

26 February 2021

James Grapsas, Senior Lawyer  
Investment Managers Team  
Australian Securities and Investments Commission

By email: [james.grapsas@asic.gov.au](mailto:james.grapsas@asic.gov.au)

Dear James

### **ASIC Consultation Paper 336 Financial requirements: Treatment of lease assets**

The Property Council welcomes the opportunity to provide comments on the ASIC Consultation Paper 336 Financial Requirements: Treatment of lease assets.

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

#### **Technical clarification required on drafting of RG166 and PF209**

The Property Council supports the broad intent of Consultation paper 336 to amend the financial requirements for AFS licensees by allowing right-of-use assets to be included in the calculation of net tangible assets (NTA), adjusted surplus liquid funds and surplus liquid funds.

However, it appears the proposed additions to RG 166 and PF 209 exclude right-of-use assets from the adjusted assets calculation, contrary to the intent of the consultation paper. Regarding the proposed changes to PF 209 and RG 166 it appears as though the insertion of 'right-of-use assets' into 'excluded assets' does not ultimately include them for NTA calculations, which is the overall intent of CP 336 as we understand it. The Property Council seeks clarification on the wording of the amendments.

#### **Implications of treating right-of-use assets as intangibles for Net Tangible Asset calculations outside of AFS licensing rules**

While the Consultation paper focuses solely on the treatment of right-of-use assets in the context of AFS licensees, this issue can also extend to NTA calculations produced for different purposes. We take this opportunity to raise the issue of referring to right-of-use assets as intangibles without looking at the item being leased. We previously communicated with ASIC in 2020 seeking clarification of treatment for NTA calculations.

As ASIC is aware, regarding right-of-use assets as intangible in nature has led to inconsistent interpretation and application of the NTA concept. The Property Council maintains that it is important to look at the item being leased when considering if it is intangible or tangible.

AASB 16 paragraphs 34 and 48 require right-of-use assets meeting the definition of investment properties be fair valued and presented together with investment properties (in accordance with the requirements of AASB 140: Investment Property). This is commonly the case where an entity holds an investment property, a component of which is leasehold (for example, where an investment property is constructed on land with a long-dated lease). This therefore requires that these assets be presented as tangible assets for the purposes of presentation.

Paragraph 47(a)(i) also requires presentation of the right-of-use assets based on the underlying asset leased if the right-of-use assets are not separately presented. This would also indicate that right-of-use assets presented in this manner would be considered tangible assets.

Similarly, paragraphs 35, 57, and 95 refer to right-of-use assets for property, plant, and equipment assets, requiring these right-of-use assets to be revalued and presented in accordance with the requirements of AASB 116: Property, Plant and Equipment. Again, this requirement would indicate that right-of-use assets disclosed in this manner would be classified as tangible assets.

Paragraph 96 requires that the disclosure requirements of AASB 140, AASB 116, AASB 148: Intangible Assets, and AASB 141: Agriculture be applied to operating leases. Taken with the above paragraphs, this would seem to suggest that in classifying the right-of-use asset and determining the appropriate disclosures for these assets, preparers of financial statements should look to the nature of the underlying leased asset. Other sections of AASB 16, and amendments to other standards on the introduction of AASB 16 would also suggest this interpretation.

#### *International Perspective*

The Basel Committee has provided advice regarding the treatment of right-of-use assets. They stipulate that “a [right-of-use] asset should not be deducted from regulatory capital so long as the underlying asset being leased is a tangible asset”.

The Committee views the purpose of revisions to the leasing standard as “to more appropriately reflect the economics of leasing transactions, including both the lessee’s obligation to make future lease payments, as well as a right-of-use asset reflecting the lessee’s control over the leased item’s economic benefits during the lease term”. This acknowledges that leasing is essentially a financing decision. The revisions to the standard were designed to create similar accounting outcomes between entities which chose to lease their assets and those which chose to borrow and purchase these assets. If the entity had borrowed to purchase a tangible asset, a tangible asset would be recorded in its financial statements, together with a corresponding liability for the same outcome for reporting purposes.

The Association for Financial Markets in Europe (AFME) has released a position paper on regulatory treatment of leased assets. They cite the European Banking Authority’s statement that the classification of a right-of-use asset as tangible or intangible for regulatory purposes will follow the accounting designation of the underlying asset.<sup>1</sup>

#### *Clarification sought from ASIC*

We note that the consultation paper amendment effectively allows the right-of-use asset to be included for AFSL purposes, but to avoid future confusion we request that ASIC makes a statement clarifying that it is important to look at the item being leased when considering if it is intangible or tangible. This will also ensure comparability of reported metrics, particularly NTA, within the

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<sup>1</sup> Association for Financial Markets in Europe, *AFME Position Paper: IFRS 16 – Regulatory treatment of Leased assets*, May 2017.

property industry, between Australian reporting entities, and between Australian and international reporting entities.

If you would like to discuss any aspect of this submission further, please contact Adele Lausberg on 0415 225 638 and [alausberg@propertycouncil.com.au](mailto:alausberg@propertycouncil.com.au), or myself on 0400 356 140 and [bngo@propertycouncil.com.au](mailto:bngo@propertycouncil.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Belinda Ngo', with a stylized flourish at the end.

Belinda Ngo  
**Executive Director, Capital Markets**