

21 October 2026

Via email: Andrew.Templer@asic.gov.au



Dear Mr Templer

**AFMA Submission on Enhanced Beneficial Ownership Regime - Industry Implementation Issues
and Request for Further Guidance**

Thank you for ASIC's engagement with industry throughout the development of the enhanced beneficial ownership disclosure regime and for the significant changes made to the final framework in response to consultation feedback.

AFMA and its members recognise the work undertaken by ASIC in finalising the *ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument 2026/482 (Instrument)*, the new Substantial Holding Notice and the updated Regulatory Guides 5, 9 and 222 (**RG 5**, **RG 9** and **RG 222**).

In particular, most members welcome the move from the proposed delta-adjusted methodology to a full notional methodology, the increase in the basket and index threshold to 30%, the new exceptions for derivatives over major indices and ETF-tracked baskets, and the six-month transitional period for the new prescribed form of the substantial holder notice.

Following publication of the final framework, AFMA convened an industry working group comprising affected market participants to discuss implementation and interpretation issues arising from the regime ahead of its commencement on 4 December 2026. While members broadly support the policy objective of the reforms and acknowledge the improvements made following consultation, a number of common themes emerged where further ASIC guidance and clarification would materially assist implementation and promote consistent disclosure outcomes.

Members also emphasised that implementation of the regime extends well beyond interpretation of the legal requirements. For many firms, particularly global investment banks operating across multiple jurisdictions, implementation requires changes to global regulatory reporting systems, data sourcing and aggregation processes, governance frameworks and operational controls. Members noted that the final methodology, relief framework and guidance were not settled until July 2026, leaving a relatively short period to design, build, test and implement these changes before commencement. Several members observed that the principal implementation challenge is not the completion of disclosure forms themselves, but rather identifying, classifying, monitoring and aggregating the relevant positions and transactions that ultimately feed into the reporting process. Against this background, members consider that clear implementation guidance and greater certainty regarding ASIC's expectations during the early stages of the regime will be critical to supporting consistent compliance outcomes.

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A recurring theme across the discussion was that members are not seeking changes to ASIC's policy settings. Rather, they are seeking practical implementation guidance, worked examples and greater clarity regarding ASIC's expectations to support consistent implementation across the market. In a small number of areas, most notably the disclosure of offsetting short positions under multi-leg derivatives such as collars, members are concerned that a strictly literal reading of the Substantial Holding Notice could produce disclosures that overstate a holder's position. In those areas, members seek confirmation that a disclosure approach which reflects the economic substance of the position, and which is fully transparent about how it has been prepared, is acceptable to ASIC.

Many of the issues concern how particular equity derivative and stake-management structures interact with the new regime. We have therefore sought to explain the relevant products and disclosure mechanics from first principles.

1. Relatable Derivative-Based Holding Percentage and "Ought Reasonably Know"

This was consistently identified as one of the most significant areas of uncertainty. Members note that the issue arises for physically settleable derivatives. For non-physically settleable derivatives, the taker's deemed economic interest is the full notional amount irrespective of the writer's hedge (RG 5.230).

Members continue to work through the practical application of the "reasonable steps" exception in s671BC and the associated obligation to consider information they know, or ought reasonably know, when determining relatable derivative-based holding information.

The working group identified two distinct challenges:

- determining what information should be obtained when entering into a derivative transaction; and
- understanding the extent of the ongoing monitoring obligation once a disclosure obligation arises.

Members noted that the requirement becomes particularly challenging where firms are managing large volumes of derivative transactions across multiple counterparties, products, entities and jurisdictions and where information relating to counterparties' hedge positions may change over time. To be workable, this requires systematic sourcing and analysis of the relevant information, particularly for large financial institutions. Where this is not available, it becomes unpracticable to manually obtain and analyse relatable derivative-based holding information for individual derivatives within the 2-day reporting period.

A key concern is that while the legislation imposes an "ought reasonably know" standard, there is limited practical guidance regarding the inquiries, controls and monitoring arrangements ASIC expects firms to have in place.

Several members questioned whether firms are expected to actively seek information from counterparties regarding hedge positions or relevant interests and, if so, on what basis and how frequently. Members noted that such information may be difficult to obtain, may become stale

quickly and may not be independently verifiable and, in some circumstances, may be confidential, commercially sensitive and/or material.

Members also observed that neither direct inquiry of counterparties nor reliance solely on publicly available information may be practical or appropriate in all circumstances. For example, firms may enter into large numbers of derivative transactions across multiple counterparties, products and jurisdictions, with disclosure obligations assessed on an aggregate basis and subject to ongoing monitoring requirements.

Members noted that there may be a range of reasonable approaches to complying with the "ought reasonably know" standard. Depending on the circumstances, these may include reliance on information already obtained through ordinary business processes, publicly available information, conservative assumptions regarding counterparties' hedge positions, or other methodologies supported by appropriate governance and controls.

