

4 January 2024

By email: [REDACTED]

Financial Advice and Investment Management  
Regulation & Supervision  
Australian Securities and Investments Commission  
GPO Box 9827  
Brisbane QLD 4001

Dear Sir / Madam

**Submission on ASIC Consultation Paper 374: *Remaking ASIC class order on exchange traded funds* [CO 13/721]**

We appreciate the opportunity to comment on the proposals of the Australian Securities and Investments Commission (**ASIC**) in Consultation Paper 374 relating to remaking ASIC class order on exchange traded funds (**CP 374**).

K&L Gates has a global asset management and investment funds practice group that regularly advises issuers of exchange traded funds (**ETFs**) in many jurisdictions around the world. This also includes advising on the launch of ETFs in Australia and relevantly, on the operation of ASIC [CO 13/721] (**Class Order**).

While our submission reflects our recent experience in advising clients on the application of the Class Order, the views expressed in this submission are ours alone, and do not necessarily reflect the views of our clients.

Unless otherwise specified, all legislative references in this letter relate to the *Corporations Act 2001 (Cth)* (**Act**).

## 1. Background

The ETF industry in Australia has in recent years seen significant growth, largely due to the structural advantages and the ease of access they provide for investors. ASIC has recognised that there are significant innovations and global developments occurring in ETF products.<sup>1</sup> One more recent innovation is the 'dual access model' ETF structured as a registered managed investment scheme that provides all members with the opportunity to:

- (a) purchase and sell units in the same class either on-market (via the securities exchange) or apply for and withdraw those units off-market (directly with the issuer); and

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<sup>1</sup> See ASIC Information Sheet 230 (INFO 230)

- (b) move their units held off-market to be held on-market (so that they may be traded on the securities exchange) or from on-market to be held off-market (so that they may be withdrawn directly with the issuer). This process is often referred to as "conversion".

We have recently advised a global fund manager on the launch of its first three ETFs on the Australian Securities Exchange under the dual access model. We believe the remaking of the sunseting Class Order will continue to facilitate the growth of ETF products in Australia, including actively managed ETFs and dual access ETFs.

## 2. Summary

We welcome ASIC's proposals to remake the Class Order and continue its application beyond 1 April 2024. We share ASIC's views that without this relief, the operation of ETFs will become impractical or unduly burdensome.

In this submission we have identified some other amendments to the Class Order for ASIC's consideration which in our view would further enhance its application (particularly in relation to 'dual access' ETFs). These include:

- (a) in relation to the equal treatment relief:
  - (i) extending the relief to include authorised participants 'applying' for interests in ETFs;
  - (ii) modifying the condition of the relief relating to the withdrawal fee provisions of ETF constitutions so that it applies to 'retail clients' (rather than more generally to any other member who is not an authorised participant); and
  - (iii) introducing further relief to allow issuers of ETFs to apply a different application and withdrawal cut-off time for members who are authorised participants;
- (b) extending the declaration relating to relevant interests under section 609 of the Act so that it applies to all types of quoted ETFs, not only those that track an index; and
- (c) some minor drafting suggestions for clarity in relation to the declaration relating to substantial interest and beneficial tracing requirements under the Act.

## 3. Consultation Questions

### 3.1 B1Q1

***Do you agree with our proposal? If not, why not?***

We agree that the Class Order is operating effectively and efficiently, and continues to form a necessary and useful part of the ETF legislative framework.

We also agree with ASIC's proposal to extend the current relief to all types of quoted ETFs, not limited to those prescribed in the Class Order that are passively managed and track an index.

However, we submit that ASIC should consider setting an expiry date for the new Class Order of at least 8 years ending 2032 (rather than the proposed 5 years).

In our experience, it is typical for the investment strategy of an ETF product to have a minimum suggested timeframe for holding the investment of 3 or 5 years. We submit an expiry date of a further 5 years as proposed in CP 374 would therefore be a relatively short period in the investment timeframe for a typical ETF product. In our view a longer expiry date would provide better certainty for industry.

### 3.2 B1Q2

***Are you aware of any significant issues with the operation of this class order? If so, please explain.***

Through our advisory work, in particular regarding dual access ETFs, we have encountered some limitations with the operation of the current Class Order.

These limitations will largely be overcome by ASIC's proposal to extend the current relief to other types of quoted ETFs and not limiting the application of the Class Order for certain prescribed ETFs that are passively managed and track an index.

