



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 336

Financial requirements: Treatment of lease assets

December 2020

About this paper

This consultation paper is for Australian financial services (AFS) licensees and their advisers.

This consultation paper seeks your feedback on our proposal to amend the financial requirements for AFS licensees by allowing right-of-use assets to be included in the calculation of net tangible assets, adjusted surplus liquid funds and surplus liquid funds.

Note: The proposed legislative instruments to amend the requirements are available on our website at www.asic.gov.au/cp under CP 336.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 11 December 2020 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our consideration of the merits of our proposals and alternative options. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be emailed by 26 February 2021 to:

James Grapsas, Senior Lawyer
Investment Managers Team
Australian Securities and Investments Commission
email: james.grapsas@asic.gov.au

What will happen next?

Stage 1	11 December 2020	ASIC consultation paper released
Stage 2	26 February 2021	Comments due on the consultation paper
Stage 3	End of April 2021	Legislative instruments and guidance released

A Background to the proposal

Key points

Australian Accounting Standard [AASB 16 Leases](#) (AASB 16) governs the accounting treatment of leases. AASB 16 was made in February 2016. It requires a lessee to recognise all leases in its balance sheet as both an asset and a liability. AASB 16 applies to financial years commencing from 1 January 2019.

Concerns have been raised that changes to the treatment of leases may have a potential unfair impact on the ability of particular categories of Australian financial service (AFS) licensees to satisfy certain financial requirements that apply to them. In July 2020, we addressed these concerns on an interim basis by issuing a no-action position.

This consultation paper sets out our proposal to address on an ongoing basis this potential unfairness. We are seeking feedback on our proposal and how we plan to implement it.

This section gives an overview of the:

- financial requirements;
- changes to the relevant accounting standard; and
- impact the changes may have on AFS licensees.

ASIC's financial requirements for AFS licensees

- 1 Unless it is regulated by APRA, an AFS licensee must have adequate resources, including financial resources, to provide the financial services that it is authorised to provide under the terms of its AFS licence: see s 912A(1)(d) of the *Corporations Act 2001* (Corporations Act).
- 2 We impose financial requirements to help ensure that AFS licensees have:
 - (a) sufficient financial resources to conduct their financial services business in compliance with the Corporations Act, including carrying out supervisory arrangements;
 - (b) a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if the business fails; and
 - (c) incentives for their owners to comply through risk of financial loss.

Note: See [Regulatory Guide 166 Licensing: Financial requirements](#) (RG 166) at RG 166.3.

- 3 The financial requirements that we impose on AFS licensees are set out in the following ASIC instruments (the ASIC instruments) and AFS licence conditions:
- (a) [Class Order \[CO 12/752\]](#) *Financial requirements for retail OTC derivative issuers*;
 - (b) [Class Order \[CO 13/760\]](#) *Financial requirements for responsible entities and operators of investor directed portfolio services*;
 - (c) [Class Order \[CO 13/761\]](#) *Financial requirements for custodial or depository service providers*; and
 - (d) [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209).

Note: From 2015, class orders are referred to collectively as ASIC instruments.

- 4 The financial requirements include requirements for net tangible assets (NTA), adjusted surplus liquid funds (ASLF) and surplus liquid funds (SLF). The NTA, ASLF and SLF requirements are triggered by particular types of AFS licence authorisations and activities of an AFS licensee. An AFS licensee may be subject to more than one of the NTA, ASLF and SLF requirements.

Note: This consultation paper discusses the concepts of NTA, ASLF and SLF in general terms. See [RG 166](#) for a more detailed explanation.

- 5 Table 1 gives a summary of who the NTA, ASLF and SLF requirements apply to.

