Law Council
OF AUSTRALIA

Business Law Section

24 July 2026

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

Dear Colleague

ASIC Simple Consultation CS 56—Proposed remake of exchange-traded derivative and securities-related instruments

Summary

1. This submission is made by the Financial Services Committee (**Committee**) of the Business Law Section of the Law Council of Australia. It is in response to Consultation Statement 56 *Proposed remake of exchange-traded derivative and securities-related instruments* (**CS 56**). CS 56 was issued by the Australian Securities and Investments Commission (**ASIC**) on 22 June 2026.

2. CS 56 proposes to remake *ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) Instrument 2016/883* (**Instrument 2016/883**), *ASIC Corporations (Securities: NZ FASTER System) Instrument 2016/891* (**Instrument 2016/891**), *ASIC Corporations (Transfers of Division 3 Securities) Instrument 2016/893* (**Instrument 2016/893**) and *ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821* (**Instrument 2021/821**) (together, **the ASIC Instruments**).

3. We support ASIC's proposal to remake the ASIC Instruments and, in particular, the continuation of the existing relief under the ASIC Instruments.

4. Additionally, we recommend that ASIC seeks Treasury's support for Parliament to make amendments to the *Corporations Act 2001* (Cth) to include the relief under the ASIC Instruments in the substantive law.

The purpose of the ASIC Instruments

5. The ASIC Instruments apply as follows:

   (a) **Instrument 2016/883** modifies the Product Disclosure Statement (**PDS**) disclosure requirements in Part 7.9 of the Corporations Act for certain exchange-traded derivatives that have multiple issuers such that only the market participant is required to provide a PDS, as well as other disclosure obligation modifications for intermediaries.

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(b) **Instrument 2016/891** provides targeted exemptions from and modifications to Part 7.11 of the Corporations Act for transfers of securities via the NZCDC Legal Title Transfer system (formerly known as the NZ FASTER system).

(c) **Instrument 2016/893** applies Division 3 of Part 7.11 of the Corporations Act and regulations made for the purposes of section 1073D to certain foreign company securities quoted on the ASX, facilitating their settlement within the Australian clearing and settlement framework with the benefit of statutory warranties and indemnities.

(d) **Instrument 2021/821** provides relief from the Chapter 6C substantial holding provisions (including section 671B) of the Corporations Act for certain securities lending and prime broking arrangements, which reduces unnecessary compliance burdens where beneficial ownership does not substantively change.

6. ASIC has provided draft instruments remaking the ASIC Instruments which indicate that the overall effect of the ASIC Instruments remains unchanged. The drafts include minor amendments comprising, in summary:

(a) a rewording of the relief requirements in the draft remake of Instrument 2016/883 to improve clarity;

(b) updates to system and financial market references to the draft remake of Instrument 2016/891 to reflect New Zealand's NZCDC Legal Title Transfer system; and

(c) the use of market-neutral language and simplified definitions in the draft remake of Instrument 2016/89.

No amendments to the content are proposed in the remake of Instrument 2021/821.

Submission

7. The Committee agrees that the relief contained within each of the ASIC Instruments is necessary and that such relief should continue to be available. The Committee also agrees that the ASIC Instruments should be remade for a further five years with minor amendments and unchanged effect.

8. The ASIC Instruments provide market participants dealing in exchange-traded derivatives and securities with relief that is clearly beneficial. This is reflected in ASIC's assessment that the instruments are 'operating effectively' and 'continue to form a necessary and useful part of the legislative framework'. Additionally, the reason that ASIC is undertaking this consultation, and that the remaking of the ASIC Instruments is proposed, is the effect of the 'sunsetting' regime for legislative instruments under section 50 of the *Legislation Act 2003* (Cth), under which legislative instruments automatically sunset after 10 years unless action is taken to preserve them.

9. The Committee considers that, as a matter of policy coherence and regulatory certainty, it would be preferable that the relief currently in the ASIC Instruments be incorporated into the Corporations Act by Parliament, because it would improve navigability of the legislative framework, reduce the level of regulatory complexity,

and avoid the associated costs that are incurred as a consequence of ASIC needing to deploy resources to undertake the consultation process and draft the new instruments.

10. While the Committee notes that it is now ASIC's practice to remake instruments for only a five-year period rather than the maximum 10-year period, it should be noted that this means the regulatory maintenance costs associated with undertaking consultation and drafting fresh instruments are double what they would be over a 10-year period if the ASIC Instruments were made for that maximum period.

11. The Committee would welcome the opportunity to discuss these matters further.

12. Please contact Ms Pip Bell, Executive Liaison for the Financial Services Committee [redacted] or Mr Steven Rice, Financial Markets Lead of the Financial Services Committee of the Business Law Section [redacted].

Yours sincerely



Adrian Varrasso
Chair, Business Law Section