However, we submit there are further changes that ASIC should consider making to the Class Order which in our view would further enhance its application (particularly in relation to 'dual access' ETFs).

These further suggested amendments are explained below. To assist ASIC we have also provided suggested drafting changes in **Attachment 1** to this submission as a mark-up to the draft *ASIC Corporations (Relief to Facilitate Admission of Exchange Traded Funds) Instrument 2024/XX* provided by ASIC in CP 374.

#### **(a) Section 601FC(1)(d) - Unequal treatment in withdrawal from an ETF**

We submit that ASIC should consider making two further amendments to the proposed extended relief from unequal treatment that currently applies to withdrawals from an ETF.

##### **(i) Extending the application to 'applying' for interests in ETFs**

The draft Class Order provides that a responsible entity or a corporate director may permit only authorised participants to withdraw from the ETF where certain conditions set out in the Class Order are satisfied.

We submit that this relief should also be extended to permit only authorised participants to 'apply' for interests in the ETF. While the equal treatment requirements in s601FC(1)(d) of the Act do not necessarily apply to new applicants, they do apply to existing members (including authorised participants) who wish to acquire further interests in the ETF. In particular, where authorised participants can apply directly with the issuer for more interests in the ETF, existing members must typically purchase those interests on-market to increase their holding.

This amendment is also relevant under the dual access model whereby authorised participants may apply to the responsible entity directly for new units held on-market but all other members that are not authorised participants may only apply to the responsible entity directly for units held off-market. In both cases, authorised participants are to be treated differently.

We submit that relief from the equal treatment requirement in s601FC(1)(d) is therefore appropriate in these instances and consistent with the intent of the Class Order to enable authorised participants to quickly and efficiently meet investor demand through the purchase and sale of securities on the securities exchange.

[REDACTED]

(ii) Limiting the withdrawal fee condition to 'retail clients'

The Class Order requires that in order for the equal treatment relief to be available, the constitution of the ETF must not permit a withdrawal fee per security to be payable by a member who is not an authorised participant that is greater than the withdrawal fee per security that would generally be payable by an authorised participant receiving redemption proceeds in cash while interests or shares in the ETF are quoted when withdrawing the minimum parcel.

We submit that this condition of the Class Order should apply to 'retail clients' only, rather than more broadly to 'any other member that is not an authorised participant'. In particular, we submit the application of the Class Order is inconsistent with the ability for ETF issuers to negotiate fees with other members who are wholesale clients and are not authorised participants. Specifically, *ASIC Corporations (Registered Schemes and CCIVs—Differential Fees) Instrument 2017/40* permits issuers to negotiate fee arrangements with a member who is a wholesale client, which may also include increases in some fees (such as withdrawal fees).

We submit that making this change to refer to 'retail clients' would be consistent with the policy behind the Class Order by ensuring that retail clients are not charged a higher withdrawal fee than authorised participants in this situation, while also maintaining ASIC's policy to allow issuers to negotiate fee arrangements with other wholesale clients.

[REDACTED]

**(b) Section 601FC(1)(d) - Unequal treatment in Cut-Off Times for authorised participants**

Market makers and authorised participants play a key role in facilitating the efficient purchase and sale of ETFs on the securities exchange. In order to fulfil this function, authorised participants are required to apply for and withdraw interests in the ETF directly with the issuer. Issuers will typically set a cut-off time (generally around 2pm on a business day) by which investors must apply for or withdraw from an ETF to have the request processed at the price for that particular day.

[REDACTED]

However, in our experience authorised participants will generally not know until the end of trading on that particular day the quantity of interests in the ETF to apply for or withdraw directly with the ETF issuer (i.e. the 'netted off' amount). The quantity is driven by market demand. Accordingly, we submit that ASIC should consider granting additional relief to responsible entities and corporate directors of CCIVs from the equal treatment requirement in s601FC(1)(d) of the Act so as to allow them to apply a different application and withdrawal cut-off time for members who are authorised participants.

This is particularly relevant for the dual access model, whereby any prescribed cut-off time for submitting applications and withdrawals with the ETF issuer will otherwise apply equally to authorised participants and members. Granting this relief will allow authorised participants more time to determine the quantity of ETF interests they need to apply for or withdraw to facilitate the purchase and sale of interests on the securities exchange for that particular trading day.