Members also noted that, where information regarding a counterparty's hedge position is not reasonably available, one potential approach may be to assume that the counterparty is fully hedged and therefore report the full notional amount as a relatable holding.

Members are not seeking ASIC endorsement of any particular methodology. Rather, they would welcome guidance regarding the range of approaches that ASIC considers consistent with the "reasonable steps" obligation and examples of how those approaches may be applied in practice.

Suggested ASIC support

Members would welcome:

- practical guidance regarding the range of approaches that ASIC would consider consistent with the "reasonable steps" and "ought reasonably know" obligations, including examples of approaches currently used by market participants when complying with existing relevant interest and substantial holding disclosure obligations, the circumstances in which those approaches may be appropriate, and any factors ASIC considers relevant when assessing whether a firm's approach is reasonable;
- clarification regarding when, if ever, ASIC expects firms to seek information directly from counterparties;
- worked examples illustrating what ASIC considers to be "reasonable steps";
- guidance regarding ongoing monitoring obligations;
- lifecycle examples demonstrating how relatable derivative-based holding percentages should be disclosed and updated over time; and
- confirmation that obtaining hedge information for compliance purposes does not, without more, give rise to an association.

2. Market Maker and Client Facilitation Exclusions

Members broadly welcomed the exclusions but continue to work through how they should be operationalised in practice. For example, what condition (c) of the client services exemption at section 16 of the Instrument means in practice.

The principal concern, however, relates to the condition that 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 Chapter 6C body (sections 16 and 17 of the Instrument).

Members noted that RG 5 largely reproduces the wording of the legislative instrument and provides limited practical guidance regarding how these tests are intended to operate in practice. In particular, members would welcome further examples illustrating the types of client facilitation activity that ASIC intended to capture through the exemption, beyond the limited examples currently included in the guidance.

A number of firms observed that they already maintain governance controls designed to ensure that positions held for market making, client facilitation or hedging purposes are not used to influence issuers. Examples discussed included restrictions on voting hedge positions and other controls designed to separate facilitation activity from corporate influence or control considerations.

Several members also noted that existing governance frameworks established for other regulatory purposes may provide useful reference points when assessing compliance with the market maker exclusion. For example, a number of global financial institutions maintain designated market making desks and books for the purposes of compliance with the Volcker Rule. These frameworks typically involve formal desk designation, limits on permitted activities, documented business purposes, risk management requirements and independent compliance oversight. Members observed that there appear to be similarities between the market making concepts underpinning those frameworks and the activity contemplated by the market maker exclusion in the Instrument. As a result, it would be helpful to understand whether ASIC considers existing market-making governance arrangements of this nature to be relevant when assessing whether a firm is appropriately relying on the exclusion.

However, firms remain uncertain as to how the legislative test should be interpreted and monitored on an ongoing basis.

A recurring theme from the discussion was that concepts already contained in Chapter 6 of the *Corporations Act* are well understood by market participants and compliance teams and would be significantly easier to operationalise. Several members noted that concepts such as association, control and influence under Chapter 6 have been considered extensively by courts, regulators and market participants and may therefore provide a more objective and workable framework than the current formulation.

Members also raised questions regarding the interaction between the market maker and client facilitation exclusions and the broader policy objective of ensuring transparency where derivative arrangements may confer influence or control outcomes of the kind contemplated by Guidance Note 20.

In particular, members noted that the phrase "reasonably capable of determining, influencing or attempting to influence the affairs of the issuer" appears intended to distinguish between ordinary market-making and client facilitation activity and transactions that may give rise to influence or control outcomes. However, there remains uncertainty as to how that distinction is intended to

operate in practice and whether ASIC expects the concept to be interpreted by reference to existing Chapter 6 concepts such as association, influence and control.

Members observed that greater clarity regarding the relationship between these concepts, and the interaction between the exclusions and existing Guidance Note 20 principles, would assist firms in designing governance frameworks and applying the exclusions consistently.

Members further note that the exclusion does not remove relevant interests arising from hedge holdings or physically settleable derivatives, which continue to count towards a licensee's substantial holding. Worked examples for the bank side of common stake-management trades would assist (see the Annexure).

Regarding a statement to the relevant market operator where an exempt licensee's total holdings goes over the 20% threshold, it would be helpful for ASIC to confirm:

- if it has a preferred template for use in such scenarios, containing the information required under section 19(3) of the Instrument; and
- that it is the holdings of the licensee, not its related bodies corporate or other associates, that are to be:
- considered when determining whether the 20% threshold (and any disclosable movement) is reached; and
- disclosed in the statement.