Table 1: Summary of financial requirements

Requirement	Who the requirement applies to
NTA	<ul style="list-style-type: none"> • Responsible entities of a registered scheme: see [CO 13/760]. • Operators of an investor-directed portfolio service (IDPS): see [CO 13/760]. • Providers of a custodial or depository service: see [CO 13/761]. • Retail over-the-counter (OTC) derivative issuers: see [CO 12/752] <i>Financial requirements for retail OTC derivative issuers</i>. • Issuers of margin lending facilities: see condition 19A of PF 209. • Trustee companies providing traditional services: see condition 19B of PF 209.
ASLF	<ul style="list-style-type: none"> • Foreign exchange dealers: see condition 20 of PF 209. • Licensees that transact with clients as principal, where the licensees incur actual or contingent liabilities of \$100,000 or more from transacting with clients: see condition 22 of PF 209. The ASLF requirement does not apply if the licensee is a retail OTC derivative issuer: see [CO 12/752].
SLF	<ul style="list-style-type: none"> • Licensees that hold more than \$100,000 in client money or property must hold at least \$50,000 of SLF, unless an exception applies: see condition 21 of PF 209.

- 6 A common feature of the NTA, SLF and ASLF requirements in the ASIC instruments and [PF 209](#) is that they are based on an AFS licensee's NTA. The NTA is based on the assets and liabilities in an AFS licensee's balance sheet (which is prepared under Ch 2M of the Corporations Act), and the assets and liabilities are subject to a series of prescribed adjustments. An AFS licensee's NTA equals its adjusted assets minus its adjusted liabilities.
- 7 SLF is based on NTA. SLF equals adjusted assets minus adjusted liabilities (i.e. NTA), subject to certain *additional* adjustments (SLF adjustments): see the definition of 'surplus liquid funds' in [PF 209](#). The SLF adjustments include adding back any non-current liability that was used to calculate adjusted liabilities and subtracting any non-current asset that was used to calculate adjusted assets.
- 8 ASLF is also derived from the calculation of NTA. ASLF equals SLF (including the SLF adjustments for non-current liabilities and non-current assets outlined in paragraph 7) minus certain *additional* adjustments (being either the standard adjustments set out in [PF 209](#) or the adjustments that ASIC has consented to in writing): see the definition of 'adjusted surplus liquid funds' in [PF 209](#).
- 9 The definitions of 'adjusted assets' and 'adjusted liabilities' are substantially the same in the ASIC instruments and [PF 209](#). For the NTA, SLF and ASLF requirements, in calculating adjusted assets, an AFS licensee must subtract from the total assets in its balance sheets any excluded asset. In the calculation of adjusted assets, intangible assets are listed in paragraph (a) of the definition of 'excluded assets' in the ASIC instruments and [PF 209](#).
- 10 The SLF requirement reduces the risk that an AFS licensee holding client money or property will be subject to pressure to use the client money or property to meet its own liabilities. SLF is not intended to provide a source of compensation for clients whose money or property is misused: see [RG 166](#) at RG 166.74.
- 11 The ASLF requirement applies to those categories of AFS licensees where counterparties depend on the licensee's financial performance. In this context, the financial failure of an AFS licensee may jeopardise market integrity. ASLF requirements are designed to set a standard of liquidity to help manage risks that would impact on an AFS licensee's financial stability: see [RG 166](#) at RG 166.86.