We have proposed in paragraph 6(3) of Attachment 1 that a responsible entity or corporate director that relies on this proposed new relief may accept applications and withdrawals from authorised participants after the relevant cut-off time until the end of trading on the relevant trading day of the cut-off time. However, ASIC may be minded to consider extending this time for a further period (say up to 3 hours after the close of trading on the relevant trading day of the cut-off time) which we submit would provide even greater flexibility for authorised participants (particularly where they may have operations outside of Australia).

**(c) Section 609 - Relevant Interest**

The Class Order provides that a member of an ETF who is an authorised participant in relation to the ETF does not have a relevant interest in securities that form part of ETF property merely because the ETF has an acquisition and withdrawal facility, provided certain conditions are satisfied. One of those conditions is that the current PDS contains a statement to the effect that the investment strategy for the ETF is to make investments that are expected to result in the value of an interest or share (as applicable) in the ETF changing in proportion to the value of a published index of securities, ignoring the effect of fees and other costs (including taxes) in relation to the ETF.

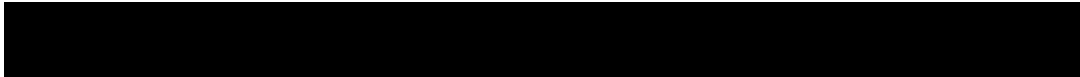
We submit that ASIC should consider removing this condition so that the relief extends to all types of quoted ETFs, not limited to those that track an index. We consider this approach is generally consistent with ASIC's policy in CP 374.

An additional condition in the Class Order is that the current PDS contains a statement to the effect that at the time the investment strategy for the ETF disclosed in the current PDS was first published in a Product Disclosure Statement for interests or shares (as applicable) in the ETF, there were reasonable grounds to believe that implementation of the investment strategy would not be likely to lead to ETF property including certain securities in a class.

We further submit that this condition should not apply to the first time the investment strategy was published in a Product Disclosure Statement. We see no significant policy reason why this reference to the first publication of the

investment strategy is relevant, particularly for actively managed ETFs. We also note that for many dual access ETFs that have already been operating as registered managed investment schemes, the first Product Disclosure Statement may have been published a number of years earlier when the investments of the relevant scheme may have been substantially different. We submit that in this case, the intention at the time of first publication in a Product Disclosure Statement is not relevant.

As an alternative we have suggested that ASIC consider modifying this condition so that it instead refers to the reasonable grounds assessment being made as at the date of issue of the current PDS.



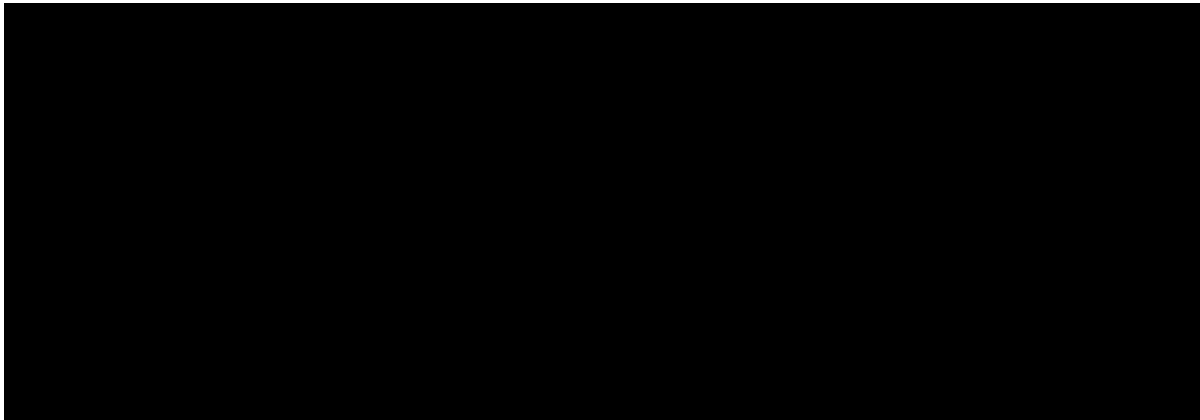
**(d) Substantial Interest and Beneficial Tracing**

We have proposed some further minor drafting suggestions to this declaration which we consider reflects the intent of the Class Order such that the relevant interest is only established when the withdrawal request is made, rather than if it was made (which would always be the case and defeat the regulatory intent of the instrument).



