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NTA requirements - Consultation feedback  
Australian Securities and Investments Commission  
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To whom it may concern

## **Consultation Paper 388: NTA requirements for responsible entities - Submission from the Property Funds Association**

### **About the Property Funds Association**

The Property Funds Association (**PFA**) is the peak body representing responsible entities (**REs**) and fund managers operating unlisted property and real asset managed investment schemes (**MISs**) across retail and wholesale markets in Australia. PFA members collectively manage more than \$32 billion in assets on behalf of approximately 50,000 investors. Schemes operated by PFA members provide Australians with access to diversified property investment across residential, commercial, industrial and agricultural asset classes. These schemes support housing delivery, commercial development, and long-term retirement savings. They play an important role in channelling private capital into productive real-economy assets that underpin broader economic growth.

The PFA welcomes the opportunity to engage with ASIC on Consultation Paper 388 (**CP 388**). The PFA is committed to constructive participation in reforms that are evidence-based, proportionate, and targeted.

### **Executive summary**

The PFA appreciates ASIC's focus on the strength of the regulatory system following the recent collapses of the Shield Master Fund and the First Guardian Master Fund. As noted by ASIC in CP 388, the NTA requirement is a component of the broader obligations that apply to responsible entities under the *Corporations Act 2001* (Cth) (**Corporations Act**). Following the recent collapses, there has been a significant number of regulatory changes considered by both ASIC and Treasury. As each of these regulatory items work together in the funds management industry, the PFA urges ASIC and Treasury to consider any regulatory changes in a holistic way to ensure that there is not such a significant change that the industry is stifled.

The PFA notes, as it did in its submission to Treasury's consultation on Enhancing Oversight and Governance of Managed Investment Schemes, that where scheme failures have occurred, they reflect breaches of existing obligations and governance failures, not structural deficiencies in the legislative or regulatory framework. A lack of financial resources has not been shown to be a cause of the recent MIS failures, and there has been no evidence provided that more specific financial resource requirements would have assisted in those instances. The appropriate response is targeted

enforcement and enhanced supervisory capability for ASIC, not a blanket increase in capital requirements that would apply uniformly across the entire, highly diverse MIS sector.

The NTA requirement is a component of the broader compliance obligations that apply to responsible entities under the Corporations Act, and ASIC itself acknowledges that increasing the NTA requirement alone will not prevent collapses of managed investment schemes or fully compensate investors who suffer loss from significant events, nor is it intended to operate in that way. Financial resource requirements serve an operational resilience function, not a consumer protection function. Consumer protection in the event of RE failure is more appropriately served by adequate professional indemnity and other insurance arrangements.

Furthermore, in a review of the financial requirements for REs in 2023, including the NTA requirement, ASIC found that the existing requirements were operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework with further review not required until October 2028.<sup>1</sup> CP388 provides no evidence that there is a deficiency in the amount of NTA currently held or that REs do not hold adequate financial resources to meet the objectives of the NTA requirement and relies on the argument that the thresholds have not been increased since 2013.

On this basis, and given the other regulatory changes being considered by Treasury, the PFA does not support a change to the NTA requirements for REs.

In summary, the PFA's key positions in this submission are as follows:

- No changes should be made to the NTA requirements.
- If any changes are to be made to the NTA requirements, which the PFA believes is unnecessary, the only option the PFA could support is a CPI-linked increase to the NTA thresholds under Option 1, as this represents a measured and proportionate recalibration that restores the real value of the financial thresholds without disrupting market structures.
- The PFA does not support Options 2 or 3 in their current form, as these would impose material capital requirements that could create barriers to entry, necessitate consolidation of smaller fund managers, and increase compliance costs that are likely to be passed through to investors without demonstrated regulatory benefit.
- The concessional NTA requirement for responsible entities that meet custody and fund asset type requirements remains appropriate and should be retained.
- Any changes to the NTA requirement should be accompanied by a transition period of at least 18 months.
- Greater regulatory benefit is likely to be achieved through targeted supervisory, surveillance and enforcement action in relation to governance, compliance and oversight failures, rather than through across-the-board increases to capital requirements that apply to compliant responsible entities.
- ASIC should coordinate its review with Treasury's separate consultation to avoid duplication and inconsistency. Any regulatory changes should be considered from a holistic perspective to ensure they are targeted, appropriate, proportionate and not overly burdensome and its impact on competition and barriers to entry for SME fund managers should be deeply considered.