AASB 16 and its relationship to NTA, ASLF and SLF

AASB 16

- 12 Australian Accounting Standard [AASB 16 Leases](#) governs the accounting treatment of leases. Under AASB 16, a lessee is the ‘entity that obtains the right to use an underlying asset for a period of time in exchange for consideration’: see Appendix A of AASB 16. A lessee’s right to use an underlying asset for the term of a lease is known as a ‘right-of-use asset’.
- 13 [AASB 16](#) was made in February 2016 and applies to financial years commencing from 1 January 2019. It requires a lessee to recognise all leases in its balance sheet as both an asset and a liability. Prior to 1 January 2019, Australian Accounting Standard [AASB 117 Leases](#) was in effect. Under AASB 117, only leases classified as ‘finance leases’ gave rise to this treatment. Accounting firms and the financial services industry have raised concerns that the changes to the treatment of leases under AASB 16 have a net adverse effect on an AFS licensee’s NTA, SLF and ASLF calculations.
- 14 [AASB 16](#) applies to lease contracts for the use of an asset. It excludes:
- (a) leases with a term of less than 12 months; and
 - (b) leases for an underlying asset of low value.
- 15 An objective of AASB 16 is that, because leasing is an important activity for many entities, users of financial statements have a complete and coherent picture of an entity’s leasing activities: see the Preface to [AASB 16](#).
- 16 Under AASB 16, a lessee must categorise a right-of-use asset as a non-current asset on its balance sheet when the remaining lease term exceeds 12 months. In this situation, the lessee must also recognise the lease liability as a non-current liability. If the remaining lease term is 12 months or less, the lessee must recognise the right-of-use asset and corresponding liability as a current asset and current liability, respectively. While AASB 16 does not directly address the question about whether a right-of-use asset is an intangible asset, a right-of-use asset will usually be an intangible asset.

‘Excluded assets’ in ASIC’s financial requirements

- 17 As discussed in paragraph 6, an AFS licensee’s NTA equals its adjusted assets minus its adjusted liabilities. The calculation of adjusted assets includes subtracting excluded assets from the value of total assets in the AFS licensee’s balance sheet.
- 18 The definition of ‘excluded assets’ is substantially similar in the ASIC instruments and [PF 209](#). Under paragraph (a) of this definition, intangible assets are excluded assets.

- 19 The ASIC instruments and PF 209 do not define an ‘intangible asset’. Australian Accounting Standard [AASB 138](#) *Intangible assets* defines an intangible asset as ‘an identifiable non-monetary asset without physical substance’. As a lessee’s right to use an underlying asset under a lease will generally be a contractual right, a right-of-use asset under [AASB 16](#) will usually be an intangible asset and therefore an excluded asset under the ASIC instruments and [PF 209](#).
- 20 Generally, a right-of-use asset will be an excluded asset under [AASB 16](#). This means that an AFS licensee will be unable to include a right-of-use asset in its adjusted assets. However, an AFS licensee will usually need to include a lease liability under AASB 16 for a leased asset. The treatment of right-of-use assets in this way will reduce the AFS licensee’s NTA, where the amount of the NTA reduction equals the carrying value of the lease liability under AASB 16.
- 21 The usual exclusion of a right-of-use asset as an intangible asset reflects an AFS licensee’s usual inability to realise that asset in order to meet financial requirements. However, lease contracts are generally executory contracts and if the lessee’s right to use the underlying asset ceases for some reason, the corresponding liability is also likely to cease. As defined in Australian Accounting Standard [AASB 137](#) *Provisions, contingent liabilities and contingent assets*, an ‘executory contract’ is a contract under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent. An executory contract contains a combined right and obligation constituting a single asset or liability.

Concerns raised about the impact of AASB 16

- 22 Generally, the right-of-use asset and corresponding lease liability are both intangible in nature. The financial services industry has raised concerns about the apparent unfairness that flows from the treatment of right-of-use assets under [AASB 16](#). That is, an AFS licensee is required to exclude the right-of-use asset as an intangible asset but include the corresponding lease liability.
- 23 [AASB 16](#) has the effect that AFS licensees may not satisfy their NTA, SLF or ASLF requirements because they may fail to maintain the required level of NTA, SLF or ASLF, where there has been no commercial change to their business and the lease asset and the liability are intrinsically linked.
- 24 When the remaining lease term is more than 12 months, [AASB 16](#) has a neutral impact on a licensee’s calculation of SLF and ASLF. This is because the right-of-use asset and corresponding liability are characterised as non-current in the entity’s balance sheet and, applying the definitions of ASLF

and SLF in [PF 209](#) (see paragraph 7), a licensee must not count in the calculation of ASLF and SLF any non-current assets and non-current liabilities. In contrast, when the remaining lease term is 12 months or less, a lessee has to recognise the right-of-use asset as a current asset and the lease liability as a current liability.