We would welcome any request to discuss our submission in greater detail.

Yours faithfully



# Attachment 1 - Draft instrument

## Part 1—Preliminary

### 1. Name of legislative instrument

This is the *ASIC Corporations (Relief to Facilitate Admission of Exchange Traded Funds) Instrument 2024/XX*.

### 2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3. Authority

This instrument is made under subsections 601QA(1), 655A(1), 673(1), 1020F(1) and 1243(2) of the *Corporations Act 2001*.

### 4. Definitions

In this instrument:

**Act** means the *Corporations Act 2001*.

**ASX** means ASX Limited ACN 008 624 691.

**authorised participant** means, in relation to an ETF, a person who:

- (a) has an agreement with:
  - (i) in the case of an ETF that is a registered scheme—the responsible entity of the scheme; and
  - (ii) in the case of an ETF that is a sub-fund of a CCIV—the CCIV (in respect of the sub-fund);

in relation to making applications to acquire and withdraw interests in the scheme or shares in the sub-fund; and

- (b) is, or has engaged to act on its behalf, a participant in relation to a financial market, to acquire and dispose of interests in the scheme or shares in the sub-fund.

**Cboe** means CBOE Australia Pty Ltd ACN 129 584 667.

**constitution** means:

- (a) in relation to an ETF that is a registered scheme—the constitution of the scheme; and

- (b) in relation to an ETF that is a sub-fund of a CCIV—the constitution of the CCIV.

**corporate director**, in relation to a sub-fund of a CCIV (including a sub-fund that is an ETF), means the corporate director of the CCIV.

[Cut-Off Time means the time determined by the responsible entity or corporate director \(as applicable\) before which applications or withdrawals must be received by the responsible entity or CCIV to be accepted on a particular day.](#)

**ETF** (short for exchange traded fund) means a registered scheme or a sub-fund of a CCIV in relation to which all of the following are satisfied:

- (a) interests in the scheme or shares in the sub-fund are in a class that is able to be traded on a financial market operated by ASX or Cboe, but the scheme or sub-fund is not listed on either of those markets;
- (b) the responsible entity or CCIV has the power and approval to issue interests or shares in that class on any day that those interests or shares are able to be traded on the relevant financial market;
- (c) the responsible entity or CCIV allows applications for, and redemptions of, interests or shares in that class on any day that those interests or shares are able to be traded on the relevant financial market;
- (d) the responsible entity or CCIV does not make a market (within the meaning of subsection 766D(1), but ignoring subsection 766D(2), of the Act) for those interests or shares.

**indicative net asset value per security** means:

- (a) for an ETF that is a registered scheme, the total assets of the ETF less the total liabilities of the ETF (disregarding any liability to a member of the ETF as a member), divided by the number of interests in the ETF; and
- (b) for a class of interests in an ETF that is a registered scheme, the total assets attributable to that class of interests less the total liabilities attributable to that class of interests (disregarding any liability to a member of the ETF as a member), divided by the number of interests in that class; and
- (c) for an ETF that is a sub-fund of a CCIV, the total assets of the ETF less the total liabilities of the ETF (disregarding any liability to a member of the ETF as a member), divided by the number of shares in the ETF; and
- (d) for a class of shares in an ETF that is a sub-fund of a CCIV, the total assets attributable to that class of shares less the total liabilities attributable to that class of shares (disregarding any liability to a member of the ETF as a member), divided by the number of shares in that class.

**minimum parcel** means the smallest number or value of interests or shares in an ETF that are generally permitted to be withdrawn from the ETF by an authorised participant while interests or shares in the ETF are quoted.

[retail client has the same meaning as in the Act.](#)



trading day, in relation to a financial market, means any day that financial products are able to be traded on the market.

**withdrawal fee per security** means:

- (a) in relation to an ETF that is a registered scheme, the fee that is payable in relation to a withdrawal from the ETF divided by the number of interests in the ETF to which the withdrawal relates; and
- (b) in relation to an ETF that is a sub-fund of a CCIV, the fee that is payable in relation to a withdrawal from the ETF divided by the number of shares in the ETF to which the withdrawal relates.

