

AFS Licensee: lease assets treatment

Reporting Update

15 January 2021, 21RU-004



ASIC proposes clarity and consistency of treatment of right-of-use assets for AFSL financial condition requirements

Comments submission date

AFS financial conditions – tangible vs intangible

Highlights

- Proposal: Right-of-use asset not an 'excluded asset'
- Net tangible assets considerations

Proposal: Right-of-use asset not an 'excluded asset'

ASIC has released Consultation Paper 336: *Financial requirements: Treatment of lease assets* (CP 336) to seek feedback on its proposal relating to the treatment of right-of-use assets for Australian financial services (AFS) licensees.

CP 336 proposes to amend the financial requirements for AFS licensees by allowing right-of-use assets arising from applying AASB 16 *Leases* to be included in the calculation of net tangible assets (NTA), adjusted surplus liquid funds and surplus liquid funds.

The deadline for submission of comments on CP 336 is 26 February 2021, with legislative instruments and guidance expected to be released at the end of April 2021.

Net tangible assets considerations

Why does an issue arise?

AFS licensees are subject to financial condition requirements. Such conditions could include an NTA requirement under relevant conditions or Class Orders. ASIC has previously communicated that the implementation of the new accounting standard, AASB 16 *Leases* may impact an entity's ability to meet its AFS financial condition requirement, as in ASIC's view, right-of-use assets are usually an intangible asset.

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.

The definition of 'excluded assets' includes intangible assets. 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 the lease liability recognised under AASB 16 in its adjusted liabilities. The asymmetrical treatment of right-of-use assets and lease liabilities may impact an entity's ability to meet its AFS financial requirement.

No-action position for any breaches pending outcome of this consultation

Temporary no-action position

Any breaches of financial condition requirements as required by the *Corporations Act 2001*, Regulatory Guide 166 *Licensing: Financial requirements*, and relevant Class Orders should be reported to ASIC in accordance with the relevant regulatory requirements.

As the financial condition requirements are on an 'at all time' basis, ASIC issued a temporary no-action position pending the outcome of this consultation on 7 July 2020 due to the concerns raised.

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 considered as an intangible asset under AASB 16.

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