14 May 2024

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

Dear Committee Secretary

Submission to the inquiry into the *Corporations Act 2001* and related regulations on the wholesale investor test for offers of securities and the wholesale client test for financial products and services

The Australian Investment Council (the Council) welcomes the opportunity to provide this submission to the Joint Parliamentary Committee.

The Council is the peak body for private capital in Australia and has over 220 members who work to build strong businesses that support our communities, create new employment opportunities and grow our nation's economy. Members of the Council comprise the leading domestic and international private capital firms operating in Australia and span private equity, venture capital, private credit, family offices, superannuation, and sovereign wealth funds as well as leading financial, legal, and operational advisors.

The wholesale investor/client tests are relevant to the private capital industry because investors in this category are a critical source of capital for investment into start-ups and growth companies. This is particularly the case for investment into early-stage start-ups where the investment required is too small for institutional capital such as superannuation funds. As Australia's superannuation funds increasingly deploy capital into larger offshore capital markets, the reliance placed on wholesale investors such as high net-worth investors continues to increase. In 2023 Australian superannuation funds represented around 20 per cent of investors in private equity funds, down from just under 50 per cent in 2019[1].

The Council recognises the importance of the wholesale investor/client tests, particularly the income threshold and the sophisticated investor tests. We recognise that these tests seek to provide assurance that investors understand the risk associated with an investment class through a presumed link between financial resources and investor knowledge. We also recognise that it is prudent to review the framework from time to time to ensure that it remains fit for purpose.

That said, we are concerned that changes to the wholesale investor/client tests may have a significantly adverse effect on the availability of capital for start-ups and growth businesses.

[1] Australian_Private_Capital_Market_Overview.pdf (investmentcouncil.com.au)

Level 12, Aurora Place
88 Phillip Street
Sydney NSW 2000
+61 2 8243 7000
mail@aic.co
aic.co

If these businesses are not able to access equity investment, they either cease to be viable or move offshore in search of capital. These are perverse outcomes when considered against the backdrop of a broader public policy intent to retain talent, grow innovative businesses, and build a diversified and futureproofed Australian economy.

We understand this may be an unintended consequence of any desire to increase financial thresholds. It is highly relevant that the UK recently reversed increased thresholds precisely because of the detrimental impact to the availability of capital to start-ups.

We recognise that private capital funds are more complex than some other products. However, we are not aware of these complexities being the source of hardship for wholesale investors investing in private capital funds. Examples of complexity include: return risk from investing in unproven businesses at early stages in their lifecycle; the illiquid nature of the investments as they have a longer-term horizon than more liquid products such as listed equities; and the call-up nature of investing.

Given the severe impact on availability of capital to businesses that are additive to the Australian economy, and the lack of case studies of inadequate protection for wholesale investors in private capital funds, we would advocate for wholesale investor / client definitions to remain unchanged. As noted above, the UK provides a relevant reference point.

However, if after considering other investment categories, there is a case for change, we would strongly suggest looking at other jurisdictions. We have included an Appendix that summarises approaches taken in other jurisdictions and note the UK and European Economic Area's approach of building in additional tests that measure financial literacy, education and employment experience.

In making the case for change, it would be useful for the regulator to educate stakeholders about case studies where the underlying issues have not been subsequently addressed by regulatory reforms including the 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Importantly, any legislative change must be accompanied by grandfathering provisions for members to continue to sensibly manage current funds.

The following pages include contextual information as well as more detailed responses to the terms of reference which we hope will assist the Committee in its work.

Yours faithfully

[redacted]

Navleen Prasad
Chief Executive Officer

CONTEXT

Private capital investment

Private capital investment generally involves fund managers, such as venture capital (VC) and private equity (PE) firms, deploying capital raised from investors such as institutional investors, family offices and high net-worth investors. Capital is pooled into a fund and then deployed into businesses ('investee businesses') from start-ups through to larger growth businesses.

In Australia, private equity and venture capital funds managed over $65 billion in assets at June 2023[2]. This is effectively investment into more than 850 businesses, mainly start-ups and small and medium-sized businesses.

Private capital is a longer-term investment class, with investment periods lasting from three to 10 years. Investments are made into businesses with the goal of increasing their value over time. The fund manager provides financial and human capital, working with the businesses to help it mature and grow. Fund manager employees may also invest in the fund, providing alignment with the success of the investee business.