## Part 2—Exemption

### 5. Unequal treatment in applications and withdrawals from an ETF

- (1) The responsible entity of an ETF that is a registered scheme and the corporate director of an ETF that is a sub-fund of a CCIV do not have to comply with paragraph 601FC(1)(d) or 1224D(2)(b) of the Act (as applicable) to the extent that it would prevent the responsible entity or the corporate director from permitting only authorised participants to apply for and withdraw from the ETF.
- (2) The exemption in subsection (1) applies where both the following are satisfied:
  - (a) there is a Product Disclosure Statement in relation to interests or shares in the ETF that are or will be able to be traded on a financial market operated by ASX or Cboe that contains statements to the effect that:
    - (i) the responsible entity or corporate director will not treat members of the same class equally to the extent that it restricts applications for, and withdrawals from the ETF to authorised participants; and
    - (ii) except in exceptional circumstances, only authorised participants may withdraw from the ETF, but other members may sell their interests or shares on the financial market operated by ASX or Cboe; and
    - (iii) when interests or shares in the ETF are suspended from trading on the financial market operated by ASX or Cboe for more than 5 consecutive trading days, members have a right to withdraw from the ETF and receive payment for their interests or shares in money within a reasonable time of a request unless any of the following apply:
      - (A) the ETF is being wound-up;
      - (B) the ETF is not liquid;
      - (C) the responsible entity or the CCIV suspends withdrawals in accordance with the constitution of the ETF;
  - (b) the constitution of the ETF does not permit a withdrawal fee per security to be payable by a member who is a retail client ~~not an authorised participant~~ that is greater than the withdrawal fee per security that would generally be payable

by an authorised participant receiving redemption proceeds in cash while interests or shares in the ETF are quoted when withdrawing the minimum parcel.

Note: Paragraph 5(2)(b) applies regardless of whether the withdrawal fees for the ETF are calculated on a per interest or a per share basis or otherwise.

## **6. Unequal treatment in receiving applications and withdrawals from an ETF**

(1) The responsible entity of an ETF that is a registered scheme and the corporate director of an ETF that is a sub-fund of a CCIV do not have to comply with paragraph 601FC(1)(d) or 1224D(2)(b) of the Act (as applicable) to the extent that it would prevent the responsible entity or the corporate director from permitting only authorised participants to apply for and withdraw from the ETF after the Cut-Off Time.

(2) The exemption in subsection (1) applies where there is a Product Disclosure Statement in relation to interests or shares in the ETF that are or will be able to be traded on a financial market operated by ASX or Cboe that contains statements to the effect that the responsible entity or corporate director will not treat members of the same class equally to the extent that it accepts applications and withdrawals from authorised participants after the Cut-Off Time.

### Conditions

(3) The latest time a responsible entity or corporate director that relies on the exemption in subsection (1) may accept applications and withdrawal requests from authorised participants after a particular Cut-Off Time is the close of trading on the ASX or Cboe (as applicable) on the trading day of that Cut-Off Time.

## **6.7. Unequal treatment in provision of information to authorised participants**

(1) The responsible entity of an ETF that is a registered scheme and the corporate director of an ETF that is a sub-fund of a CCIV does not have to comply with paragraph 601FC(1)(d) or 1224D(2)(b) of the Act (as applicable) to the extent that it would prevent the responsible entity or the corporate director from providing information to authorised participants before other members about:

(a) the price or value of any financial product, index, currency, commodity or other thing that the ETF invests in or, in the case of an index, refers to as part of its investment strategy; and

(b) the number and class of securities and any other property required to acquire an interest or share in the ETF by authorised participants on the trading day that first ends after the information is provided; and

(c) the number and class of securities and any other property transferred on withdrawal from an interest or share in the ETF by authorised participants on the trading day that first ends after the information is provided.

*Where the exemption applies*

- (2) The exemption in subsection (1) applies where there is a Product Disclosure Statement in relation to interests or shares in the ETF that are or will be able to be traded on a financial market operated by ASX or Cboe that contains a statement to the effect that the responsible entity or the corporate director will provide information about the matters referred to in paragraphs (1)(a) to (c) to authorised participants before other members.

#### *Conditions*

- (3) A responsible entity or corporate director that relies on the exemption in subsection (1) must:
- (a) publicly disclose any information which has been disclosed to authorised participants as permitted by the exemption before the commencement of the trading day after the day on which such disclosure was made to authorised participants; and
  - (b) take reasonable steps to ensure that the following information is publicly available and updated every 15 minutes during each trading day:
    - (i) where the ETF has only one class of interests or shares—the indicative net asset value per security in the ETF; or
    - (ii) otherwise—the indicative net asset value per security for each class of interests or shares.