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<sup>1</sup> ASIC Consultation Paper 367: *Remaking ASIC class orders on financial requirements: [CO 13/760], [CO 13/761] and ASIC Instrument 2022/449.*

## **Section B — Options for increasing the NTA requirement for responsible entities**

### **Proposal B1 — Option 1: Increase in Line with CPI**

*B1Q1: Please provide your feedback on this option, including reasons in support of your views.*

To the extent that it is determined an increase in the NTA requirement is required, the only option the PFA could support is Option 1. The PFA considers this is the most proportionate of the three options presented. The PFA understands that thresholds have remained unchanged since 2013, and a CPI adjustment reflects the change in the value of money over time without introducing structural changes to the NTA framework. However, the PFA does not consider that, of itself, this is a significant enough reason to change the NTA requirement.

*B1Q2: Do you agree that applying a CPI-linked increase to the financial thresholds specified in the NTA requirement is appropriate to support the objectives of the NTA requirement? If not, why not?*

The PFA does not agree that a CPI-linked increase is appropriate to support the established objectives of the NTA requirement, which are to ensure the responsible entity has adequate financial resources to meet operating costs, align the responsible entity's interests with the interests of scheme members, provide some level of assurance for orderly transitions, and impose a liquidity component to meet immediate and unexpected expenses. The PFA is not aware of any instances where it has been shown that the current level of NTA is insufficient to support the established objectives, nor has any evidence of this been provided in CP 388.

*B1Q3: Are there alternative measures to CPI that you consider more appropriate for this purpose? Please provide details.*

To the extent that a change is required, the PFA considers CPI to be the most appropriate measure for this purpose. CPI is a well-understood, publicly available, and independently published measure of price inflation that provides a transparent and objective basis for adjusting financial thresholds. The PFA does not consider that alternative measures, such as the Wage Price Index or asset-specific indices, would be more appropriate given the broad operational nature of the costs the NTA requirement is intended to address.

*B1Q4: For existing responsible entities, what effect would this option have on your business (including the amount of capital you hold and compliance costs)? Is this proposal likely to affect fees for scheme members? Please provide specific details and dollar estimates.*

The PFA anticipates that the effect of a CPI-linked increase on PFA members will vary. It may be manageable for some members, but not for all. In particular, for responsible entities that are already subject to the non-concessional minimum (including where any scheme assets are held in self-custody or the responsible entity does not otherwise qualify for the concessional settings), an uplift to the \$10 million minimum would be a sizable increase and would have a direct impact on the amount of capital required to be held and the related liquidity settings.

The impact is also likely to be disproportionate for corporate groups that operate multiple responsible entity licences within the same corporate group, including due to legacy structures and acquisitions. Because the minimum applies at the licence holder level, any uplift scales across multiple licences and can quickly become material. Many responsible entities meet NTA requirements in part through eligible undertakings, including bank guarantees, which attract ongoing costs and administrative overheads. Any uplift to minimum thresholds is therefore likely to increase recurring costs for these groups and, over time, flow through to scheme members.

Other PFA members already hold NTA in excess of the current minimum thresholds, meaning a CPI adjustment would not require additional capital injections. For responsible entities currently holding NTA at or near the minimum thresholds, the increases under Option 1 are of a scale that can reasonably be planned for and met, particularly if accompanied by an adequate transition period.

The PFA notes that any increase in capital requirements will necessarily have some flow-through effect on fees and, in turn, could have a flow on effect to investor returns.