At the end of the funds' defined period, investors will receive a return on their investment and the private capital firm will receive a percentage profit on their work. In 2023, Australian private capital generated an internal rate of return (IRR) of 14.5 per cent. For wholesale investors investing in private capital funds, this is a superior rate of return compared with other investment classes such as listed equities. For example, over a three-year period Australian PEVC (private equity, venture capital) provides a pooled IRR of 27 per cent compared with 11 per cent for the ASX 300 and three per cent for the ASX Small Ords. This outperformance is consistent over five-year, ten-year and twenty-year time periods[3].

Types of private capital investment

There are different types of capital invested by private capital firms. These include:

- *Seed capital:* the first official capital raised to help a start-up finance its first steps which include initiatives such as market research and product development. It is generally provided by family, friends or university funds, or by angel investors who receive an equity stake in the business in return for their investment.

- *Series A funding:* raised to further the development of the business' product or service offerings. This funding traditionally comes from VC firms who will have undertaken a due diligence process to determine the risks of the investment and the company's potential market opportunities.

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[2]Australian Private Capital Market Overview: Preqin AIC Yearbook 2024
[3] Australian investment council Cambridge Associates Performance Update 2023 Q3

- *Series B funding:* used to take the business to the next level. It is deployed to grow the company so it can meet new levels of demand or open in new markets.

- *Series C and D funding:* larger capital amounts deployed when the business has already proven its potential to continue to drive more accelerated growth. These funding rounds are often used to support a company's valuation prior to an in initial public offering on the securities exchange.

Economic contribution made by private capital
Australia's private capital investment market has grown steadily and significantly over the past decade, and investment by private capital in Australia contributes to three per cent gross domestic product (GDP) and is responsible for more than 600,000 full-time jobs.

Australia is similar to other major economic centres in that private capital is increasingly being called on to meet areas of unmet need or fulfil Australia's economic potential, working alongside public capital. Beyond investing in national priorities, private capital can also boost the productivity and performance of home-grown businesses, cultivate jobs in high-value, high-paying industries, and create a more dynamic economy.

Private capital investment will be the backing required to future-proof the economy through modernisation of heritage industries, drive innovation and maturation of new industries and drive new, high-value jobs.

Private capital also builds wealth for investors, including Australians in retirement.

Private capital and the innovation eco-system
Innovation investment in Australia is largely driven by the willingness of investors such as VC funds to take risks and invest in new businesses that are creating markets and industries which may not even exist today. This type of investment is essential to diversifying and digitalising Australia's economy.

VC funds often fill what otherwise would be a gap in the business development lifecycle between seed funding/angel investors and the investment in a proven business by private equity, public markets and government.

This funding is accompanied by strategic and operational advice and guidance to the founders and management teams of early stage/fast growth businesses, known as portfolio companies. This model of working in partnership is often the element that can help these innovative businesses realise their ambitions in domestic and global markets.

Without a domestic VC funds ecosystem, Australia would not have homegrown technology success stories such as Afterpay, Airwallex, Canva, 10x Genomics, ZipMoney and Zoox.

TERMS OF REFERENCE

1. **Review of the current wholesale investor/client tests, including:**
    - **legal requirements,**
    - **identification of all contexts in which the tests are relevant,**
    - **the consequences of an investor/client meeting the relevant test, and**
    - **the application of the tests in practice.**

Australia's private capital funds generally raise capital from three sources: domestic institutions; foreign institutions; and high net-worth investors.

The provisions of chapters six and seven of the *Corporations Act 2001* provide the framework for investors to provide capital to private capital funds. This framework includes the wholesale client/investor tests which provide the thresholds and requirements for investing as a wholesale investor.

In line with global trends, high net-worth investors are increasingly a critical source of capital. In 2023, more than 10 per cent of investors in Australia private capital funds were high-net worth investors. Almost every private capital fund in Australia would be impacted by changes to the wholesale investor/client tests, with emerging and mid-sized funds most profoundly impacted by any change to the threshold that excludes significant numbers of individuals from investing.

Within the wholesale test, the individual wealth test and the sophisticated investor test are the primary tools used by the private capital industry[4]. This is because funds such as Series B investments, are often assessed as being a higher risk investment option, as the businesses that are the subject of investment are unproven as they are in a developmental stage.

2. **The historical development in Australia of the wholesale investor/client tests and consideration of any previous reviews and inquiries**

The Council notes there have been a number of policy discussions and inquiries over the years, and that many of these are canvassed in the consultation conducted by the Australian Treasury: 'Review of the regulatory framework for managed investment schemes' (Treasury Consultation), Chapter 1 of which included the wholesale client/investor tests threshold.

