



14 May 2024

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Sir / Madam

**Submission to the Parliamentary Joint Committee on Corporations and Financial Services  
inquiry into Wholesale investor and wholesale client tests.**

We make the following submissions in relation to the proposed changes to the wholesale client test as outlined in the Corporations Act 2001 (Cth) and its related regulations.

**Effectiveness of the Test**

We are not aware of links between a person having above average income and assets to also having above average financial acumen. There appears insufficient evidence to demonstrate that the current income or assets thresholds being used to classify investors as retail or wholesale are causing consumer harm or that higher levels would promote consumer protection.

Where there is discussion of ASIC limiting the kinds of managed investment schemes that may be provided to retail investors, is there a risk that this regulatory approach will push previously wholesale investors newly classified as retail investors to unregulated financial products (like cryptocurrency) perhaps for the opportunity of the risk/return previously available to them as wholesale clients? Will the approach promote consumer harm not consumer protection?

There are suggestions that wage growth in Australia over the last decades has been weak meaning \$250,000 pa, is still a small proportion of society (starting at 1% in 2001 and rising to 2% in 2023). Where first time home buyers reportedly now need nine times their salary (and not the three times required around the time the tests were set), we suggest that in practice, these threshold limits still apply to a very small proportion of society. That said, we are supportive of the suggested change that excludes the primary residence from the \$.2.5m net assets test.

We consider it would be useful to understand increases in general financial literacy since the tests were introduced in 2001. Compulsory Super has been around since 1992 forcing many Australians to become more financially literate than they previously were. This is perhaps demonstrated by the continuing growth of the Self-Managed Super sector with over 610,000 SMSFs holding \$876 billion in assets, with more than 1.1 million SMSF members, as at 30 June 2023.



### **Opt-In Nature of the Test**

There is no requirement for any investor to provide an accountant's certificate when they meet the income threshold of \$250,000 for two years and net asset test of \$2.5 million, they must elect to do so themselves.

Investors who elect to qualify as a wholesale client under income or assets test must find an accountant with the requisite qualifications, provide them with the necessary evidence of meeting the income or asset thresholds, likely pay for the certification to be provided and then refresh that certification every 2 years.

Any investor who wishes to invest as a retail investor in products only offered to retail clients, they may do so even where they meet these relevant thresholds. This is not the case with investors who apply for \$500,000 worth of interests in a managed investment scheme or, for example, hold their own AFSL or invest as part of a business (that is not a small business).

### **Sophisticated Investors s.761GA**

It appears that the aim of change is a belief that investors will be protected. There is, however, still the possibility for a person to be considered wholesale where an Australian Financial Services (AFS) licensee is satisfied on reasonable grounds that the investor has previous experience in using financial services and investing in financial products that allows the investor to assess the merits, value, risks and information about the product or service.

Accordingly, investors with very low balances may become "sophisticated" when reviewed by unscrupulous trustees.

The process is cumbersome and complex and lacks sufficient certainty for licensees in circumstances where an investor subsequently claims they did not actually understand the product.

### **Grandfathering**

There is a risk of substantial disruption to the financial services industry where the pool of investors who qualify as wholesale rapidly shrinks from 11% of the population to 1% of the population. If changes are to be made, effective grandfathering and transitional measures will be required, and we consider designing and administered grandfathering and transitional measures will be complex.

It will be necessary to grandfather some financial products which may have unintended consequences where investors who were once classified as wholesale become reluctant to redeem from a high-returning investment where they will only be able to reinvest in lower returning registered managed investment schemes.

In the absence of discernible failures, the current mechanism and associated thresholds have served the wholesale property market well thus far providing appropriate protection for wholesale investors from investing in unsuitable investments. The risk of increasing the thresholds and subsequently causing 'wholesale investors' to no longer qualify and the potential destabilisation this could cause in the financial system needs to be weighed against the real problem it solves and/or the improvement it creates.



## Conclusion

In conclusion, any changes to the threshold for the gross income and net asset tests will need to be carefully considered, particularly when the system does not seem to have failed wholesale investors thus far. No regulatory system will stop unscrupulous or illegal behaviour of individuals, and the current system already provides authority and powers to deal with this behaviour.

Yours faithfully,

A black rectangular box redacting the signature of Sarah Wiesener.

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**Sarah Wiesener**

Director, Legal, Risk & Compliance

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**David Lom**

Managing Director, Trustee Services