4 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>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.</p>	<p>B18Q1 Are there any features that should be considered for inclusion as part of a web-based substantial holding notice form?</p> <p>B18Q2 What registration requirements (if any) should be imposed on users of a web-based substantial holding notice form?</p> <p>B18Q3 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<p>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.</p>	<p>B19Q1 Are there any specific data standards we should consider for the purpose of storing and submitting substantial holding information?</p> <p>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?</p>
<p>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.</p>	<p>B20Q1 Do you agree with our proposal?</p> <p>B20Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>B21 We propose to prescribe by legislative instrument the following standard form documents that do not need to accompany a substantial holding notice:</p> <ul style="list-style-type: none"> (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 <i>ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821</i>, where the prescribed information under that instrument is provided, including: <ul style="list-style-type: none"> (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; 	<p>B21Q1 Do you agree with our proposal?</p> <p>B21Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p> <p>B21Q3 For which additional agreements would you suggest this standard form exemption could apply, especially with respect to derivatives agreements?</p> <p>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?</p>

Proposal	Your feedback
<ul style="list-style-type: none"> (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. 	
<p>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.</p>	<p>B22Q1 Do you agree with our proposal?</p> <p>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.</p>
<p>C1 We propose to update RG 5 to:</p> <ul style="list-style-type: none"> (a) provide guidance on deemed economic interests, including guidance about: <ul style="list-style-type: none"> (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 non-physically 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: <ul style="list-style-type: none"> (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; 	<p>C1Q1 Do you agree with our proposal?</p> <p>C1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>

Proposal	Your feedback
<ul style="list-style-type: none"> (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 <i>Relevant interests and deemed economic interests</i> to reflect its expanded scope, which is focusing on the concepts of relevant interests and deemed economic interests. 	
<p>C2 We propose to update RG 9 to:</p> <ul style="list-style-type: none"> (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. 	<p>C2Q1 Do you agree with our proposal?</p> <p>C2Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>
<p>C3 We propose to update RG 222 to:</p> <ul style="list-style-type: none"> (a) incorporate substantial holding disclosure guidance from RG 5; (b) incorporate guidance on tracing notices from Regulatory Guide 86 <i>Tracing beneficial ownership</i> (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 <i>Substantial holding disclosure and tracing requirements</i> to reflect its broadened scope. 	<p>C3Q1 Do you agree with our proposal?</p> <p>C3Q2 Would you suggest any changes to our proposed approach? If so, please provide details.</p>