[4] This test asks an Australian Financial Services (AFS) licensee to assess that the investor has sufficient previous experience in using financial services and investing in financial products that allows the client to assess the merits, value, risks and information about the product or service.

3. Comparison with comparable overseas jurisdictions, including any proposed or recent changes to tests used in similar contexts

Please refer to the Appendix which includes a table that outlines the terminology and provisions of the related legislation in Europe, the United Kingdom, the United States, Singapore and Hong Kong, as examples of jurisdictions with comparable legislation. In reviewing these comparative jurisdictions, key points to note are:

- In all of the other jurisdictions there is no pre-determined or automatic increases in financial/qualifying thresholds based on indexation or other methodology
- Any proposed changes to the financial/qualifying thresholds across jurisdictions are carefully considered and typically subject to public consultation prior to implementation.

United Kingdom (UK)

It is notable that the UK recently reversed changes it had implemented in January 2024 to increase the thresholds of its High Net Worth and Sophisticated investors definitions.

Test	**Threshold**		
	Prior to changes	***2023 change***	***2024 reset***
Income	£100,000	£170,000	£100,000
Net assets (excluding permanent residence)	£250,000	£430,000	£250,000

The Council notes that the thresholds for the net assets tests are significantly lower than the current threshold of $2.5 million in Australia.

In relation to the reversal of the threshold increase, the British Venture Capital Association (BVCA) noted: *'the Government has listened to industry concerns about the impact of the changes on start-ups, early-stage companies and venture capital funds, expressed by the BVCA, the Enterprise Investment Scheme Association (EISA) and the UK Business Angels Association (UKBAA)'.*[5]

Elective Professional Client mechanisms

In addition to the financial threshold tests, the UK also has an Elective Professional Client test that distinguishes an individual from a retail investor/client. To achieve Elective Professional Client status, an individual must meet a qualitative test of their knowledge and a quantitative test.

[5] BVCA on X: "We're pleased to see the Government implement industry recommendations to reverse changes in the Financial Promotion Order exemptions for high net worth individuals and for sophisticated investors. The Government has listened to industry concerns about the impact of the changes..." / X (twitter.com)

The qualitative test requires assessment by the investment firm of the individual's expertise, experience and knowledge to give reasonable assurance, in light of the nature of the transactions and services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The quantitative test requires that an investor meets two of three options:

- that they have carried out transactions of a significant size on the relevant market
- The individual has a financial instrument portfolio over EUR 500,000[6]
- The individual works, or has worked, in the financial sectors for at least one year in a professional position, which requires knowledge of the relevant investment.

European Economic Area (EEA)
In the EEA, similar tests are already in place, and consideration is being given to expand the ability for individual clients to be 'opted up' to Professional Client status (equivalent to the UK's Elective Professional Client status). The proposal expands the final two criteria to include (broadly) work experience in 'another relevant sector' or previous experience buying or selling related financial instruments and secondly, the person has proof of recognised education or training that evidences an individual's ability to evaluate risks.

United States of America (USA)
The USA has similar requirements to those currently in place in Australia, including comparable thresholds to for individual incomes tests. The net assets test is markedly lower at US$1 million however, this is excluding a primary residence.

In addition to the assets tests, the USA also specifically provides for investors who are employees within the fund.

Singapore and Hong Kong
Have requirements and thresholds very similar to those in place in Australia.

4. **Consideration of any proposals to change the wholesale investor/client tests, including:**
    - **any evidence to support such proposals**
    - **the possible consequences (both intended and unintended) of any change to the wholesale investor/client tests**
    - **the costs and benefits of any change**
    - **the impact of any change on different cohorts of investor/client and other stakeholders.**

Any increase to the thresholds which apply to the wholesale investor/client tests will:

- materially reduce the amount of capital flowing into wholesale private capital funds, with a disproportionately high impact on emerging and mid-sized funds;

[6] The UK legislation derives from the European Act, and this threshold has not yet been updated to pounds sterling.

- substantially constrain the availability of capital for early-stage start-up and growth businesses; and
- significantly reduce the range of investment opportunities available to those investors who cease to be classified as wholesale investors/clients.

Impact on funds
Depending on the extent of increases to the wholesale investor / client tests, the impact on VC and PR funds' ability to raise capital and invest would be profound.