*B1Q5: Would it be appropriate for ASIC to introduce an ongoing indexation mechanism (e.g. periodic CPI adjustment) for increasing the financial thresholds in the NTA requirement? Why or why not?*

The PFA does not see the regulatory need for an ongoing indexation mechanism for increasing financial thresholds in the NTA requirement to be included.

However, if one were introduced, it would need to be subject to the following conditions:

- The mechanism should be transparent and predictable, based on a published CPI measure, with adjustments occurring at regular, specified intervals.
- The intervals for indexation must not be too often so as to add a disproportionate compliance burden on REs. The PFA considers the indexation should occur no more frequently than every three or five years.
- Responsible entities should be given reasonable notice of any adjustment and an adequate transition period in which to comply.
- Any indexation mechanism should provide at least 12 months' advance certainty, rather than relying on CPI outcomes that are only known at the end of the relevant period, to enable effective capital planning.
- The indexation mechanism should be implemented through ASIC's existing instrument-making powers, preserving the flexibility to calibrate requirements through subordinate instruments in consultation with industry. Moving detailed thresholds into a rigid automatic formula without periodic review could reduce adaptability.

*B1Q6: What impact will this proposal have on competition?*

The PFA considers that Option 1 would have less impact on competition. A CPI-linked increase preserves the existing structure of the NTA requirement and restores the real value of thresholds that were calibrated in 2013. It would be less likely to create material new barriers to entry or impose requirements that are disproportionate to the scale of the business being conducted.

The PFA is concerned about the effects of more substantial increases (under Options 2 and 3) on smaller fund managers and competition in the fund management industry, and particularly in challenging economic times. Option 1 avoids these concerns.

*B1Q7: Do you see any practical difficulties with this approach? If so, please provide details.*

The PFA does not foresee material practical difficulties with a CPI-linked increase, provided it is accompanied by a reasonable transition period.

**Proposal B2 — Option 2: Increase the \$150,000 minimum under the concessional NTA requirement**

*B2Q1: Please provide your feedback on this option, including reasons in support of your views.*

The PFA does not support Option 2 in its current form. While the PFA acknowledges ASIC's objective of ensuring that responsible entities are entities of substance and hold a sufficient financial buffer to facilitate orderly transitions, the scale of the increases contemplated, up to \$1 million under proposal B2(a), or a per-scheme calculation under proposal B2(b), represents a significant departure from the existing calibration of the concessional NTA requirement.

Any material increase in capital requirements would directly affect market structure, as it could create barriers to entry, necessitate consolidation of smaller fund managers, increase reliance on outsourced responsible entities and increase costs to investors. The concessional NTA requirement was deliberately designed to apply to responsible entities that meet specified custody or fund asset type requirements, reflecting the lower risk profile associated with those arrangements. Increasing the concessional minimum to a level that significantly narrows the gap with the non-concessional requirement undermines the policy rationale for having a concessional category.

*B2Q2: Do you prefer proposal B2(a) or B2(b)? Please provide reasons.*

If ASIC were to proceed with Option 2 (which the PFA does not support), the PFA would prefer proposal B2(a) over B2(b), on the basis that a fixed dollar amount is simpler to administer and more predictable for responsible entities. Proposal B2(b), which would apply the \$150,000 minimum on a per scheme basis, would impose significant additional capital requirements on responsible entities that operate multiple schemes, penalising efficient multi-scheme platforms and incentivising structural consolidation of schemes that may not be in the interests of investors.

This impact would be particularly pronounced in the unlisted property sector, where the prevalence of single-asset and small-portfolio fund structures means property fund managers may operate a larger number of schemes than managers in other asset classes and may therefore be disproportionately impacted by changes that scale by scheme number or fund size, despite comparable overall business risk. In some cases, schemes are registered for structural or transaction-related reasons (including stamp duty considerations) and may not be offered to retail investors, yet could still be captured by a per-scheme NTA requirement in the absence of clear exclusions.

Where an RE operates multiple funds of a similar nature and risk profile, it is common practice (and permitted under the current framework) to use shared compliance and operational infrastructure covering those funds. A per-scheme NTA requirement would undermine this efficient operating model. It would create a structural penalty for diversified platforms without a demonstrated link to incremental operating risk.