### **7.8. Ongoing disclosure for ETFs**

- (1) Neither of the following has to comply with section 1017B of the Act:
- (a) the responsible entity of an ETF that is a registered scheme;
  - (b) a CCIV (in respect of a sub-fund of the CCIV that is an ETF).
- (2) The exemption in subsection (1) applies where the responsible entity or CCIV (in respect of the sub-fund):
- (a) complies with section 675 of the Act as if the scheme or CCIV were an unlisted disclosing entity; and
  - (b) includes statements in any Product Disclosure Statement for interests or shares in the ETF to the effect that the responsible entity or CCIV (in respect of the sub-fund) will comply with the continuous disclosure requirements of the Act as if the scheme or CCIV were an unlisted disclosing entity.

Note 1: Section 1017B of the Act applies to a CCIV subject to the modifications set out in Division 4 of Part 8B.7: see sections 1241 and 1241Z of the Act.

Note 2: Section 675 of the Act has a modified operation in relation to securities in a CCIV: see section 1240F of the Act.

## **Part 3—Declaration**

### **8.9. Relevant Interest**

- (1) Chapters 6 and 6C of the Act apply to all persons as if section 609 were modified or varied by, in the appropriate position in section 609, inserting:

*“ETFs*

- (10A) A member of an ETF who is an authorised participant in relation to the ETF does not have a relevant interest in securities that form part of ETF property merely because the ETF has an acquisition and withdrawal facility, provided that:

- (a) interests in the registered scheme or the sub-fund of a CCIV (as applicable) are in a class that is able to be traded on a financial market operated by ASX or Cboe~~the current PDS contains a statement to the effect that the investment strategy for the ETF is to make investments that are expected to result in the value of an interest or share (as applicable) in the ETF changing in proportion to the value of a published index of securities, ignoring the effect of fees and other costs (including taxes) in relation to the ETF;~~ and

- (b) the current PDS contains a statement to the effect that, ~~at the time the investment strategy for the ETF disclosed in the current PDS was first published in a Product Disclosure Statement for interests or shares (as applicable) in the ETF,~~ as at the date of issue of the current PDS, there were reasonable grounds for the responsible entity or corporate director (as applicable) to believe that implementation of the investment strategy would not be likely to lead to ETF property including securities in a class of securities that:

- (i) would represent more than 10% by value of ETF property; and
- (ii) were, or would result in the responsible entity or CCIV having a relevant interest in, securities in:
- (A) a listed company; or
- (B) an unlisted company, other than a CCIV, with more than 50 members; or

Note: The prohibitions in subsections 606(1) and (2) only apply to the acquisition of a relevant interest in an issued voting share in a CCIV if the CCIV is a listed company: see section 1240A.

- (C) a listed body that is formed or incorporated in Australia; or
- (D) a listed scheme.

Note: The responsible entity or CCIV may have a relevant interest in securities that do not form part of ETF property because of paragraph 608(3)(b).

- (10B) If subsection (10A) applies in relation to a member and the member makes a withdrawal request under the acquisition and withdrawal facility:

- (a) subsection (10A) stops applying in relation to any securities that the member would receive if the responsible entity or CCIV transferred securities to the member in accordance with the withdrawal request; and

- (b) the member is taken to acquire a relevant interest in those securities at that time through a transaction in relation to the securities entered into by the member.

Note: If the member makes a withdrawal request only in relation to some of the member's interests or shares in the ETF, subsection (10A) may still apply in relation to the member's remaining interests or shares.

(10C) If:

- (a) other than because of subsection (10B), a member has a relevant interest in securities that form part of ETF property because subsection (10A) has stopped applying in relation to the scheme or sub-fund; and

Note: The circumstances in which subsection (10A) will stop applying include where the scheme or sub-fund ceases to be an ETF.

- (b) the member makes a withdrawal request in relation to the interests in the registered scheme or the shares in the sub-fund;

then for the purposes of section 606, at the time of the withdrawal request:

- (c) the member is taken to acquire a relevant interest in any securities that the member would receive if the responsible entity or CCIV transferred securities to the member in accordance with the withdrawal request; and
- (d) the member is taken to have acquired the relevant interest through a transaction entered into by the member in relation to those securities; and
- (e) the member's voting power is taken to have increased from what it would have been before the withdrawal request if the votes attached to those securities were disregarded to what it was after the withdrawal request (taking the votes attached to those securities into account).