A preliminary canvassing of the potential impact of an indexed change to the current test thresholds on a sample of Council members indicates between ~10 per cent to ~50 per cent reduction in investors, particularly at the start-up and early-stage levels of the investment ecosystem.

For VC funds in particular, large portions of their investors would be unable to continue to invest, to the point of fund closure. Even the largest venture capital funds have over 200 individual investors, indicating the relatively small size of their individual investments and the impact of raising the thresholds.

As an example, one venture capital member estimated that nearly half of their investor base would become ineligible if the threshold were raised to $4.5 million, as suggested in some media reports. Another member noted that the change would eradicate nearly all of their investor base, and half of their committed capital, effectively making the fund itself defunct.

PE funds that invest in growth businesses economy-wide would also be profoundly impacted. One fund estimated they could lose nearly a billion dollars of funding if the thresholds were raised in line with CPI.

Impact on businesses, particularly start-ups and growth businesses
It follows that if there is a significant shrinkage in the amount of capital invested with VC and PE funds, there will be less capital available for investment in businesses, particularly start-ups and growth businesses.

This would have an economy-wide impact, including technology, consumer businesses, healthcare, and transportation.

It is highly unlikely that Australian superannuation funds could step in to meet the shortfall. In 2023, Australian superannuation funds represented around 20 per cent of investors in VC and PE funds, down from just under 50 per cent in 2019[7]. In an increasingly consolidated industry, superannuation funds must make larger allocations to investment funds, generally ruling out allocations to emerging and mid-sized funds.

[7] Australian_Private_Capital_Market_Overview.pdf (investmentcouncil.com.au)

These emerging and mid-sized funds play an important role in supporting the growth of smaller and medium-sized businesses. Businesses such as Afterpay, Canva and Employment Hero would not have grown to the size they are today without early-stage equity funding. The equity investment provided by PE and VC funds also enable medium-sized businesses to secure debt funding which is a catalyst for expansion and growth.

Impact on innovation and development of new industries

Many of the businesses and industries of the future are currently in start-up phase. A startup company has a unique and challenging lifecycle, from the point of the initial capital contribution, until the business begins generating revenue. During this window, it can be difficult for firms to raise additional financing as the business model has not yet been proven, but significant expenses such as wages, premises and R&D are incurred.

This period of time can be referred to as 'death valley', as without investment, these businesses – even the most promising – can wither on the vine. It is at this juncture that VC funds provide an equity injection to enable the business model/product to be proven. Traditional bank loans are not an option for businesses at this stage: the inherent risk is often unacceptable to a bank given there are limited assets with which to balance the risk.

Impact on investors

High net-worth investors themselves would be adversely impacted if they are shut out from investing in VC and PE funds. PE and VC has consistently surpassed public markets in terms of annualised net returns. Over three, five, 10, and 20 years, the PEVC Index has achieved annualised returns at least double that of the Australian listed market[8].

Radical changes to the thresholds in the tests would make it difficult for certain populations, such as younger investors and women, to access such superior returns.

Retail PE and VC offerings are relatively rare in Australia. Individuals who were once wholesale investors but recategorised as retail would have very little choice when investing in PE and VC. For funds that have a retail offering, investment fees are generally higher because of the more extensive compliance requirements.

While an increase to the thresholds of the wholesale client/investor test in line with consumer price indexation may seem an appropriate measure given the tests have not been updated since 2002, members have indicated to us that such an increase will significantly impact their ability to raise capital.

The reduction in capital to these funds will impact the flow of capital into technologies and businesses that are not yet large enough to attract institutional capital. It will inhibit the growth of innovative product and service delivery businesses, and of business development in new sectors, like emerging technologies, for example.

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8 Cambridge Associates. As at 30 September 2023, pooled IRR, returns in local currency

5. Any potential adjustments to proposals to change the wholesale investor/client tests to address the concerns of stakeholders

We recognise that private capital funds are more complex than some other products. However we are not aware of these complexities being the source of hardship for wholesale investors investing in private capital funds.

Examples of complexity include: return risk from investing in unproven businesses at early stages in their lifecycle; the illiquid nature of the investments as they have a longer-term horizon than more liquid products such as listed equities; and the call-up nature of investing.

Unlike some other investment products, there is no contagion risk from the failure of an individual investee business. Each investment in a private capital fund stands, such that if one individual company fails, it is not possible to draw on resources from other businesses held by the same fund. Investing in a number of different businesses is a fundamental principle within private capital investment strategies and supports the security of investments in the private capital market.