*B2Q3: If we adopt proposal B2(a), what should the fixed amount be? What is the basis for this?*

The PFA does not support Option 2. If ASIC nonetheless proceeds with proposal B2(a), the PFA considers that any increase to the concessional minimum should be limited to a CPI-linked adjustment (approximately \$200,000), as contemplated under Option 1. The PFA does not support an increase to \$1 million.

B2Q4: Do you agree that this proposal is appropriate to support the objectives of the NTA requirement? If not, why not?

No. The PFA does not consider that the scale of increase contemplated under Option 2 is proportionate to the objectives of the NTA requirement. The objectives are operational in nature — ensuring adequate resources to meet operating costs, aligning the RE's interests with members, and facilitating orderly transitions. The financial requirements for responsible entities are not intended to address market or credit risks, or to prevent entities from becoming insolvent or failing, and are not designed to compensate clients for unexpected losses. An increase from \$150,000 to up to \$1 million goes well beyond what is necessary to achieve those operational objectives.

*B2Q5: For existing responsible entities, what effect would this proposal have on your business (including the amount of capital you hold and compliance costs)? Is this proposal likely to affect fees for scheme members? Please provide specific details and dollar estimates.*

For smaller responsible entities operating under the concessional NTA requirement, an increase to \$1 million would represent a very significant capital impost. Many of these entities are specialist operators managing property funds with well-defined asset bases and robust custody arrangements. Requiring these entities to hold up to \$1 million in NTA (or more, under proposal B2(b) if they operate multiple schemes) would necessitate substantial capital injections from shareholders or the use of eligible undertakings (such as bank guarantees) or other arrangements to meet the requirement. The increased cost of this additional capital would ultimately have to be borne by investors.

The PFA requests that ASIC conduct a formal regulatory impact assessment calibrated to the specific characteristics of the unlisted property sector before finalising any proposal under Option 2.

*B2Q6: What effect will this proposal have on competition?*

The PFA considers that Option 2, particularly at the higher end of the proposed range, would have material adverse effects on competition. It would create barriers to entry for new responsible entities, potentially force consolidation of smaller fund managers, and increase reliance on outsourced responsible entity arrangements. This would reduce choice and competition in the market to the detriment of investors.

*B2Q7: Do you see any practical difficulties with this approach? If so, please provide details.*

The principal practical difficulty is the significant capital requirement that Option 2 would impose on responsible entities that currently operate under the concessional NTA requirement, many of which are smaller, specialist operators. These entities may not have access to the capital necessary to meet the higher thresholds and may be forced to exit the market or consolidate, reducing competition and choice for investors. The difficulties in this approach are disproportionate to the benefits.

A further practical difficulty with a per-scheme NTA requirement is the lack of clarity as to how “scheme” would be defined for these purposes, including whether the requirement would apply only to registered schemes or could also capture unregistered wholesale schemes for which an AFS licensee with responsible entity authorisation acts as trustee.

In addition, the number of schemes operated by a responsible entity is not static, particularly in the unlisted property sector where schemes are frequently established, restructured or wound up as part of normal asset lifecycle management. A per-scheme capital model would therefore introduce ongoing uncertainty and administrative complexity in cash flow projections, capital planning and

liquidity management, as required NTA levels could fluctuate over time in line with changes to the scheme population rather than underlying operating risk.

**Proposal B3 — Option 3: Increase the \$5 million cap under the concessional NTA requirement**

*B3Q1: Please provide your feedback on this option, including reasons in support of your views.*

The PFA does not support Option 3. While the PFA acknowledges ASIC's observation that the \$5 million cap has remained unchanged since 2002 and that operating risk associated with growth of funds under management does not stop above a certain threshold, the PFA considers that the average revenue limb of the NTA formula already addresses this concern. The average revenue limb is uncapped and captures the operating risks of responsible entities that generate significant income. Increasing the cap on the average value of fund assets limb, in addition to the existing uncapped revenue limb, would impose a double burden on larger responsible entities.