Suggested ASIC support

Members would welcome:

- consideration of whether existing Chapter 6 concepts relating to association, influence and control can be used as practical interpretive references when applying the exclusion;
- worked examples illustrating the types of market making and client facilitation activity that the exclusions are intended to cover, including examples beyond exchange-traded options and other traditional agency-style transactions;
- worked examples illustrating circumstances where the exclusion is available and circumstances where it is not;
- guidance regarding the governance and control frameworks ASIC considers relevant including whether existing market-making governance arrangements maintained for other regulatory purposes may be relevant when assessing compliance with the exclusions;
- clarification regarding how firms should assess and monitor whether a dealing is "reasonably capable" of determining, influencing or attempting to influence the affairs of an issuer, including how ASIC expects that concept to interact with existing Chapter 6 principles and Guidance Note 20; and
- guidance regarding the form, content and reporting expectations where the 20% threshold is reached, including any preferred approach to satisfying the notification requirements under section 19 of the Instrument.

3. Basket and Index Look-Through Requirements

Members continue to work through the practical operation of basket and index provisions, including threshold calculations, data requirements and monitoring obligations.

Some members observed that aspects of the methodology are broadly consistent with approaches used in jurisdictions such as Hong Kong and the United Kingdom. However, challenges arise where firms must rely on external data providers, index providers and constituent-level information to determine underlying exposures and monitor thresholds.

Members welcome the new exceptions for indices compiled by major index providers and for baskets or indices tracked by an exchange-traded fund (sections 10(4) and 13(4) of the Instrument). However, particular uncertainty remains regarding the extent of required look-through analysis where multiple layers exist within a structure, and whether the new exceptions apply at each layer.

Examples raised by members included:

- derivatives referencing ETFs that themselves reference baskets or indices;
- derivatives referencing other products that themselves reference baskets or indices;
- derivatives referencing other derivatives linked to baskets or indices; and
- structured products and issued notes that indirectly create exposure to baskets or indices; and
- monitoring if the situations are present in a basket or index resulting in the deemed economic interests to be zero.

Several members questioned whether certain outcomes produced by layered look-through requirements appropriately reflect the policy objective of identifying influence or control over an issuer. For example, derivatives used for broad-based portfolio or macro hedging purposes may ultimately create disclosure outcomes that appear remote from any intention to influence an issuer. Members have also raised concerns on the technological and operational challenges of determining if the conditions for certain derivative types are met in calculating whether the deemed economic interest is zero. For example, under Situation 2 for derivative type 'where benefit under a derivative is determined by reference to a basket or index of assets that includes securities (basket or index)', the deemed economic interest as a result of the basket or index will be zero if the derivative references an index that is compiled and calculated by certain index providers, weightings are determined solely in accordance with a publicly available methodology of the index provider; and each constituent securities has to be quoted on a financial market.

Suggested ASIC support

Members would welcome:

- worked examples covering basket and index calculations;
- examples involving ETFs and layered structures;
- guidance regarding the expected degree of look-through;
- clarification regarding reliance on third-party data sources;
- clarification regarding monitoring expectations; and

- examples demonstrating how the basket and index exclusions are intended to be monitored and operated in practice.

4. Common Data Sources and Scope Determinations

Members also highlighted practical challenges associated with consistently identifying securities and products that fall within scope of the regime, particularly in large global organisations where reporting obligations may be triggered by activity undertaken outside Australia.

For example, a global financial institution's North American or European business may trigger an Australian disclosure obligation independently of any Australia-based business or transaction as a result of activity undertaken by offshore affiliates. Members noted that dual-listed securities are particularly challenging in this regard.

Questions raised included:

- identification of dual-listed securities;
- consistent treatment of Australian securities across global systems;
- mapping of issuers across multiple identifiers, including ISINs and CUSIPs;
- ensuring consistent scope determinations across business units, jurisdictions and service providers; and
- determining whether particular securities and products fall within scope of the regime where no centralised reference source exists.

Members noted that securities regulators in several overseas jurisdictions maintain public reference lists to assist market participants in determining reporting scope. Examples include the SEC's Official List of Section 13F Securities and Canadian reporting issuer databases.

Several members observed that, in the absence of a comparable Australian reference source, there is a risk of inconsistent scope determinations across market participants, particularly in relation to dual-listed securities and globally traded products.

To expand further on the challenges faced by members, the second requirement under s671F is that the listed entity must forward a copy of the information disclosed to the overseas regulator, to the ASX.¹ Such a dependency on information flows is not practical as it involves a considerable degree of uncertainty, for example whether the issuer agrees to forward the information, whether this is in fact done, and if not the implications for the investor if this becomes apparent after the 2 business day reporting timeframe locally and it then needs to make a late disclosure in Australia.

¹ "...to the operator of each declared financial market:
 (a) that is operated in this jurisdiction; and
 (b) the official list of which includes the listed body."

Suggested ASIC Support

Members would welcome consideration of whether ASIC could publish, maintain or facilitate access to a reference list of in-scope Australian securities and identifiers (including relevant ISINs and treatment of dual-listed securities) to assist firms in making more consistent scope determinations.

Members also noted that a centralised reference source may assist firms in determining the securities and products that should be included in deemed economic interest calculations and ongoing monitoring processes.