The other prominent investor risk is the illiquid nature of the investment – it is critical investors understand that their capital is committed for a defined, long-term period and is not available to be drawn upon prior to fund closure. It is these risks, rather than the complexity of the asset class, that investors need to understand prior to investment.

To help manage the risks arising from investment in more complex products, the Council suggests Australia consider approaches to extend test criteria (particularly in the areas of education and skills), separate to the financial thresholds, as effective ways of ensuring investors are not taking financial risks they do not understand.

As per the requirements in the UK, the Council recommends that individuals could possess two of three criteria in order to meet an appropriate threshold.

The Council notes it is necessary to ensure that the criteria for determining whether a client or customer possesses the necessary experience, knowledge and expertise to be treated as a professional client are fit for purpose. It is the Council's view that criteria should therefore also take into account experience gathered in the financial services sector or in another relevant sector; and certified training and education that the client has completed.

Self-managed Superannuation Funds
There is a need for clarity when it comes to the position of self-managed superannuation funds (SMSF), being a substantial part of the investor universe. The Council recommends that section 761G(6) be amended to definitively provide that:

- if an 'individual' wholesale client is a trustee of an SMSF, the SMSF will be deemed to be a wholesale client (regardless of the assets or income of the SMSF); or
- where the SMSF has a corporate trustee, if at least half of the (individual) directors of the trustee are wholesale clients, then the SMSF will be deemed to be a wholesale client (again, regardless of the assets or income of the SMSF).

If an individual otherwise qualifies as a wholesale client in their own right, it should follow that their SMSF is also a wholesale client, in particular, given it is subject to the same directing mind. The position under current law is ambiguous.

6. The process to be adopted prior to settling any change to the wholesale investor/client tests, including any additional Government consultation process necessary to ensure full and proper consultation prior to implementing any change

As noted above, any increase to the wholesale investor/client tests will impact the amount of capital flowing into the private capital industry, with the potential for this impact to be profound.

It is for this reason, that we highlight the importance of further analysis and consultation. At a minimum, we recommend:

- Further consultation by Treasury on the impact of any change on the flow of capital to start-ups, growth businesses and areas of national priority;
- The Productivity Commission analyse the impact of any change on productivity-accretive investment; and
- At the point of legislation and regulation being drafted, a thorough Regulation Impact Statement process be conducted.

Importantly, any legislative change must be accompanied by grandfathering provisions for members to continue to sensibly manage current funds.

CATEGORISATION OF INDIVIDUALS OTHER THAN AS 'RETAIL' CLIENTS/ INVESTORS:
High-Level Summary

This summary focuses on (a) the most common methods by which an individual can be categorised other than as a 'retail' client or 'retail' investor, and (b) the high-level consequences of categorising an individual other than as a 'retail' client or a 'retail' investor, in each case in the context of typical (potential) private fund investments.

For private fund managers, such categorisation is broadly relevant for two reasons:

1. To determine whether a high-net worth individual may be offered an interest in that manager's private fund in a similar way to institutional investors; and
2. To determine whether that manager's executives may participate in carried interest and executive co-investment programmes related to the relevant private fund.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes
European Economic Area	Concept is '*Professional Client*' The general rule is that a 'Professional Client' is a client who possesses the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that they incur. Generally, typical institutional investors will meet the criteria for categorisation as a 'Professional Client'. For an individual to be classified as a 'Professional Client', that individual must be able to meet the criteria to be opted-up to Professional Client status (see below).	Generally: • Private funds may be marketed to Professional Clients (subject to satisfaction of other requirements) • Where an EEA jurisdiction permits marketing of a private fund to non-Professional Clients, more	• The financial/qualifying thresholds are static, unless the subject of detailed review and consultation. • Currently, proposals are being considered (from the Committee on Economic and Monetary Affairs) to expand the criteria to opt-up an individual to Professional Client status (i.e., to make it easier for an individual to be opted-up to Professional Client status). The proposals are based on the concerns of industry that currently it is too difficult to opt-up High Net Worth (HNW) individuals to Professional Client status. Broadly, the criteria for opting-up should be "appropriate and fit for purpose" (Committee on Economic and Monetary Affairs Report A9-0162/2024).

