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ASIC
By email: rri.consultation@asic.gov.au

RE: Proposed Changes to the Net Tangible Assets Requirement for Responsible Entities

1. Introduction

We refer to ASIC Consultation Paper 388 regarding proposed changes to the net tangible assets requirement for responsible entities.

We do not support any increase to the current net tangible assets requirements at this time. In our view, the existing framework remains appropriate and proportionate, and the case for increasing minimum capital settings has not been made out. The proposals would impose additional cost and complexity on industry participants without clear evidence that they would materially improve investor protection or market outcomes.

In particular, we are concerned that the proposed changes would:

- create unnecessary and duplicative capital burdens for firms operating through multiple licensed entities,
- reduce competition by increasing barriers to entry and ongoing participation,
- disproportionately affect smaller and mid-sized operators, including specialist and boutique managers,
- risk increasing costs for investors without corresponding regulatory benefit; and
- be introduced on an unrealistically short transition period.

For those reasons, our primary submission is that ASIC should not proceed with any of the proposed changes.

2. The current framework remains adequate

The current financial requirements for responsible entities already impose meaningful capital requirements. They include minimum capital thresholds and an assets and revenue based component, as well as liquidity requirements.

That framework already recognises that responsible entities differ in scale and operating model. It also already provides mechanisms that scale requirements according to the nature of the business and the amount of assets operated. The more registered scheme assets a responsible entity has, the higher the capital requirements. The more revenue the responsible entity has, the higher the capital requirements.

In our view, the current framework remains workable and appropriately suited to the industry and for consumers. A broad increase to the capital settings would be a blunt regulatory response and would not necessarily address the actual causes of operational or governance failure in managed investment schemes.

The principal drivers of poor outcomes are more likely to include governance failures, inadequate compliance systems, weak oversight, conflicts management, asset valuation issues, poor liquidity management and ineffective risk controls. Increasing balance sheet capital alone is unlikely to resolve those issues.

3. The proposals are not sufficiently risk based

The proposed changes appear to apply broad increases across the sector rather than focusing on actual risk drivers.

A responsible entity's risk profile is influenced by a range of factors, including:

- the nature and complexity of the scheme assets,
- custody arrangements,
- outsourcing and service provider oversight,
- valuation methodology,
- governance and compliance capability; and
- operational scale and internal controls.

These factors are more directly relevant to investor protection than a general increase in minimum capital thresholds.

A higher capital requirement may create the appearance of greater financial strength, but it does not necessarily improve operational competence or reduce the likelihood of misconduct, governance failure or poor scheme management. In that sense, the proposed approach risks increasing cost without addressing the issues that most directly affect consumers.

4. Duplicative burden for firms with multiple licences or entities

A significant practical concern is the impact on firms that operate through multiple licensed entities or hold multiple licences within a broader group structure.

Many groups have separate entities for different functions, including responsible entity services (registered and unregistered schemes), trustee functions, custody or other regulated activities. These structures often exist for sound legal, operational, governance and client related reasons.

If capital requirements are increased across multiple licence categories or multiple regulated entities within a group, the result may be a duplicative capital burden. Larger amounts of capital would need to be maintained separately in different entities, even where the group as a whole is financially sound and operationally integrated.

That outcome would be onerous and inefficient. It would not necessarily improve investor protection, but it would require groups to lock up additional capital in multiple locations. This would reduce capital efficiency, increase cost and divert resources away from investment in compliance systems, technology, risk management and operational resilience.

In our view, ASIC should be particularly cautious about reforms that result in capital duplication rather than genuine prudential improvement.

5. Reduced competition and higher barriers to entry

We are also concerned that the proposed changes would lessen competition in the managed funds sector.

Higher minimum capital requirements would disproportionately affect smaller responsible entities and new entrants. Many of these businesses operate soundly, with strong governance and external service provider arrangements, but do not have the balance sheet depth of larger incumbent institutions.

The likely effect of materially higher NTA requirements would be to:

- deter new entrants,
- force some smaller operators to exit the market,
- encourage consolidation,
- entrench larger incumbents; and
- reduce diversity of products and investment strategies.

That would be detrimental to market competition and ultimately to investors. A competitive market benefits investors through greater choice, lower fees, innovation and differentiated investment opportunities. By contrast, a market with fewer participants and higher entry barriers is likely to become more concentrated and less dynamic.

These competition impacts should be treated as a central consideration, not a secondary one.

6. Increased costs are likely to be passed on to investors

Higher capital requirements are not costless. Where firms are required to hold materially more capital, those costs are likely to be absorbed in one of three ways:

- through increased fees to investors,
- through reduced investment in systems, personnel or compliance; and
- through withdrawal from certain products or market segments.

None of these outcomes is desirable.

If the consequence of the proposals is that operators must hold significantly more idle capital, then the overall cost of offering products will increase. That cost will ultimately be borne by members, either directly through higher fees or indirectly through reduced market choice and less innovation.

In our submission, ASIC should be cautious about imposing additional financial burdens where the likely investor benefit is uncertain.

7. Timing is premature given broader policy review

It would also be premature to proceed with material changes to the NTA framework while the broader legislative and policy settings for AFS licence holders remain under review.

Where the broader framework is being reconsidered, significant changes at the instrument level risk creating unnecessary burdens. Regulated entities may be required to recapitalise, restructure or revise their operating models now, only to face further change once the broader policy position is settled.

That uncertainty is unhelpful for industry and may lead to unnecessary cost and disruption. In our view, ASIC should avoid making material changes ahead of completion of the broader policy review.

8. Any transition period must be substantially longer than six months

If ASIC nevertheless decides to proceed with any changes, the proposed six-month transition period would be far too short.

A change to minimum capital settings can require substantial planning and implementation work. Depending on the entity and group structure, firms may need to:

- raise additional equity
- restructure internal capital allocations

- obtain board, shareholder or lender approvals
- amend financing arrangements
- review scheme structures and operating models
- make changes across multiple licensed entities

These steps cannot always be completed within six months, particularly for independent, smaller or medium-sized operators.

A short transition would create avoidable pressure and could itself produce poor outcomes, including rushed restructures, unnecessary exits or constrained business activity.

Any transition period should be materially longer. At a minimum, ASIC should allow 18 months. A transition period of 24 months would be more appropriate. Consideration should also be given to phased implementation and grandfathering arrangements where appropriate.

9. Preferred position

Our preferred position is that ASIC should not make any changes to the current NTA settings.

The current framework already provides a meaningful and structured capital regime. The proposals in CP 388 would increase burden and reduce competition without clear evidence of corresponding benefit.

If ASIC remains minded to proceed, any reform should be narrowly targeted, evidence-based and clearly linked to actual risk. It should also avoid unnecessary duplication across related licensed entities and provide a significantly longer transition period than six months. As an industry, the changes that would have the least impact on consumers and responsible entities would be to increase the minimum NTA to reflect CPI changes since 2013 referred to in Option 1.

10. Conclusion

For the reasons set out above, we do not support the proposed increases to the net tangible assets requirement for responsible entities.

The proposals would impose additional capital burdens that are likely to be duplicative, costly and anti-competitive. They would particularly affect firms with multiple licences or group entities, as well as smaller and mid-sized operators. In turn, this is likely to reduce competition, increase concentration and increase costs for investors.

ASIC should retain the current settings.

If any changes are made despite these concerns, the transition period must be substantially longer than six months, with at least 18 to 24 months allowed for implementation.

Kind regards

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Chairman | Westbridge Funds Management

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