- 25 The impact of [AASB 16](#) is restricted to the calculation of an AFS licensee's adjusted assets and, in turn, financial requirements that include adjusted assets as a component in their calculation, namely NTA, ASLF and SLF. Subject to one exception, AASB 16 has no impact on an AFS licensee's positive net assets and solvency base level financial requirements. This is because these requirements are not based on, or derived from, the calculation of adjusted assets. The exception is when an AFS licensee has negative net assets and, under the note to RG 166.30(a), the licensee is allowed to apply an alternative test of adjusted assets compared to adjusted liabilities. In this case, as the licensee uses adjusted assets to apply the positive net assets test, the treatment of leases for a lessee under AASB 16 are relevant.
- 26 On 7 July 2020, ASIC issued a temporary no-action position pending the outcome of this consultation. Under this temporary no-action position, ASIC will not take regulatory action against an AFS licensee for a breach of a financial requirement that is solely caused by the exclusion of a right-of-use asset from the AFS licensee's adjusted assets if that exclusion was the result of the right-of-use asset being an intangible asset under AASB 16.

Note: For more information about the no-action position, see [Media Release \(20-158MR\) ASIC issues no-action position to allow right-of-use lease assets to count in satisfying AFS licensee requirements \(7 July 2020\)](#) and our [No-action position on right-of-use lease assets](#) webpage.

Purpose of this paper

- 27 This consultation paper sets out our proposal to address the impact on an AFS licensee in meeting its NTA, ASLF and SLF requirements because of the exclusion of right-of-use assets under [AASB 16](#).
- 28 We are seeking feedback on:
- (a) our proposal; and
 - (b) our proposed implementation of it.

B Our proposal

Key points

We propose to amend the ‘excluded assets’ definition to provide that a right-of-use asset is not an excluded asset.

We propose to implement this by:

- making two new ASIC instruments that amend the relevant ASIC instruments;
- revising [PF 209](#) and the relevant AFS licence conditions, as set out in Table 2; and
- updating our guidance in [RG 166](#), as set out in Table 2.

Amending the definition of excluded assets

Proposal

- B1** We propose to amend the ‘excluded assets’ definition in the ASIC instruments to provide that a right-of-use asset is not an excluded asset. If we proceed with this proposal, we intend to implement it by:
- (a) issuing two legislative instruments—one legislative instrument will amend the definition of ‘excluded asset’ in the ASIC instruments so that a right-of-use asset is excluded from the definition; the other legislative instrument will implement corresponding changes to the licence conditions of AFS licensees;
 - (b) revising [PF 209](#) and the relevant AFS licence conditions, to make it clear that a right-of-use asset is not an excluded asset; and
 - (c) updating our guidance in [RG 166](#).

Your feedback

- B1Q1 Do you agree with our proposal? If not, why not?
- B1Q2 Are there other options we should consider that might adequately address the concerns about potential unfairness? If yes, please specify.
- B1Q3 Do you agree that changes should be made to the ASIC instruments and the existing requirements in RG 166? If not, why not?

Rationale

- 29 AASB 16 changes the asset and liability values for leased assets in a lessee’s balance sheet. This accounting treatment applies regardless of whether there has been a change to the AFS licensee’s underlying business.