[9] The details of how an individual may be categorised other than as a 'retail' client/ investor are not set out herein. The purpose of this column is to give a broad overview of the monetary thresholds relevant to such categorisation.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes
		extensive disclosure obligations (PRIIPS) apply	
	The [ ] and **bold/underlined text** set out in the definition of 'Professional Client' below sets out language currently that is being considered for amendment (in order to make the criteria for opting an individual up to Professional Client status more flexible). Individual who is a *Professional Client* (through the opt-up process): • Meets the qualitative test – an adequate assessment by the investment firm of the individual's expertise, experience and knowledge individual gives reasonable assurance, in light of the nature of the transactions and services envisaged, that the client is capable of making investment decision and understanding the risks involved • Meets the quantitative test (at least two of the following criteria is met): o Has carried out transactions, of significant size, in the relevant market [at an average frequency of 10 per quarter over the previous four quarters] / [**on a regular basis**][10] o Has a financial instrument portfolio (including cash deposits) exceeding [EUR500,000] / [**EUR250,000 on average during the last 3 years**]		• As a complement to the proposed changes to the criteria to opt-up an individual to Professional Client status, there is a proposed increased European focus on the importance of financial literacy for retail clients. "Increasing the level of financial literacy of retail clients and customers, and of prospective retail clients and potential customers, is key to providing those retail clients and customers with a better understanding of how to invest responsibly, to adequately balance the risks and benefits involved with investing. Member States should therefore promote formal and informal learning measures that support the financial literacy of retail clients and customers, and of prospective retail clients and potential customers in relation to responsible investing. Investing responsibly refers to retail investors' ability to make informed investment decisions in line with their personal and financial objectives, provided that they are aware of the range of available investment products and services, their key features, and the risks and benefits involved with investing, and provided that they understand the investment advice they receive and are able to react to it appropriately". (Committee on Economic and Monetary Affairs Report A9-0162/2024).

[10] The proposal is that ESMA would then develop technical standards to determine the frequency and size of transactions that need to be carried out for relevant market categories.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes
	○ Works, or has worked, in the financial sector [**<u>or in another relevant sector in relation to the investment decision or has undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments</u>**] for at least one year in a professional position, which requires knowledge of the investment contemplated ○ **<u>Has provided the investment firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and his/her ability to evaluate adequately the risks</u>**[11]		
United Kingdom	Concepts are '*High Net-Worth Investor*', '*Self-Certified Sophisticated Investor*', '*Certified Sophisticated Investor*' and '*Elective Professional Client*'[12] Individual who constitutes a *High Net-Worth Investor*: • Income of at least £100,000 (was increased to £170,000 in 2023 then re-set to £100,000 in 2024) in the last financial year • Net assets of at least £250,000 (was increased to £430,000 in 2023 and then re-set to £250,000 in 2024) throughout the last financial year (excluding permanent residence)	Generally: • Private funds may be marketed to High Net-Worth Investors, Self-Certified Sophisticated Investors, Certified Sophisticated Investors and Elective Professional	• In 2023 changes were made, *inter alia*, to increase the financial/qualifying thresholds. Following adverse feedback, in March 2024 these changes were reversed and the previous financial/ qualifying thresholds reinstated • Prior to 2023/24 changes, the last set of substantive changes were in 2005

[11] The proposal is that this criterion must not be combined exclusively with the criterion re the size of the client's financial portfolio.
[12] Note that for the classification tests described herein, technically there are different routes for classification depending on whether the relevant investment firm is authorised by the UK FCA or not authorised.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes
	Individual who constitutes a *Self-Certified Sophisticated Investor*: • Must have been a director of a company turning over at least £1 million (was increased to £1.6 million in 2023 and then re-set to £1 million in 2024) within the last two years • Must have worked in the last two years in a professional capacity in the private equity sector • Must have made two or more investments in an unlisted company in the last two years (this criteria was removed in 2023 and reinstated in 2024) Individual who constitutes a *Certified Sophisticated Investor*: • Holds a certificate signed by an FCA authorised person to the effect that he or she is sufficiently knowledgeable to understand the risks associated with the relevant investment Individual who is an *Elective Professional Client* (through the opt-up process):[13] • Meets the qualitative test – an adequate assessment by the investment firm of the individual's expertise, experience and knowledge individual gives reasonable assurance, in light of the nature of the transactions and services envisaged, that the client is capable of making investment decision and understanding the risks involved	Clients (subject to satisfaction of other requirements) • Where the individual being marketed to is not a Professional Client (i.e., the individual has not been opted-up to Professional Client status), more extensive disclosure obligations apply (primarily, a Key Information Document under PRIIPS must be prepared and provided in advance of investment)	