In regards to s671(3), for ASIC to include guidance on reasonable steps an investor can take, for example:

- where a disclosure is made to the issuer on T+2 in the UK, that a note should be added to the disclosure requesting that they inform the ASX;
- in the case of the US, where disclosures are uploaded to regulatory portal (EDGAR), how ASIC would expect that investors can satisfy themselves that a US issuer would notify the ASX; and
- that a facilitative approach would be taken to late disclosures by ASIC if it becomes known to an investor that an issuer has not or will not notify the Australian exchange of the required information.

5. Product-Specific Example – Offsetting Short Positions and the Zero-Cost Collar

A zero-cost collar is a common hedging and stake-management tool under which a shareholder keeps its shares but enters into a derivative with a bank that locks in a band of values for a specified number of those shares. The collar is (if broken down to its basic components) a bought put and a sold call over the same shares and, from the shareholder's perspective, each leg gives rise to an offsetting short position. The product and its disclosure treatment are explained in more detail in Example 1 of the Annexure.

The main issue that arises is what "offsetting short position" is represented by the collar. Members consider that a collar executed and documented as one transaction over one parcel of shares should be seen as a single derivative, so that a collar over 1% of a company's shares gives rise to an offsetting short position of 1%, not 1% for each leg. Members understand that without guidance, there may be an implicit expectation that each leg is to be reported as a separate offsetting short position in the Substantial Holding Notice. On that approach, the same collar would be reported as a 2% short position, even though the holder can never be short more than the 1% of shares collared. This would therefore overstate the extent to which the holder's position is hedged and mislead the market as a result.

Members consider that treating the collar as a single derivative is consistent with the policy intent and does not involve netting long positions against short positions; the supporting analysis is set out in the Annexure. It is suggested that, as a matter of best practice, a collar of this kind be reported once (at its notional amount) with a plain-English description of both legs and the holder's maximum short exposure, while genuinely separate positions continue to be reported separately.

If ASIC considers that each leg must be reported separately, members would welcome confirmation that holders may explain the effective short exposure in the notice so that the reported figure does not mislead. Either way, an opportunity to work through this kind of example with ASIC (and if ASIC is agreeable to it, a published set of common scenarios and how the regime would operate in those scenarios) would be of considerable benefit to the market and ensure a consistent approach is taken.

Separately, the regime on the disclosure of offsetting short positions would, in AFMA's view, not apply to a shareholder who holds only physical shares (and no long derivative positions) because the precondition to the section 671BB(1)(iv) disclosure obligation (which requires a person's derivative-based holding percentage to be greater than nil) is not satisfied. Members would be grateful if this interpretation could be discussed with ASIC.

A mirror-image question arises for the writer of the collar (in circumstances where the writer does not have the benefit of the market maker and client services exclusion or another exception that would prevent a deemed economic interest arising). From the writer's side, the collar comprises a sold put and a bought call over the same shares. Applying RG 5.236, each leg would appear to give the writer a long position (a deemed economic interest or, where physical settlement is possible, a relevant interest), so that a collar over 1% could again be counted as 2%. Members would welcome confirmation of how the writer's position should be characterised and counted in those circumstances. This is discussed further in the Annexure.

The analysis becomes more complex where the collar may be physically settled (or has one leg that is physically-settled and one that is cash-settled) or is financed through a share pledge or stock loan. These variations, and other complex but common structures seen in the market, are discussed in the Annexure.

6. Other Product Classification Issues

Members identified a number of derivative structures that are not specifically addressed in existing guidance, including:

- call spreads (where a holder buys a call at one strike and sells a call at a higher strike over the same shares);
- variable forward contracts, including prepaid variable forwards under which the number of shares deliverable varies with the share price;
- stake-management structures, including sale-and-swap transactions, collars financed by share pledges or stock loans, and covered calls; and
- other structured equity-linked products.

Several members noted that comparable overseas regimes, including the Hong Kong substantial shareholder regime, provide worked examples for some of these products.

The principal concern is ensuring consistent treatment of economically equivalent positions and avoiding unintended double counting. Members observed that similar economic exposures can be represented differently across products and systems, increasing the risk of divergent classification and disclosure outcomes. These products also raise questions about which party has a relevant interest

where physical settlement is possible, and how financing arrangements interact with existing securities lending relief.

Suggested ASIC support

Members would welcome:

- product-specific worked examples illustrating how ASIC expects these structures to be classified and reported;
- examples addressing collars, call spreads and variable forwards;
- clarification regarding when multiple legs or transactions should be treated as a single derivative or economic position for the purposes of section 12 of the Instrument;
- guidance on whether the maximum, minimum or current number of shares deliverable is the full notional amount for variable forwards and similar products; and
- guidance aimed at minimising the risk of inconsistent treatment or double counting.

7. Reporting and Documentation Requirements

This was one of the strongest themes emerging from the working group and was viewed by several members as the highest-priority area for additional practical guidance.

