Consultation Paper 388: Net tangible assets (NTA) requirements for responsible entities

WIAA Submission in Response

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Submitted by

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WHOLESALE INVESTOR ADVOCACY AUSTRALIA

Response to ASIC Consultation Paper 388 (CP 388)
Net tangible assets (NTA) requirements for responsible entities

Wholesale Investor Advocacy Australia (WIAA) welcomes the opportunity to comment on Consultation Paper 388 (CP 388) on net tangible assets (NTA) requirements for responsible entities and other AFS licensees. CP 388 correctly recognises that NTA settings are one component of the broader framework by which responsible entities (REs) meet their obligation to have "adequate resources (including financial, technological and human resources)" under s912A(1)(d) of the *Corporations Act 2001* (Cth).

WIAA's considered opinion is that capital requirements should:

- Support, but not substitute for, structural governance reforms, independence and conflict management.
- Be proportionate to size, complexity and risk profile, to avoid unduly burdening smaller, innovative or specialist managers and diminishing competition.
- Be internationally competitive as to not create a disincentive to operate in Australia.
- Be calibrated with clear policy objectives (operational continuity, orderly transition/wind-up, basic alignment of RE and investor interests) and not repurposed into a de facto prudential or investor-compensation regime.

WIAA supports ASIC's intent to restore the real value of NTA thresholds and to review concessional and parity settings. However, we caution that blunt or overly aggressive increases, particularly under the concessional regime "risk":

- Raises barriers to entry and accelerates consolidation in favour of large vertically integrated groups, with potential detriments for investor choice and innovation.
- Encourages regulatory arbitrage into unregistered, offshore or less visible structures, where governance and disclosure are weaker.

We encourage ASIC to consider WIAA's positions:

- We support a CPI-based uplift to NTA thresholds (Option 1, B1) as a baseline measure, with an appropriate transition period and periodic but non-automatic review.
- We support a moderate increase to the concessional minimum and consider that a calibrated per-scheme approach (Option 2, B2) can better align capital with the number of schemes but should be capped and combined with stronger custodial and governance conditions.
- We see merit in lifting the $5m cap on the concessional 0.5% of FUM limb (Option 3, B3), but recommend a tiered or risk-based approach, to avoid disproportionate impacts on lower-risk, lower-margin products.

- We support retaining the liquidity component but recommend updating the $150k cash minimum in line with CPI while tightening the quality of "cash or cash equivalents" and "liquid assets".
- We recommend a transition period of at least 12 months for more material changes (particularly B2/B3), with the possibility of staged implementation for smaller REs.
- We support continued regulatory parity for IDPS operators and retail CCIV corporate directors, subject to careful impact analysis on non-scheme platforms (D1).
- We support a targeted review of NTA settings for other AFS licensees, focusing first on business models that create significant client-money or operational risk and observable harm (e.g. retail OTC derivatives, certain custodial structures), rather than imposing broad NTA requirements on all licensees (D2–D3).
- We also support keeping a sensible cap on NTA settings, informed by comparable overseas regimes, so that requirements stay proportionate, do not push out smaller but well-run REs, and ensure Australia remains a competitive and attractive place to operate schemes rather than driving activity offshore.

WIAA believes investors' interests are best served by a framework that combines appropriate capital with strong structural governance (independent boards or compliance committees, robust custodial arrangements, related-party safeguards, and data-enabled supervision).

WIAA values the opportunity to contribute to this consultation and welcomes further engagement with ASIC to ensure that the final guidance sets a clear expectation for structural independence as a foundation for effective conflict management in the sector. We would certainly welcome the opportunity to meet with ASIC to discuss these issues in more detail.

To arrange a meeting to discuss WIAA's position and recommendations, please do not hesitate to contact me via email at [redacted] or [redacted], Policy Manager via email at [redacted]

Yours sincerely

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Chief Executive Officer

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