*B3Q2: If we adopt this proposal, what do you think the new cap should be? What is the basis for this?*

If ASIC proceeds with an increase to the \$5 million cap, the PFA considers that the increase should be limited to a CPI-linked adjustment, which would result in a cap of approximately \$6.9 million. This approach is proportionate, transparent, and consistent with the methodology proposed under Option 1.

*B3Q3: Do you agree that this proposal is appropriate to support the objectives of the NTA requirement? If not, why not?*

No. The PFA does not consider that a significant increase to the cap (beyond CPI) is proportionate to the stated objectives. The uncapped average revenue limb of the test already provides a scalable measure that ensures responsible entities with significant operations hold adequate NTA.

*B3Q4: For existing responsible entities, what effect would this proposal have on your business (including the amount of capital you hold and compliance costs)? Is this proposal likely to affect fees for scheme members? Please provide specific details and dollar estimates.*

For responsible entities operating under the concessional NTA requirement with significant funds under management, an increase to the cap could result in a material increase in required NTA. The extent of the impact would depend on the new cap amount. If the cap were increased significantly above CPI, responsible entities managing large property portfolios could be required to hold substantially more capital. These costs would ultimately be passed on to investors through increased fees.

*B3Q5: What effect will this proposal have on competition?*

An increase significantly above CPI could disadvantage larger responsible entities operating under the concessional NTA requirement and could incentivise restructuring to avoid the higher thresholds, resulting in increased complexity and cost.

*B3Q6: Do you see any practical difficulties with this approach? If so, please provide details.*

The PFA notes that the practical difficulty lies primarily in the scale of any increase above CPI and the interaction between the increased cap and the uncapped average revenue limb, which could result in some responsible entities being required to hold disproportionately high levels of NTA relative to their operational risk.

**Proposal B4 — Seeking feedback on the appropriateness of the liquidity component**

*B4Q1: Do you consider the cash or cash equivalents and liquid assets requirements imposed on responsible entities remain appropriate? Please provide specific details and reasons.*

The PFA considers that the existing liquidity component requirements (being at least 50% of NTA in cash or cash equivalents (with a minimum of \$150,000) and 100% in liquid assets) remain appropriate. The liquidity component serves the important function of ensuring that a responsible entity can call on its NTA to help it meet any immediate and unexpected expenses. The current calibration strikes an appropriate balance between ensuring liquidity and avoiding the imposition of unduly onerous requirements that would reduce the productive deployment of capital. However, in practice, the extent to which these amounts can be drawn upon is constrained, as using the liquidity component may result in a breach of the NTA requirement itself unless capital is promptly replenished.

*B4Q2: If we adopt Option 1 (proposal B1), should we increase the cash or cash equivalents minimum requirement (currently, \$150,000) to reflect cumulative CPI growth since 2013?*

No. Given that the remaining balance of the NTA is held in liquid assets there is no need to increase the cash or cash equivalents minimum requirement. Increasingly this limit would reduce the ability of REs to earn a return on the amounts held in NTA, which would increase the burden of holding amounts in respect of the NTA requirement, especially if those amounts were to increase.

*B4Q3: If we adopt Option 2 (proposal B2) or Option 3 (proposal B3), should we make any changes to the cash or cash equivalents or liquid assets requirements? Please provide specific details and reasons.*

As noted above, the PFA does not support Options 2 or 3. If ASIC were to adopt either option, the PFA would urge caution in making corresponding increases to the liquidity component. The requirement to hold 50% of NTA in cash or cash equivalents (subject to a minimum of \$150,000) and 100% in liquid assets already operates as a proportional requirement that scales with the NTA level. If the NTA requirement itself increases significantly under Options 2 or 3, the liquidity component would automatically increase in absolute terms through its proportional calculation. Any further changes to the liquidity component could impose an excessive cash holding burden on responsible entities.