- 30 We believe that proposal B1 would be an effective way of addressing industry concerns that the accounting treatment of leases under [AASB 16](#) is anomalous and potentially unfair. Amending the ‘excluded assets’ definition would address the potential problems arising from the exclusion of a right-of-use asset from an AFS licensee’s calculation of NTA, ASLF and SLF. This would also address the incongruity of excluding a right-of-use asset but including the corresponding lease liability for the same underlying asset.
- 31 If we did not proceed with our proposal, some AFS licensees would need to increase their NTA, ASLF or SLF to comply with their financial requirements. This outcome may be unfair where no substantive change to an AFS licensee’s business has occurred in respect of the lease.
- 32 Under [AASB 16](#), the asset aspect of a lease is intrinsically connected with the corresponding liability aspect of the lease because they both stem from the one lease contract. The initial measurement of the asset and liability is based on calculating the present value of lease payments using the applicable discount rate. Both the asset and liability aspects of a lease are accounting depictions of the same contractual terms and, therefore, are intangible in nature.
- 33 While it is generally reasonable for ASIC to disregard intangible assets for the purposes of calculating NTA, it may be unreasonable for us to include the liability aspect and exclude the asset aspect if both aspects are intangible in nature and stem from the same contractual rights and obligations of the lessee under a lease.
- 34 As outlined in paragraph 24, our proposal will not change the calculation of ASLF and SLF for an AFS licensee that is a lessee under a lease that has a term remaining of more than 12 months. Our proposal will change the calculation of a lessee’s ASLF and SLF when the remaining term of the lease is 12 months or less because the right-of-use asset and lease liability will have to be recognised as a current asset and current liability, respectively, in the AFS licensee’s balance sheet. In turn, the right-of-use asset and liability will form part of the calculation of ASLF and SLF, and the exclusions for non-current assets and non-current liabilities will not apply.

Note: We consider that it is not an option to amend only paragraph (a) of the ‘excluded assets’ definition, which deals with intangible assets, because a right-of-use asset under AASB 16 will not *always* be an intangible asset.

Other perspectives

- 35 Conversely, it is arguable that the impact of a lease on an AFS licensee’s NTA, ASLF and SLF is the natural and direct consequence of a revision to the accounting standards, on which ASIC’s financial requirements are based and, therefore, ASIC should propose no changes to the calculation of NTA, ASLF and SLF.

- 36 A further reason for excluding intangible assets from the calculation of adjusted assets, and ultimately from the calculation of NTA, ASLF and SLF, is that intangible assets do not have a realisable value if the AFS licensee is subject to external administration.
- 37 The fundamental characteristics of a lease are that the lessee's rights and corresponding obligations are both unperformed. While the terms of every lease contract cannot be considered, it is likely that the rights and obligations of a lessee would not generally be enforced in the event of the financial failure of a lessee.
- 38 However, as discussed above, if we did not proceed with our proposal, we would need to inform AFS licensees that they must adjust their businesses to hold additional NTA, SLF and ASLF to compensate for the exclusion of right-of-use assets. We consider that this approach is not preferable as it imposes an additional regulatory and financial burden for many AFS licensees.

Table 2: Proposed changes to PF 209, licence conditions and RG 166

<p>PF 209 and licence conditions: Proposed changes</p>	<p>After paragraph (e) of the definition of 'excluded assets' in the Terms and conditions section, we are proposing to insert:</p> <p>'(ea) a right-of-use asset arising under a lease; and'.</p> <p>This amendment would change the calculation of NTA, ASLF and SLF under conditions 16–22 of PF 209.</p> <p>Under one of the two proposed legislative instruments, despite anything to the contrary in a condition of the licence, a right-of-use asset arising under a lease will be deemed not to be included in the definition of 'excluded assets' in the licence.</p>
<p>RG 166: Proposed changes</p>	<p>After paragraph (d) in RG 166.152, we are proposing to insert:</p> <p>'(e) a right-of-use asset arising under a lease.'</p> <p>This updated guidance would state that an AFS licensee may include the right-of-use asset in its calculation of, where applicable, NTA, ASLF and SLF.</p> <p>We are also proposing to add guidance in RG 166.156 about our approach to right-of-use assets and why we consider that excluding them from an AFS licensee's calculation of NTA, ASLF and SLF is anomalous and potentially unfair.</p>