Members continue to seek clarification regarding:

- what constitutes a "relevant agreement";
- treatment of standard-form ISDA documentation;
- treatment of transaction confirmations;
- what constitutes a "difference" from standard-form documentation that requires disclosure; and
- the level of detail expected within document summaries.

A recurring theme was that most derivative agreements are highly standardised and commercially negotiated documents that generally provide little information regarding ownership, control or influence over an issuer. Members questioned whether requiring extensive disclosure of *all* departures from standard documentation (as the wording in RG 222 suggests) advances the transparency objectives of the regime, particularly where differences are operational or commercial in nature and have no bearing on the relevant interest or deemed economic interest analysis.

Members also highlighted uncertainty regarding the threshold for what constitutes a reportable difference from standard-form documentation and how such differences should be summarised in practice.

Further concerns were raised regarding the public nature of supporting documentation lodged with notices, particularly given the inability to redact documents and the potential for significant volumes of information to become publicly available.

Members note ASIC's view that transaction confirmations must generally accompany a notice. This is of particular concern for stake-management structures, where confirmations may contain the

parameters for the bank's hedge unwind. Publishing these terms could allow other participants to trade ahead of the unwind, to the detriment of orderly trading. Members would welcome guidance on how such terms should be treated.

Questions were also raised regarding operation of the new Substantial Holding Notice in certain reporting scenarios, including where a person ceases to be a substantial holder and where a notice is triggered solely by a movement in an offsetting short position (in which case the relevant written agreement must accompany the notice: RG 222.32).

Further, members would welcome ASIC guidance on when a firm is taken to have become aware, or ought reasonably to have become aware, of the information triggering a substantial holding notice. Where a consolidated group-wide position is only available (e.g. on a T+1 basis) after overseas activity is received and aggregated through internal monitoring systems, confirmation from ASIC that the awareness date is taken as the day this occurs (such that filing may in practice occur for example by T+3) would materially assist global firms, particularly given the broader disclosure obligations introduced under the new regime.

Suggested ASIC support

Members would welcome:

- worked examples illustrating what constitutes a relevant agreement;
- examples of acceptable document summaries;
- clarification regarding treatment of ISDAs and confirmations;
- guidance on what types of departures from standard-form documentation are intended to be disclosed;
- examples of reportable and non-reportable differences;
- worked examples demonstrating completion of the new Substantial Holding Notice;
- guidance on the treatment of hedge execution parameters contained in transaction confirmations;
- further guidance regarding publicly disclosed supporting documentation and ASIC's expectations in relation to accompanying materials; and
- guidance in relation to when a holder becomes aware, or ought to have reasonably become aware, of the information triggering a substantial holding notice

8. Existing Positions and Transitional Reporting

Members continue to work through the application of the regime to positions that exist at commencement.

While, given the "deemed disclosure" transitional provisions, commencement may not of itself require every existing substantial holder to lodge a fresh notice, the reforms introduce unusual outcomes for holders of derivative positions. This is because a person who disclosed (or was required to disclose) its holding under Part 6C.1 before commencement, and who is not required to disclose on commencement, is taken to have disclosed its derivative-based percentages on 4 December 2026, creating a baseline for future movements (s671BK(3)–(7)), but (since a deemed economic interest under a pre-commencement derivative is taken to begin on commencement and the holder is taken

to become aware of it on that date (s1711C)), assuming a cash-settled swap entered into before 4 December 2026):

- **New substantial holder:** a person holding 3% in shares and a 4% swap was never a "substantial holder" under the existing regime, so no deemed baseline is available, and on commencement its holding percentage becomes 7%, so it begins to have a substantial holding and must give an initial notice (s671B(1)(a), s671D and s1711C). This is so even if the swap was previously announced under Guidance Note 20, which is not a disclosure under Part 6C.1; and
- **Existing substantial holder:** a person who last disclosed a 6% holding (shares only) and who also holds a 2% swap has the holding percentage measured against its old holding percentage of 6% (s1711D(4)), which becomes 8% on commencement, which means there is a 2 percentage point movement requiring a notice, including the full derivative-based breakdown and any offsetting short positions; and the deemed baseline in s671BK(3)-(7) does not displace this obligation, as it applies only where no disclosure is required on commencement.

By contrast, an existing substantial holder whose pre-commencement derivatives move its holding percentage by less than 1 percentage point will not need to give a notice and will instead take the deemed baseline. Members would welcome ASIC confirming this analysis and providing worked examples of commencement notices and would also welcome consideration of a streamlined approach where a commencement notice would largely repeat information already announced under Guidance Note 20. Transitional forms will remain available until 3 June 2027.

Questions raised include:

- interaction with existing Guidance Note 20 disclosures;
- treatment of positions that exist on commencement;
- when reporting obligations arise following commencement; and
- practical operation of the transition arrangements.

Suggested ASIC support

Members would welcome worked examples dealing specifically with common commencement and transition scenarios.