*B4Q4: Should we continue to calculate the cash or cash equivalents and liquid assets requirements as a proportion of the NTA the responsible entity is required to hold, or should we use an alternative formula or approach? Please provide specific details and reasons.*

The PFA supports retaining the current approach of calculating the cash or cash equivalents and liquid assets requirements as a proportion of the NTA the responsible entity is required to hold. This approach is straightforward, proportionate, and scalable. It ensures that the liquidity requirement reflects the overall financial position of the responsible entity without introducing additional complexity.

**Proposal B5 — Transition period**

*B5Q1: Do you agree that we should provide a transition period if we decide to adopt one or more of proposals B1–B4?*

Yes. A transition period is necessary and appropriate to allow responsible entities time to comply with any increased NTA requirement. Depending on the proposal(s) adopted, some responsible entities may need to hold a significantly higher level of NTA and will require adequate time to arrange additional capital.

*B5Q2: Do you agree with the transition period being six months? If not, why not?*

No. The PFA considers that a six-month transition period is insufficient, particularly if ASIC adopts any of the more significant increases contemplated under Options 2 or 3, but also noting that even a CPI-linked increase under Option 1 may have a material impact for some responsible entities depending on their existing capital position and operating structure. The PFA submits that a transition period of at least 18 months would be more appropriate. An 18-month period would:

- Allow responsible entities to conduct proper financial planning and, where necessary, engage with shareholders regarding capital injections.
- Align with the tailored cash needs requirement, which requires a 12-month cash flow projection horizon that responsible entities are already required to maintain under the tailored cash needs requirement (noting that, in practice, projections are often prepared over up to 15 months to ensure they always cover at least the next 12 months).
- Provide sufficient time for responsible entities operating multiple schemes and/or multiple AFS licences within the same corporate group to assess the cumulative impact of any changes across their entire scheme portfolio.
- Allow responsible entities and schemes that rely on outsourced responsible entity providers more time to review and, where necessary, renegotiate existing trustee and service provider agreements and fee schedules that may lock in current pricing, noting that increased NTA and liquidity settings can increase the cost of service delivery and may not be immediately recoverable under current contractual term.
- Allow the market to adjust in an orderly manner, avoiding a compressed compliance window that could result in forced restructuring or scheme wind-ups.

Even if ASIC adopts only Option 1, an 18-month transition period would be more appropriate to ensure that responsible entities can plan for the increased requirements within their normal business planning cycles.

### **Proposal B6 — Alternative approaches**

*B6Q1: Do you consider that there are alternative approaches to increasing the NTA requirement that are preferable? Please provide details.*

The PFA considers that the most effective approach to addressing the concerns that have prompted this review is not a blanket increase in NTA requirements, but rather targeted enhancement of ASIC's supervisory and enforcement capabilities.

As the PFA noted in its submission to Treasury, ASIC already has access to substantial data that, if properly analysed, could identify higher-risk operators at an early stage, including annual and half-yearly financial reports, Form 491 notices, late or qualified financial reports and compliance plan audit reports, breach reporting data and patterns, and internal dispute resolution data. Investors would be better served by ASIC being resourced to collect and analyse data that would assist it in identifying poor behaviour earlier.

The PFA also notes that Treasury is separately reviewing options to strengthen governance and financial requirements for responsible entities of registered schemes. ASIC should coordinate its review with Treasury's consultation to avoid duplication, inconsistency, and the risk of compounding regulatory burdens.

If ASIC considers that a tiered or risk-based NTA requirement is warranted, the PFA would support further consultation on an approach that differentiates between responsible entities based on objective risk indicators (such as asset class, leverage, liquidity profile, and governance structure) rather than applying uniform increases across the entire sector.

