Submission to ASIC Consultation Paper 388 – Net tangible assets requirement for responsible entities

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1. About Betashares

Betashares Capital Limited (Betashares) is a leading Australian fund manager and responsible entity, offering a broad range of exchange traded funds and other managed investment products to retail and institutional investors. Betashares operates a diversified suite of managed investment schemes across asset classes, investment strategies and distribution channels.

2. Executive summary

Betashares supports ASIC's objective of ensuring responsible entities remain appropriately resourced and able to facilitate orderly transitions or wind-ups. However, reforms to net tangible assets (NTA) settings should be proportionate, risk-based and evidence-driven, and should avoid unintended balance sheet inefficiency (i.e. requiring increasing amounts of low-yield capital where this does not materially improve member protection). In our view, changes should focus on preserving the policy intention of the NTA framework while avoiding settings that would impose material compliance costs, reduce competition, or duplicate other governance and compliance reforms currently under consideration.

Our responses to the proposals in the consultation paper are set out below.

We appreciate the opportunity to provide feedback on the proposals and would be happy to engage further.

3. Key comments on CP 388 proposals

3.1 Principles

- ASIC notes that financial requirements are not intended to prevent business failure or fully compensate investors for losses. NTA settings should therefore be calibrated to the stated objectives (operating costs, entity of substance, orderly transition, liquidity), and not be treated as a substitute for broader governance and conduct controls.
- Any uplift should be supported by clear evidence that the additional capital improves the likelihood of orderly transition outcomes, rather than simply increasing idle capital holdings.
- ASIC should avoid compounding effects where base NTA thresholds are increased and liquidity requirements continue to apply as a fixed percentage of the higher amount, absent evidence of incremental benefit.

3.2 Option 1 – CPI-linked uplift

A CPI-linked uplift is the most conceptually defensible of the options presented, as it preserves the structure of the existing framework while restoring the real value of thresholds that have not changed since 2013. If ASIC proceeds with an uplift, Betashares considers that a CPI-based adjustment (with a clear, periodic indexation mechanism going forward) is preferable to step-change increases that materially alter market dynamics.

3.3 Option 2 – Increase the $150,000 concessional minimum (fixed uplift or per-scheme)

Betashares does not support a per-scheme minimum or a material step-change to the concessional minimum (e.g. up to $1 million) without strong evidence that such a change is necessary to meet the objectives of the NTA requirement. In particular, a per-scheme approach risks: (i) creating disproportionate impacts for multi-scheme operators (including where schemes are low risk); (ii) increasing compliance costs ultimately borne by members; and (iii) increasing barriers to entry for smaller or growing responsible entities, potentially strengthening incumbents without targeting the entities that present the greatest prudential concern.

3.4 Option 3 – Increase the $5 million cap in the concessional formula

If ASIC considers changes to the concessional cap, we recommend ASIC first confirm (with data) the extent to which the cap is binding in practice across responsible entities and whether increasing the cap would materially advance the objectives of the NTA requirement. Where a responsible entity is already captured by the revenue limb of the formula, adjustments to the cap may not change outcomes and may add complexity without clear benefit.

3.5 Liquidity component (B4)

Betashares supports ASIC's focus on liquidity to meet immediate and unexpected expenses. However, ASIC should be cautious about increasing the liquidity overlay in a way that mechanically scales with higher base NTA thresholds. A more onerous liquidity overlay risks compounding capital lock-up and creating balance sheet inefficiency. If ASIC retains the current percentage-based liquidity component, it should consider whether any uplift to base NTA should be accompanied by (i) a review of the percentage settings; or (ii) a mechanism that recognises where a responsible entity's liquidity is already demonstrably strong.

3.6 Appropriateness of the concessional NTA regime (Section C)

Betashares supports retaining a concessional NTA pathway where a responsible entity uses an external custodian and/or where fund assets and operational arrangements reduce the asset-holding risks the NTA regime is intended to address. Removing or materially narrowing the concessional regime may impose substantial additional idle capital requirements without necessarily improving member outcomes, particularly where governance and compliance reforms are being progressed in parallel.

4. Transition

ASIC proposes a six-month transition period. Betashares supports an appropriate transition period that enables responsible entities to adjust capital management arrangements in an orderly way, to reduce impact on existing compliance and governance arrangements, and to minimise downstream impacts on the operation of the schemes, unitholders and fees.