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Australian Securities &
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Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet

**Australian Securities and Investments
Commission**

By email: helpdesk-OBPR@pmc.gov.au

2 September 2022

Dear Mr Lange

Remake of ASIC Class Order [CO 12/752]

I am writing to the Office of Best Practice Regulation (**OBPR**) regarding ASIC Class Order [CO 12/752] *Financial Requirements for Issuers of Retail OTC Derivatives* (**CO 12/752**) which is scheduled to sunset on 1 October 2022 in accordance with the *Legislation Act 2003*. CO 12/752 imposes specific financial requirements on AFS licensees that are authorised to make a market in over-the-counter (**OTC**) derivatives to retail clients.

The Australian Securities and Investments Commission (**ASIC**) proposes that CO 12/752 be remade as a legislative instrument without significant amendments.

ASIC certifies that CO 12/752 is operating effectively and efficiently, and therefore a Regulation Impact Statement is not required for this instrument to be remade.

The assessment that the instrument is operating effectively and efficiently has been informed by a consultation process during the period from 30 June 2022 to 29 July 2022. In [Consultation Paper 363](#) *Remaking ASIC class order on financial requirements for retail OTC derivative issuers: [CO 12/752] (CP 363)*, ASIC sought feedback on our proposal to remake, without significant changes, [CO 12/752] for a period of five years. It was proposed in CP 363 that ASIC would make minor drafting changes to:

- reflect ASIC's current drafting practice and format;
- remove redundant provisions;
- update legislative references and definitions; and

- correct any minor drafting errors.

We received one submission in relation to CP 363. The submission was made jointly by the Corporations Committee and Financial Services Committee of the Business Law Section of the Law Council of Australia (**Law Council**). The submission agreed that CO 12/752 forms a necessary and useful part of the legislative framework governing retail OTC derivative issuers.

The Law Council's view was that CO 12/752 strikes an appropriate balance between seeking to ensure that issuers maintain sufficient resources to support their businesses, without imposing an unreasonable burden on retail OTC derivative issuers or operating as an impediment to competition in the market. In particular, the Law Council agreed with the proposals to remake the Class Order for a further five years and also to retain the existing financial, reporting and audit requirements. ASIC has published the submission on the ASIC website.

I also note that the regulatory burden to business, community organisations or individuals of the instrument due to sunset and the instrument being remade has been quantified using the Australian Government's *Regulatory Burden Measurement framework*. We have determined that there are no regulatory costs to business, community organisations or individuals as the instrument is to be remade without significant changes, thereby maintaining the status quo.

I acknowledge that OBPR will publish this letter for transparency purposes.

If you have any queries about this advice, please contact Natalie Boulizos on 02 9911 2023 or at natalie.boulizos@asic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg Yanco', written in a cursive style.

Greg Yanco
Executive Director, Markets Group
Australian Securities and Investments Commission