[13] Note that this concept mirrors the current EEA concept of opting-up to Professional Client status. To the extent there is a change to the EEA approach, consideration likely would be given to making equivalent changes to the UK approach.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes

	• Meets the quantitative test (at least two of the three criteria is met):
	  ○ Has carried out transactions, of significant size, in the relevant market at an average frequency of 10 per quarter over the previous four quarters
	  ○ Has a financial instrument portfolio (including cash deposits) exceeding EUR500,000
	  ○ Works, or has worked, in the financial sectors for at least one year in a professional position, which requires knowledge of the investment contemplated		

United States (Federal)	Concept is '*Accredited Investor*' Individual who constitutes an *Accredited Investor* (relevant to marketing a private fund pursuant to Reg D and Reg S of the Securities Act, i.e., no registration with the SEC is required under the Securities Act): • Net worth over $1 million, excluding primary residence (individually or with spouse or partner), or • Income over $200,000 (individually) or $300,000 (with spouse or partner) in each of the prior two years, and reasonably expects the same for the current year, or • For an investment in a private fund, the individual is a '*knowledgeable employee*' of the fund (any "executive officer" of the fund or any	Generally, a private fund may be marketed to an unlimited number of Accredited Investors without triggering a requirement to register with the SEC under the US Securities Act[14]	• Accredited Investor financial/qualifying thresholds are static. Any change would require a new SEC rule

[14] Note that marketing of a private fund to US investors also necessitates consideration of other regulatory matters, including Investment Company Act registration.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes
	"affiliated management person" of the fund, and certain "participating employees" of the fund or any affiliated management person)		
Singapore	Concept is '*Accredited Investor*' Accredited Investors are investors who meet prescribed financial thresholds and who have opted in (i.e. consented) to being treated as Accredited Investors after being provided with the requisite disclosures. Individual who constitutes an Accredited Investor must satisfy one of the following criteria under the Securities and Futures Act 2001 ("**SFA**") : • Net personal assets exceeding in value SGD 2 million (or its equivalent in a foreign currency), of which the net value of an individual's primary residence is capped at SGD 1 million; • Net financial assets exceeding in value SGD 1 million (or its equivalent in a foreign currency); or • Income in the preceding 12 months not less than SGD 300,000 (or its equivalent in a foreign currency).	The offering of interests in private funds is likely to constitute an offering of units in a collective investment scheme under the SFA. Private funds marketed to Accredited Investors are exempt from prospectus and related offering requirements under the SFA (subject to satisfaction of other requirements).	Accredited Investor financial/qualifying thresholds are static. Any change would require amendments to the SFA and its subsidiary legislation.
Hong Kong	Concepts are "*Professional Investor*" and "*Individual Professional Investor*" The term "*Professional Investor*" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (**SFO**). It includes specific entities	Generally, private funds may be marketed to Professional Investors	Professional Investor financial/qualifying thresholds are static. Any change would require amendments to the SFO and its subsidiary legislation.

Jurisdiction	Categorisation of an Individual other than as a 'Retail' Client/ Investor[9]	Consequences of Categorisation	Approach to Changes
	set out in paragraphs (a) to (i) of the definition (e.g. banks and insurance companies) and persons belonging to a class which is prescribed under the Securities and Futures (Professional Investor) Rules (**Professional Investor Rules**). According to section 5 of the Professional Investor Rules, an individual is a "*Professional Investor*" if they have a portfolio of not less than HK$ 8 million, taking into account any one or more of the following: • a portfolio on the individual's own account; • a portfolio on a joint account with the individual's associate; • the individual's share of a portfolio on a joint account with one or more persons other than the individual's associate; • a portfolio of a corporation which, at the relevant date, has as its principal business the holding of investments and is wholly owned by the individual. Individuals who meet the criteria under section 5 of the Professional Investor Rules are referred to by the Securities and Futures Commission (**SFC**) as "*Individual Professional Investors*", a concept introduced by the SFC Code of Conduct.	without those funds being required to be authorised by the SFO. Private funds marketed to Professional Investors are exempt from prospectus and related offering requirements under the SFO and the Companies (Winding Up and Miscellaneous Provisions) Ordinance respectively (subject to satisfaction of other requirements).	