C Regulatory and financial impact

- 39 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us, we think the proposals are fair because they will:
- (a) remove an anomalous and potentially unfair impediment to AFS licensees satisfying their NTA, ASLF and SLF requirements;
 - (b) provide AFS licensees and their advisers with clarity about their compliance obligations; and
 - (c) be consistent with ASIC's regulatory role in promoting confident and informed participation by investors and consumers in the financial system.
- 40 In July 2020, we notified the Office of Best Practice Regulation (OBPR) of our proposed approach and consultation process. OBPR notified ASIC in August 2020 that it considers the proposal to be minor or machinery in nature and that, as a result, we do not need to prepare a Regulatory Impact Statement (RIS).
- 41 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, we are unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

Key terms

Term	Meaning in this document
AASB 16	Australian Accounting Standard AASB 16 <i>Leases</i>
AASB 117	Australian Accounting Standard AASB 117 <i>Leases</i>
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASLF	Adjusted surplus liquid funds
Ch 2M (for example)	A chapter of the Corporations Act (in this example numbered 2M), unless otherwise specified
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
[CO 12/752] (for example)	An ASIC class order (in this example numbered 12/752) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
custodial service	The service provided under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement (whether or not there are also other parties to any such arrangement), under which a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client unless the service is not a custodial service under s766E(3) of the Corporations Act Note: This is a definition contained in s766E of the Corporations Act for the term custodial or depository service provider.
IDPS	An investor directed portfolio service as defined in Class Order [CO 13/763] <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order
lessee	The entity that obtains the right to use an underlying asset for a period of time in exchange for consideration

Term	Meaning in this document
margin lending facility	<p data-bbox="770 293 1401 360">Has the meaning given in s761EA(1) of the Corporations Act, and includes:</p> <ul data-bbox="770 371 1401 517" style="list-style-type: none"> <li data-bbox="770 371 1401 405">• a standard margin lending facility; or <li data-bbox="770 416 1401 450">• a non-standard margin lending facility; or <li data-bbox="770 461 1401 517">• a facility declared by ASIC to be a margin lending facility under s761EA(8) of the Corporations Act
NTA	Net tangible assets
OTC	Over the counter
PF 209 (for example)	An ASIC pro forma (in this example number 209)
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
RG 166 (for example)	An ASIC regulatory guide (in this example numbered 166)
right-of-use asset	An asset that represents a lessee's right to use an underlying asset for the term of a lease
SLF	Surplus liquid funds
trustee company providing traditional services	<p data-bbox="770 999 1401 1066">Has the meaning given in s601RAC(1) of the Corporations Act, and includes:</p> <ul data-bbox="770 1077 1401 1440" style="list-style-type: none"> <li data-bbox="770 1077 1401 1144">• performing estate management functions (as defined in s601RAC(2)); <li data-bbox="770 1155 1401 1223">• preparing a will, a trust instrument, a power of attorney or an agency arrangement; <li data-bbox="770 1234 1401 1323">• applying for probate of a will, applying for grant of letters of administration, or electing to administer a deceased estate; <li data-bbox="770 1335 1401 1368">• establishing and operating common funds; and <li data-bbox="770 1379 1401 1440">• any other services prescribed by the Corporations Regulations as traditional trustee company services

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to amend the ‘excluded assets’ definition in the ASIC instruments to provide that a right-of-use asset is not an excluded asset. If we proceed with this proposal, we intend to implement it by:</p> <p>(a) issuing two legislative instruments—one legislative instrument will amend the definition of ‘excluded asset’ in the ASIC instruments so that a right-of-use asset is excluded from the definition; the other legislative instrument will implement corresponding changes to the licence conditions of AFS licensees;</p> <p>(b) revising PF 209 and the relevant AFS licence conditions, to make it clear that a right-of-use asset is not an excluded asset; and</p> <p>(c) updating our guidance in RG 166.</p>	<p>B1Q1 Do you agree with our proposal? If not, why not?</p> <p>B1Q2 Are there other options we should consider that might adequately address the concerns about potential unfairness? If yes, please specify.</p> <p>B1Q3 Do you agree that changes should be made to the ASIC instruments and the existing requirements in RG 166? If not, why not?</p>