Potential Areas for ASIC Support

A consistent theme from the working group was that practical worked examples may provide more immediate implementation value than additional high-level legal guidance.

Potential measures that members believe would materially assist include:

- additional worked examples within RG 5 and RG 222;
- targeted updates to guidance addressing common implementation questions;
- an Information Sheet focused on implementation issues;
- frequently asked questions addressing recurring operational questions;
- clarification of ASIC's expectations in specific reporting scenarios; and
- periodic ASIC-industry roundtables during the implementation phase.

Implementation Expectations

AFMA is not suggesting that firms will not do what they can to comply with the regime from commencement.

To the contrary, members have established implementation programmes and continue to commit significant legal, operational and technology resources to readiness activities.

However, members remain concerned that the combination of implementation complexity, compressed timeframes and ongoing interpretive uncertainty creates a risk of inconsistent implementation outcomes across the market. This is particularly relevant for firms that are currently implementing changes to global reporting systems and infrastructure, where delivery is subject to established governance, testing and change-management processes and where some longer-term enhancements may continue beyond commencement notwithstanding substantial implementation efforts.

Several members have also noted that uncertainty regarding implementation and reporting requirements may result in firms adopting conservative risk-management controls while systems, processes and automation capabilities continue to mature. In some circumstances, this may involve restricting activity or establishing internal buffers below reporting thresholds in order to manage compliance risk. Members are concerned that unnecessarily conservative approaches may have unintended consequences for liquidity and client facilitation activities in Australian markets, particularly where additional implementation guidance could otherwise support more efficient compliance outcomes.

In those circumstances, AFMA would welcome discussion regarding ASIC's implementation expectations during the early stages of the regime.

Members would be particularly interested in understanding the extent to which ASIC may have regard to:

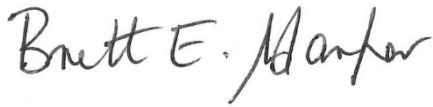
- genuine implementation efforts;
- active remediation and system enhancement programmes;
- interim controls and governance arrangements;
- proactive engagement regarding implementation challenges; and
- reasonable steps taken to identify, monitor and disclose relevant interests and deemed economic interests.

Members would welcome greater clarity regarding ASIC's implementation expectations during the early stages of the regime, particularly where firms can demonstrate genuine efforts to comply, active implementation programs and timely remediation of issues identified following commencement.

AFMA intends to continue facilitating discussion amongst affected market participants and would welcome the opportunity to share observations from that process with ASIC where appropriate. A consistent theme emerging from those discussions is that practical examples, worked scenarios and implementation guidance would be more valuable than further high-level legal discussion in promoting consistent market outcomes.

We would be pleased to discuss any of the matters raised above further, including through a technical briefing involving members' legal, compliance and product specialists to walk through the examples contained in the Annexure and discuss potential areas where additional ASIC guidance may assist implementation.

Yours sincerely,

A handwritten signature in black ink that reads "Brett E. Harper". The signature is written in a cursive, flowing style.

Brett Harper
CEO AFMA



ANNEXURE – WORKED PRODUCT EXAMPLES

This Annexure sets out stake-management and other derivative structures raised by members.

For each example, we describe the structure, the disclosure analysis, the issue (being the inaccurate or misleading disclosure that could result if a strictly literal approach is applied) and AFMA's suggested approach.

Assumptions: unless stated otherwise, the listed company has 100,000,000 voting shares on issue; the client (the taker) holds 10,000,000 shares (10%) before the transaction; the transaction is over 5,000,000 shares (5%); and the counterparty is a bank that holds an AFS licence or is a foreign equivalent licensee.

The examples are simplified and are intended to illustrate issues, not to state a conclusive view on how the regime should apply.

Example 1: Zero-cost cash-settled collar (taker's perspective)

Structure	Disclosure Analysis	Issue	Suggested approach
<p>The client buys a put (strike 90% of spot) and sells a call (strike 120% of spot) over the same 5,000,000 shares, with a 12-month maturity and cash settlement, documented in one confirmation. The client keeps its 10% (physical) holding.</p> <p>The cash-settled collar has the following features:</p> <ul style="list-style-type: none"> - The strikes are set so that the premium the client receives for the call equals the premium it pays for the put, so no upfront premium changes hands (ie, 'zero-cost'). 	<p>On entry, the client's relevant interest is unchanged and no deemed economic interest arises.</p> <p>Both legs create offsetting short positions. If the client's derivative-based holding percentage is nil, no disclosure appears to be required.</p> <p>If it is greater than nil (for example, because the client also holds a swap), the offsetting short position must be disclosed. There is a question of whether it is 5,000,000 shares or 10,000,000 shares.</p>	<p>A leg-by-leg approach would report a 10% offsetting short position against a 5% collar.</p> <p>If the client also held, say, a 3% swap, the notice would imply a short exposure more than three times the client's long derivative exposure, which is plainly not the case.</p> <p>A leg-by-leg approach would also generate spurious movements: for example, the early termination of a 0.6% collar would appear as a 1.2</p>	<p>Treat the collar as a single derivative, so that the offsetting short position is 5,000,000 shares (5%), counted once.</p> <p>In this regard we note:</p> <ul style="list-style-type: none"> - section 12 of the Instrument measures the position by the notional amount underlying the derivative, and section 11(2) applies to the extent the derivative provides a benefit from a price fall; A single derivative over 5,000,000 shares has 5,000,000 underlying shares, however many option components build its pay-off; - section 671BM(3)-(4) contains an express 'no double-counting' rule where a person and its associates have offsetting short positions because of the same