*B6Q2: Other than the objectives described in paragraph 6, are there other factors that we should consider when setting the NTA requirement for responsible entities?*

Yes. ASIC should consider:

- whether there are feasible mechanisms to recognise group structures where multiple responsible entity licences are held within the same corporate group, to reduce duplicative capital while maintaining clear legal accountability and ensuring any support arrangements are enforceable and transparent, noting that multiple AFSLs may reflect prudent governance arrangements (including management of conflicts of interest), legacy or acquisition-driven structures, and, particularly in the property sector, the practical difficulty of changing a responsible entity or trustee due to stamp duty and real property considerations;
- the impact on competition and barriers to entry, particularly for smaller and specialist fund managers;
- the diversity of the MIS sector, including the significant differences in risk profile between different types of schemes (for example, unlisted property funds, mortgage funds, equity funds, and infrastructure funds);
- the interaction between the NTA requirement and other financial and non-financial obligations that apply to responsible entities, including the tailored cash needs requirement, the solvency and positive net assets requirement, and professional indemnity insurance obligations;
- the potential for increased NTA requirements to incentivise consolidation and reduce competition, or to drive market activity towards less regulated wholesale structures; and
- the international regulatory context.

## **Section C — Appropriateness of the concessional NTA requirement for responsible entities**

*C1Q1: Do you consider that responsible entities should continue to be subject to a concessional NTA requirement if they meet the requirements relating to custody or fund assets described in paragraphs 29–31? Please give reasons.*

Yes. The PFA strongly supports the retention of the concessional NTA requirement. The concessional NTA requirement was deliberately designed to recognise that the risk profile of a responsible entity is materially affected by the custody arrangements in place for fund assets and the nature of those assets.

For responsible entities operating unlisted property funds, the concessional NTA requirement is of particular relevance. The nature of real property, being a registered, identifiable, and tangible asset, means that the risk of misappropriation or custodial failure is materially lower than for other asset types such as cash or listed securities. The existing concessional framework appropriately reflects this lower risk.

The purpose of the concessional NTA requirement, as ASIC has described, is to ensure that the person holding the client assets is an entity of substance and has sufficient financial resources to transfer assets if it ceases to be a custodian. This purpose continues to be served by the current settings. Removing or significantly narrowing the concessional NTA requirement would impose a disproportionate financial burden on responsible entities that operate low-risk fund structures, without commensurate investor protection benefit.

The PFA also notes ASIC's acknowledgement that the concessional NTA requirement recognises that, in certain circumstances, it would be unreasonably costly or impracticable for a responsible entity to retain a custodian that can meet the full NTA requirement, and that the custodial systems for some scheme property need not be as sophisticated as for other schemes. These considerations remain valid.

*C1Q2: Are there any aspects of the concessional NTA requirement that you think we should change? If so, please provide details about what you think should be changed and your preliminary views about how the change could be achieved.*

The PFA does not consider that fundamental changes to the concessional NTA requirement are necessary. The existing framework, which differentiates between responsible entities based on custody arrangements and the nature of fund assets, is well-calibrated and reflects the operational reality of the unlisted property funds sector.

## **Section D — NTA requirements for other AFS licensees**

### **Proposal D1 — Changes to NTA requirements for IDPS operators and corporate directors of retail CCIVs**

*D1Q1: Do you agree with this approach? If not, why not?*

The PFA agrees in principle with maintaining regulatory parity between responsible entities, IDPS operators, and corporate directors of retail CCIVs, given that they perform functionally similar roles as fund operators of retail collective investment schemes.

However, the PFA's support for regulatory parity is conditional on the underlying changes to the NTA requirement for responsible entities being proportionate. If ASIC adopts the more significant increases contemplated under Options 2 or 3, the PFA's concerns about those proposals apply equally to their extension to IDPS operators and corporate directors.

*D1Q2: Do you see any practical difficulties with this approach? If so, please provide details.*

The PFA does not foresee practical difficulties with extending a CPI-linked increase to IDPS operators and corporate directors. Where a responsible entity is also an IDPS operator or corporate director, a consistent approach avoids complexity in calculating NTA requirements across multiple authorisations.

