



## Consultation questions

### Disclosure of information about ownership of listed entities – Derivative based interests

1. The draft Bill proposes the repeal of s609(6) and redefines 'derivatives' in s608A. What impact would the expanded definition of relevant interests in s608A and 608B have on ownership transparency and regulatory burden?
  - 1.1. What impact will the removal of this exclusion have?
2. Subsection 608(8) is key in defining one of the categories of derivative-based interests that must be disclosed under the proposed amendments to Chapter 6C. The draft Bill assumes subsection 608(8) operates as outlined in ASIC Regulatory Guide 5 (RG 5) *Relevant interests and substantial holding notices*, at (RG 5.163-5.166) where ASIC observes in effect that the provision:
  - is not intended to be limited to arrangements regarding designated parcels of underlying securities; and
  - should be applied on the basis that the person who has a relevant interest in underlying securities will satisfy their relevant obligations by applying the securities they have a relevant interest in (even for example if they have less than the number held at the time).
  - 2.1. Is the operation of the provision outlined in the regulatory guidance sufficiently clear and followed in practice?
  - 2.2. Would the legislation benefit from expressly clarifying the operation of subsection 608(8) in any way – for example, specifying the relevant assumption to be made regarding how a counterparty will satisfy their obligations for the purposes of applying the provision?
  - 2.3. If it were to do so, should the assumption depend on the reason the relevant interest arises?
3. In relation to the disclosure of non-physically settled derivatives, the draft Bill proposes ASIC be empowered to make a legislative instrument to determine either:
  - the number of issued securities in which the other person is taken to have a relevant interest; or
  - the method of working out the number of issued securities the other person is taken to have a relevant interest in.

The ability for ASIC to determine a specific number is intended to cover the situation whereby ASIC may need to remove certain derivatives from consideration and thereby determine the value to be zero.

- 3.1. Is this approach preferable to enabling ASIC to exclude particular kinds of derivatives from the beneficial ownership disclosure requirements? If not, what alternative approach would be better?



- 3.2. Should ASIC have additional flexibility in the way it prescribes, or allows parties to a derivative to determine, the number of underlying securities a person is deemed to have an interest in?
4. The draft Bill includes provisions intended to ensure that arrangements and interests that simultaneously meet the definition of more than one category of derivative-based relevant interest are not double counted.

Are all instances of potential double counting effectively avoided under current drafting?

5. The draft Bill intends to attribute the new deemed relevant interests to the party to the transaction that is in the bought position. Is that intention achieved, or is further clarity required?

#### Substantial holding information (including disclosure of derivative-based holdings)

6. The draft Bill proposes providing ASIC with the power to approve the form in which substantial holder notices are lodged, removing a legislative obstacle to moving towards machine readable lodgements.
  - 6.1. What processes would be involved in meeting a requirement that substantial holder notices be lodged in machine readable format?
  - 6.2. What impact would carrying-out these processes have on businesses?
  - 6.3. What impact would requiring substantial holder notices to be lodged in machine readable format have on transparency of market operations?

#### Freezing orders

7. The Explanatory Memorandum outlines relevant considerations regarding how ASIC should balance the rights of third parties with the desire to ensure compliance with the disclosure obligations in exercising its expanded freezing powers.
  - 7.1. Does the guidance strike the right balance?
  - 7.2. Is the guidance in the Explanatory Memorandum sufficient or should ASIC be required to give preference to a particular approach by the legislation?