AUSTRALIA'S ENHANCED SUBSTANTIAL HOLDING DISCLOSURE AND BENEFICIAL OWNERSHIP DISCLOSURE REGIME COMES INTO EFFECT FROM 4 DECEMBER

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Australia Capital Markets Alert

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From 4 December 2026, entities listed on Australian financial markets will become subject to enhanced substantial holding disclosure and beneficial ownership disclosure obligations. In this alert, we set out what this means and what you need to be doing now in order to be prepared. This is particularly relevant for regular market participants, investors and Australian Securities Exchange (ASX) listed companies.

SNAPSHOT

- In addition to considering if they have any 'relevant interest', market participants also need to determine whether they have a new 'deemed economic interest' via the following categories:
  - Physically settleable derivatives (deeming the ultimate recipient of shares on settlement to already hold them); and
  - Non-physically settleable/cash-settled derivatives (deeming holders of the economic benefit of price movement to hold the position).
- Enhanced obligations are swept in from day one, so market participants only have a short amount of time left to ensure they are ready to comply with the new regime starting on 4 December 2026.

BACKGROUND

Prior to the commencement of the *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Act 2025* (Treasury Laws Amendment), Chapter 6C of the *Corporations Act 2001* (Cth) (Corporations Act) targeted the concepts of legal or voting interests to determine if substantial holding disclosures were required.

The new regime will treat a person as holding securities, due to a derivative position giving them an economic exposure to the securities, including an offsetting short position, with the practical effect being that far more people become visible to the market than before.

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Importantly, the core mechanics of substantial holding disclosure are unchanged: the 5% threshold, the 1% movement trigger and the cessation obligation all remain in place. What has changed is the range of interests counted towards those thresholds.

Australian Securities & Investments Commission (ASIC) has now registered the *ASIC Corporations (Listed Entities Enhanced Beneficial Ownership) Instrument 2026/482* (Instrument 2026/482). Instrument 2026/482 sets out the technical rules necessary to implement the new enhanced beneficial ownership and substantial holding disclosure regime pursuant to the Treasury Laws Amendment. Among other things, Instrument 2026/482 prescribes how to calculate the number of issued securities in which a person has a 'deemed economic interest' arising from non-physically settleable derivative-based interests, as well as how 'offsetting short positions' are to be treated.

ASIC has also published:

- An updated Regulatory Guide 5 *Relevant interests and deemed economic interests* (RG 5);
- Regulatory Guide 9 *Takeover Bids* (RG 9); and
- Regulatory Guide 222 *Substantial holding disclosure and tracing requirements* (RG 222).

It has also made further consequential amendments to the following regulatory guides:

- Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* (RG 6);
- Regulatory Guide 10 *Compulsory acquisitions and buyouts* (RG 10);
- Regulatory Guide 74 *Acquisitions approved by members* (RG 74);
- Regulatory Guide 128 *Collective action by investors* (RG 128); and
- Regulatory Guide 193 *Notification of directors' interests in securities: Listed companies* (RG 193).

MATERIAL CHANGES TO THE RULES

Determining a Substantial Holding Position

In addition to the previous considerations relating to presence of a 'relevant interest', there are now two new mechanisms to consider to determine if a 'deemed economic interest' exists:

- Physically settleable derivatives (deeming the ultimate recipient of shares on settlement to already hold them); and
- Non-physically settleable/cash-settled derivatives (deeming holders of the economic benefit of price movement to hold the position).

Short positions can offset, but do not, on their own, trigger disclosure. A pure short position, without any accompanying long-side interest, does not create a substantial holding. It is only used to net down an existing deemed economic interest.

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Substantial holding thresholds are therefore no longer assessed on relevant interests alone. Market participants need to determine their 'derivative-based holding percentage', which is made up of a person's relatable, deemed physically settleable, and deemed non-physically settleable derivative-based holding percentages.

This derivative-based figure is then considered together with the person's existing relevant-interest-based holding percentage to determine whether the 5% substantial holding threshold is crossed.

Separately, where the person has an 'offsetting short position', a corresponding offsetting short position percentage must also be calculated and disclosed.

Index and Basket Exposure Gets Relief

Exposure through a basket or index generally falls outside the rules where it is below 5% of a class and that class is less than 30% of the basket by value, or where the index is run by a recognised provider under a public methodology. These carve-outs switch off during a live bid or scheme if the person is the bidder.

Exclusions for Market-Makers, Client-Services and Clearing Facilities

Genuine market-making, client-facilitation and hedging activity can be excluded from the deemed economic interest rules within defined limits, but licensees must still notify the market once their 'would-be' holding (other than the exclusion) reaches 20% or moves by one percentage point above that level.

ASX Companies

Listed companies themselves take on new duties as the 'key person' for their Chapter 6C body. Once a company receives relevant interest information under Chapter 6C, it must maintain a register of that information.

The register must record the nature, extent and circumstances of each relevant interest, the holder's identity, and details of anyone who has given instructions about the securities, with new information entered within two business days of receipt.

The register must also now be kept in electronic form, with prescribed data fields for each disclosure (a disclosure identifier, disclosure date, member identifier, class and number of disclosable securities, and a locating reference), and copies must be given in the same electronic format.

The register must be open for inspection by members, academics and journalists without charge, and by any other person on payment of a fee if the key person requires one.
The reforms also touch related regimes. Listed company directors' obligations to notify the market operator of their relevant interests under section 205G of the Corporations Act now extend to deemed economic interests as well.

WHAT IS NEXT?

No Grandfathering for Existing Positions

A person's most recent substantial holding notice lodged before 4 December 2026 becomes the baseline for measuring future 1%-or-more movements under the new rules. Anyone holding a derivative that gives rise to a deemed economic interest before that date is treated as beginning to hold that interest on 4 December.

New Forms, Six-Month Transition

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ASIC has prepared a new consolidated 'Substantial Notice Form' which combines the previous initial, change and ceasing to become a substantial holder forms.

From 4 December 2026 to 3 June 2027, market participants may lodge the new consolidated form or transitional Forms 603, 604 and 605 to meet their obligations under the law. The new consolidated 'Substantial Notice Form' becomes mandatory on and from 4 June 2027.

The Upshot

All market participants now have a short runway left to ensure they are ready to comply with the new regime starting on 4 December 2026. Market participants should, prior to this date, reconcile their position data, establish full-notional calculation methodologies, and consider and document exemption decisions.

Further:

- Bidders and strategic investors should map their (and their associates') physical holdings, derivative exposure and short positions prior to 4 December 2026 before building a stake or entering new derivative transactions.
- Banks, prime brokers and derivative writers should consider and implement strategies to allow them to track positions in aggregate across desks, and confirm which arrangements are excluded from the regime fall within an exclusion, so that they are ready for disclosure (if required).
- Listed entities should prepare relevant interest registers and establish a tracing notice process.

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