*D1Q3: For existing fund operators, if we adopt this approach, what impact would this have on your business (including the amount of capital you hold and compliance costs)? Is this proposal likely to affect fees for your clients? Please provide specific details and dollar estimates.*

The PFA's response to this question is consistent with its responses to B1Q4, B2Q5, and B3Q4 above. For PFA members that also operate as IDPS operators or corporate directors of retail CCIVs,

the impact will depend on the specific proposals adopted. A CPI-linked increase would be manageable; more significant increases under Options 2 or 3 would impose material costs.

### **Proposal D2 — Amending NTA Requirements for Other AFS Licensees**

*D2Q1: Given the alignment between the existing NTA requirements for responsible entities and licensed custodial or depository service providers, should we conduct a review and consult on increasing the NTA requirement for licensed custodial or depository service providers?*

The PFA supports ASIC conducting a review and consultation on the NTA requirements for licensed custodial or depository service providers, given the alignment between those requirements and the NTA requirement for responsible entities. The PFA notes that the ability of a responsible entity to rely on the concessional NTA requirement is in part contingent on the custodian meeting specified financial requirements. Ensuring that custodians continue to hold adequate NTA is important to the integrity of the concessional NTA framework.

Any review of custodian NTA requirements should be conducted separately and with appropriate industry consultation.

*D2Q2: Do you consider that we should conduct a review and consult on increasing (or otherwise amending) any of the requirements that apply to other AFS licensees outlined in Table 1? Please give reasons why or why not.*

The PFA does not take a strong position on the NTA requirements for other AFS licensees outside its membership base. However, the PFA supports the general principle that any review of financial requirements should be evidence-based, proportionate, and subject to detailed consultation, and should be designed to address a demonstrated regulatory gap or provide commensurate consumer protection. ASIC should avoid unjustifiable barriers to market entry for providing different kinds of financial services.

*D2Q3: If we were to increase any of the requirements in Table 1, what are your preliminary views on the approach we should adopt to increasing the requirement?*

If ASIC were to increase the NTA requirements for other AFS licensees, the PFA considers that a CPI-linked approach, consistent with Option 1, would be the most appropriate starting point. This approach is transparent, proportionate, and preserves the existing policy calibration.

### **Proposal D3 — Imposing NTA requirements on AFS licensees that currently do not have requirements**

*D3Q1: Should we impose an NTA requirement on other categories of AFS licensees or should we maintain the status quo? Please give reasons.*

The PFA considers that any decision to impose new NTA requirements on categories of AFS licensees that are not currently subject to them should be based on clear evidence of a regulatory gap or demonstrated risk to consumers. The PFA notes ASIC's concern about ensuring regulatory parity across comparable business models and preventing regulatory arbitrage. These are legitimate objectives.

However, the PFA urges caution in expanding NTA requirements without adequate evidence that existing financial resource obligations (including the base level financial requirements, the solvency and positive net assets requirement, and the cash needs requirement) are insufficient. Any expansion

should be subject to separate, detailed consultation with affected industry participants and accompanied by a regulatory impact assessment.

### **Regulatory and financial Impact**

The PFA requests that ASIC conduct a thorough regulatory impact assessment before finalising any proposals under CP 388. In particular, the PFA submits that ASIC should:

- assess the impact of each proposal on competition, including barriers to entry and the risk of market consolidation;
- consider the cumulative impact of the NTA proposals in CP 388 in conjunction with the reforms being considered by Treasury under its separate consultation on enhancing oversight and governance of managed investment schemes;
- engage with industry to obtain quantitative data on the actual NTA holdings of responsible entities across the sector, to assess the scale of any required capital adjustments; and
- have regard to the diversity of the MIS sector and the significant differences in risk profile between different types of schemes and responsible entities.

### **Conclusion**

The PFA supports regulatory measures that will enhance investor protection where it is justified and proportionate. However, the PFA maintains that there is little evidence to justify an increase to the NTA requirements to responsible entities and other AFSL holders, and particularly where it will raise barriers to entry in the unlisted funds management sector and substantially lessen competition, making it harder for mid-market fund managers and new entrants.

The PFA welcomes the opportunity to discuss this submission with ASIC and would be pleased to provide further information or data to assist ASIC in its deliberations.