(10D) If, in the previous 6 months:

- (a) a member's voting power has increased because subsection (10A) stopped applying in relation to securities; and
- (b) the member has not been taken to acquire a relevant interest in the securities under subsection (10B) or (10C);

the increase in voting power is to be disregarded in determining the voting power of the member or any other person for the purposes of item 9 of the table in section 611.

(10E) In subsections (10A) to (10D) and in this subsection:

**acquisition and withdrawal facility** means, in relation to an ETF, a facility that:

- (a) the responsible entity or CCIV (as the case may be) has stated in the current PDS that it intends to offer on each trading day on which interests or shares in the ETF are traded on the relevant financial market operated by ASX or Cboe; and
- (b) allows:

- (i) a person who is an authorised participant to acquire an interest or a share in the ETF by contributing to the ETF; and
- (ii) a member who is an authorised participant to request that the responsible entity or CCIV satisfy a withdrawal request in relation to an interest or a share in the ETF by transferring to the member;

consideration that predominantly comprises a parcel of securities, the composition of which in relation to an acquisition and a withdrawal is published by or on behalf of the responsible entity from time to time.

Note: The composition of the parcel of securities may be different for an acquisition and a withdrawal.

**ASX** means ASX Limited ACN 008 624 691.

**authorised participant** has the same meaning as in *ASIC Corporations (Relief to Facilitate Admission of Exchange Traded Funds) Instrument 2024/XX*.

**Cboe** means CBOE Australia Pty Ltd ACN 129 584 667.

**current PDS**, in relation to an ETF, means the most recently lodged Product Disclosure Statement relating to interests or shares in the ETF.

**ETF** has the same meaning as in *ASIC Corporations (Relief to Facilitate Admission of Exchange Traded Funds) Instrument 2024/XX*.

**ETF property** means:

- (a) in relation to an ETF that is a registered scheme—scheme property of the scheme; and
- (b) in relation to an ETF that is a sub-fund of a CCIV—the assets of the sub-fund.

Note: Chapter 6 applies to a CCIV subject to the modifications set out in Part 8B.7: see section 1240.”.

## **9-10. Substantial Interest and Beneficial Tracing**

- (1) Chapters 6C of the Act applies to all persons as if provisions of that Chapter were modified or varied as follows:

- (a) by inserting after section 671A:

**“671AA Substantial holdings and relevant interests in relation to exchange traded funds**

- (1) For the purposes of this Chapter and the definition of **substantial holding** in section 9:
  - (a) subsection 609(10A) applies as if paragraph 609(10A)(b) were omitted; and
  - (b) if a member of an ETF that has an acquisition and withdrawal facility does not have a relevant interest in securities that form part of ETF property because of subsection 609(10A) (as affected by paragraph (a)), then the member is taken

to have a relevant interest in the securities that would be transferred to the member if [and when](#):

- (i) the member ~~make~~[sede](#) a withdrawal request under the acquisition and withdrawal facility for all their interests or shares in the ETF, other than any interests or shares in relation to which the member has a relevant interest in securities that form part of ETF property because of subsection 609(10B); and

Note: Subsection 609(10B) may give a member a relevant interest in securities that form part of ETF property if the member has made a withdrawal request in relation to some or all of their interests or shares in the ETF.

- (ii) the numbers and classes of securities transferred to the member under the facility for each interest or share in the ETF were the same as the numbers and classes of securities most recently disclosed to the member by the responsible entity or CCIV in relation to a withdrawal request for an interest or share under the facility.

- (2) In subsection (1):

***acquisition and withdrawal facility*** has the same meaning as in subsection 609(10E).

***ETF*** has the same meaning as in ASIC Corporations (Relief to Facilitate Admission of Exchange Traded Funds) Instrument 2024/XX.

***ETF property*** has the same meaning as in subsection 609(10E).”;

- (c) by inserting at the end of note 1 to subsection 671B(1):

“Section 671AA expands the normal concept of substantial holding and relevant interest in relation to exchange traded funds.”;

- (d) by inserting at the end of subsection 672B(1):

“Note: Section 671AA expands the normal concept of relevant interest in relation to exchange traded funds.”.

## Part 4—Repeal

### ~~10.11.~~ [11.](#) Repeal

This instrument is repealed at the start of 1 April 2029.