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Structure	Disclosure Analysis	Issue	Suggested approach
<p>- At maturity, at most one leg can be in the money and a single net cash amount is paid; between the two strikes, nothing is paid.</p> <p>- The legs share a single notional, maturity and settlement mechanism, and cannot be separately transferred, exercised or terminated.</p> <p>- Below the put strike and above the call strike the client is fully hedged on the collared shares, but at no point is it short more than the number of collared shares.</p>	<p>During the life of the collar, the bank's hedging does not affect the client's position. On maturity or early termination, the offsetting short position falls to nil, which is a disclosable movement if it was previously disclosed.</p> <p>Both legs satisfy s671AS from the client's perspective: under the bought put the client benefits from a price fall, and under the sold call its potential liability falls as the price falls (any benefit from a price increase being disregarded under s671AS(2)).</p> <p>Section 12 of the Instrument measures the offsetting short position by the full notional amount underlying <i>the derivative</i>.</p>	<p>percentage point change and trigger a notice.</p> <p>It could also expose disclosers to risk if the reported figure does not give full and accurate details of their position.</p>	<p>derivative, reflecting a policy that one derivative over one parcel should be counted once;</p> <p>- Instruction 7 to the Substantial Holding Notice provides that, where multiple provisions contribute to an interest over the same parcel, they should be included in the same row;</p> <p>- section 671AW allows ASIC to determine the method for working out the number of securities, and the Explanatory Memorandum contemplates that ASIC may allow some form of offsetting in appropriate circumstances; and</p> <p>• the Hong Kong Securities and Futures Commission's guidance addresses this exact scenario: a person who sells a call and buys a put over the same 1,000,000 shares discloses its 'effective' short interest of 1,000,000 shares rather than 2,000,000, while long and short positions are still not netted.</p> <p>Genuinely separate positions (for example, a put and a call with different counterparties, at different times or with different maturities) should continue to be reported separately. Components should be treated as a single derivative where they are executed together, documented in one confirmation, reference the same parcel and maturity, and cannot be separately transferred, exercised or terminated.</p>

Example 1A: Zero-cost collar (writer's perspective)

Structure	Disclosure Analysis	Issue	Suggested approach
<p>The same collar as in Example 1, viewed from the writer's side. The writer (for example, an investment bank) sells the client a put (strike 90% of spot) and buys from the client a call (strike 120% of spot) over the same 5,000,000 shares.</p> <p>This example assumes that the writer cannot rely on the market maker and client services exclusion (for example, because it cannot satisfy the influence condition or identify the derivative in its systems) or any other exception that would prevent a deemed economic interest arising.</p>	<p>RG 5.236 suggests that a person who sells a put option has a deemed economic interest, because it may benefit from an increase in the value of the underlying securities.</p> <p>A person who buys a call is likewise in the long position (RG 5.240, Table 13).</p> <p>Read leg by leg, the writer would therefore have two long positions over the same 5,000,000 shares: a deemed economic interest under the sold put and a deemed economic interest (or, if physically settleable, a relevant interest under s608(8)) under the bought call.</p> <p>Any hedge the writer puts in place (for example, short sales or borrowed stock) may in turn give rise to relevant interests.</p>	<p>A leg-by-leg approach would report a 10% long position against a 5% collar.</p> <p>That would overstate the writer's economic exposure and could be read by the market as stake-building, when the writer's maximum long exposure under the collar is 5,000,000 shares and the two legs can never pay out at the same time.</p>	<p>Consistent with Example 1, treat the collar as a single derivative from the writer's side, so that the writer's long position is counted once, at the notional amount of 5,000,000 shares, and described in plain terms in the notice.</p> <p>Since RG 5.236 does not address whether the writer's position under the bought call is a deemed economic interest, a relevant interest or both, members would welcome ASIC's confirmation of how that position should be characterised. We anticipate in this example it should be a deemed economic interest (given the collar is cash-settled).</p>

Example 2: Sale of shares combined with a cash-settled total return swap (sale-and-swap)

Structure	Disclosure Analysis	Issue	Suggested approach
<p>The client sells 5,000,000 shares to the bank at the prevailing price and simultaneously enters into a 12-month cash-settled total return swap (TRS) over the same 5,000,000 shares.</p> <p>After the trade, the client has 5% in physical shares and 5% through the TRS.</p> <p>During the term, the bank sells its hedge shares in the market within parameters agreed with the client (for example, a price floor and a maximum daily volume).</p> <p>At maturity, the bank makes a payment based on the prices at which it unwound its hedge.</p>	<p>The issues arise at each stage of the trade:</p> <ul style="list-style-type: none"> - At execution: the client's holding percentage is unchanged at 10%, but its derivative-based holding percentage rises from 0% to 5% (all deemed non-physically settleable). This is a disclosable movement even though the overall holding is unchanged, consistent with the example in the Explanatory Memorandum. The TRS confirmation must accompany the notice, although the ISDA Master Agreement need not; - During the life of the TRS: because the TRS is cash-settled, the client's deemed economic interest is the full notional amount, whatever the bank's hedge (RG 5.230). The bank's hedge sales should not trigger disclosure by the client while the TRS notional is unchanged. <p>Of course, if the TRS notional reduces as the hedge is unwound, each 1 percentage point reduction would be a disclosable movement, and the client would depend on timely reporting from the bank to meet the two business day deadline.</p> <ul style="list-style-type: none"> - At maturity: the client's derivative-based holding percentage falls from 5% to nil and its holding percentage falls from 10% to 5%, both of which are disclosable. The client remains a substantial holder at 5%, and any further disposal of physical shares would take it below 5% and require a notice that it has ceased to be a substantial holder; and - Smaller holders: a holder whose physical holding falls below 5% after the sale remains a substantial holder while its holding percentage, including the TRS, is 5% or more. It ceases to be a substantial holder only when the TRS terminates. 	<p>Publishing the full confirmation could disclose the hedge unwind parameters, inviting other participants to trade ahead of the bank's sales in a manner that departs from an orderly market.</p> <p>Conversely, treating each hedge sale as a movement in the client's position would misattribute the bank's activity to the client and generate a series of notices that do not reflect any change in the client's economic exposure.</p>	<p>The bank's hedge sales should not trigger disclosure by the client while the TRS notional is unchanged.</p> <p>Hedge execution parameters should be able to be omitted or summarised in the confirmation accompanying the notice, so that the market cannot trade ahead of the unwind.</p>

Example 3: Physically settled covered call

Structure	Disclosure Analysis	Issue	Suggested approach
<p>The client sells the bank a physically settled call option over 5,000,000 shares that it owns and pledges those shares with rehypothecation rights.</p> <p>The bank hedges by borrowing shares, either from the client or from the market.</p>	<p>The client has an offsetting short position under the sold call but no deemed economic interest, so (as in Example 1) it may have no disclosure obligation as derivative-based holding percentage is nil.</p> <p>The bank, as holder of a physically settleable call over shares in which the client has a relevant interest, appears to have a relevant interest under s608(8) in up to 5,000,000 shares (a relatable derivative-based holding).</p> <p>If the bank also borrows 5,000,000 shares from the market to hedge, it will have a relevant interest in those shares as well.</p> <p>If it borrows from the client, the same shares may be subject to both the call and the loan.</p>	<p>The bank's notice could show a 10% position for a 5% trade, while the client, which has transferred most of its upside, discloses nothing.</p> <p>The market could as a result receive a distorted picture of who holds the economic interest.</p>	<p>Where the bank's interests under the call and a stock loan relate to the same parcel of shares, the bank should count those shares once.</p> <p>A worked example of bank-side reporting would assist.</p>

Example 4: Call spreads and variable forwards

Structure	Disclosure Analysis	Issue	Suggested approach
<p>Under a cash-settled call spread, an investor buys a call at a lower strike and sells a call at a higher strike over the same 1,000,000 shares, retaining upside only between the two strikes.</p> <p>Under a variable (often prepaid) forward, a shareholder receives an upfront payment and agrees to deliver at maturity a number of shares (or the cash equivalent) that varies with the share price, for example between 800,000 and 1,000,000 shares.</p>	<p>For the call spread, the bought call gives a deemed economic interest of 1,000,000 shares and the sold call an offsetting short position of 1,000,000 shares, which must be reported separately without netting.</p> <p>For the variable forward, it is unclear whether the full notional amount is the maximum, minimum or currently applicable number of shares, and (where physical settlement is possible) how many shares the bank has a relevant interest in.</p>	<p>For the call spread, a reader of the disclosure who sees equal 1% long and 1% short figures may assume the investor is fully hedged, when it retains meaningful exposure between the strikes.</p> <p>For the variable forward, there is uncertainty as to which single figure should be reported.</p> <p>Different firms may adopt different notional measures for identical trades.</p>	<p>Call spreads should be reported gross with a short description of the strikes in Items 7 and 8 so that readers understand the retained exposure.</p> <p>For variable forwards, the maximum number of shares deliverable should be used as the full notional amount, with the range disclosed.</p>