



29 September 2023

By email: misreview@treasury.gov.au

Director
Investment Funds Unit
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

REVIEW OF THE REGULATORY FRAMEWORK FOR MANAGED INVESTMENT SCHEMES

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

The history of the stockbroking profession in Australia can be found [here](#).

SIAA members represent the full range of advice providers from online providers providing execution-only services to full-service stockbroking. These services are provided to both retail and wholesale clients.

SIAA welcomes the opportunity to provide feedback on Treasury's review of the regulatory framework for managed investment schemes (Consultation Paper). We are limiting our feedback to questions concerning the wholesale client thresholds.

SIAA does not support the changes to the wholesale client thresholds proposed in questions 1 to 3 of the Consultation Paper.

The regulatory distinction between retail and wholesale clients is applicable to a range of circumstances in the financial services sector and has much broader implications than just for managed investment schemes.

Any review of the wholesale client definition should be subject to a standalone consultation to enable participation by all relevant industry stakeholders to ensure it takes into account all possible consequential impacts.

Executive summary

- There is no evidence that there is a market failure in relation to financial advice servicing the higher end of the income and asset distribution, particularly when such individuals have

taken deliberate steps to opt out of the retail investor regime.

- Without evidence of harm or a market failure, SIAA does not consider that there are sufficient grounds to introduce law reform, particularly when done so in relation only to managed investment schemes, when any reform in this area has much broader implications across financial services.
- Given the significant implications for stockbrokers, investment advisers and their clients, it is important that any change to the wholesale investor test be supported by evidence of harm. It will be important to seek and consider the views of wholesale clients who would be impacted by any change.

Overview

Calls for change to the wholesale investor test have increased in frequency over the past years. The argument for change is based primarily on the fact that the monetary threshold tests have not been amended since they were introduced in 2001 and the impact of inflation, alongside the sustained boom in Australian home values in parts of the country, has seen the number of investors who qualify as wholesale increase. We note that this, as well as the time that has passed since their introduction, was the reason given for the review of the wholesale client thresholds at the Treasury roundtables we attended earlier in the month.

There is currently recognition that well-intentioned but ill-founded policy and regulation has had a deleterious impact on access to and affordability of financial advice. The unintended negative consequences of those policy approaches are now the subject of review and reform. The Quality of Advice Review found that the regulatory framework for financial advice is an impediment to consumers being able to access affordable, high-quality advice and preventing consumer harm. SIAA is pleased that the government has accepted a large number of the recommendations of the Quality of Advice Review Final Report and we are working closely with Treasury to develop a legislative response that will implement them. We also welcome the recent changes to the Corporations Act that enable experienced advisers with an unblemished record to remain in the profession and are hopeful for the development of a more flexible new entrant pathway.

It is important therefore that any review of the wholesale investor test take into account the need to not repeat regulation that has a deleterious impact on access to and affordability of financial advice. We consider that, in light of the significant implications for stockbrokers, investment advisers and their clients should any change to the wholesale investor test be introduced, it is important that any call for change be supported by evidence of harm. We also consider that it will be important to seek the voice of the client and consider the views of wholesale clients who would be impacted by any change, to ensure that there is not a repetition of well-intentioned regulation that disadvantages consumers rather than benefits them.

Last year we issued a discussion paper examining the question of whether the wholesale investor test should change. Our paper (the link to which is [here](#)) addressed the issues of:

- whether there is evidence of harm to support calls for change

- how the test is applied in practice
- existing regulatory protections for wholesale investors and
- the consequences for advisers and investors of a change in the test

and concluded that calls for change to the wholesale investor test have not yet evidenced a market failure that would support calls for change. Our views on this have not changed since the discussion paper was released.

Is there evidence of harm?

SIAA has yet to be presented with evidence that there is a market failure in relation to financial advice servicing the higher end of the income and asset distribution, particularly when such individuals have taken deliberate steps to opt out of the retail investor regime. Without evidence of harm or a market failure, SIAA does not consider that there are sufficient grounds to introduce law reform. We note that was the view of most of the stakeholders who attended the Treasury roundtable on 14 September 2023 as well.

Many of the managed investment schemes referred to in the Consultation Paper were sold to both wholesale and retail clients and pre-date the introduction of the DDO regime¹. Client losses incurred in those schemes were not due to the wholesale investor test thresholds, but to the features and circumstances of the schemes themselves and the manner in which they were marketed. In the matter of the Trio Capital collapse, investors were the victims of fraud. We don't consider that failures of these schemes should be used as a reason to change the wholesale client test either for managed investment schemes in particular, or more generally. The wholesale client test has application across financial services more broadly and is not confined to managed investment schemes.

Reference has also been made to Mayfair 101 as evidence of the shortcomings of the wholesale investor test². What was made clear in that case³ was that 'red flags' regarding the operation of the Mayfair group of companies had been raised well before ASIC brought proceedings. Concerns had been raised about the nature of Mayfair's offer and its mass-marketing to a broad population rather than with the wholesale investor test. ASIC's actions against Mayfair were based on evidence of false, misleading and deceptive conduct. Moreover, it was made clear that the false, misleading and deceptive provisions of the Corporations Act apply irrespective of whether a product is offered to retail or wholesale investors. As ASIC Deputy Chair, Karen Chester stated "ASIC's success in court.....demonstrates firms need to do the right thing by their investors, even when they are

¹ Timbercorp Securities Limited, Great Southern Limited, Wilmott forests Group, Sterling Income Trust and Trio Capital.

² The Mayfair companies promoted debenture products via their websites and online search platform advertisements to wholesale investors by stating that they were comparable to, and of similar risk profile to, bank term deposits. ASIC took action against the Mayfair companies and the court held the statements made in the advertisements by the Mayfair companies to be false, misleading or deceptive.

³ *Australian Securities and Investments Commission V Mayfair Wealth Partners Pty Limited* (No 2) [2021] FCA, 247.

wholesale investors.”⁴

Arguments in favour of change need to consider the regulatory context, how the wholesale investor test is applied in practice and the impact that change would have on investors. It is also important to consider the impact that DDO has had on the financial services industry. Any changes would have wide-ranging consequences and involve important trade-offs. These are important considerations when considering whether a policy change is justified.

The regulatory context

As we pointed out in the Treasury roundtable on 14 September 2023, the provision of wholesale advice is not a regulatory ‘free for all’.

Wholesale investors have protections under general law, the Market Integrity Rules and the Corporations Act, specifically:

- those arising from section 912A of the Corporations Act that, amongst other things, require financial services licensees to provide financial services ‘efficiently, honestly and fairly,’ manage conflicts of interest, comply with financial services laws, ensure their representatives do so as well and are adequately trained and competent
- the consumer protection provisions of the Corporations Act including those dealing with misleading and deceptive conduct, unconscionable conduct, representations and warranties, and
- a fiduciary duty to act in the client’s best interests.

Wholesale investors can continue to receive general advice and execution-only services and ask for personal advice under contract from their adviser.

Complaints

Questions have arisen during our regular stakeholder engagement with AFCA about how wholesale clients are dealt with by our members. In other words, how does a licensee deal with a complaint brought by a wholesale client when they are not required under the Corporations Act to have an internal dispute resolution scheme that includes membership of AFCA?

Our members have reported (unsurprisingly) that they treat complaints from wholesale clients the same as they do retail clients. This means that in the first instance they consider the client complaint as part of their internal dispute resolution process. If the client lodges a complaint with AFCA (as some wholesale clients do) the firm can then argue that the client is a wholesale client.

Our members have pointed out that complaints do not ‘magically disappear’ just because they are made by wholesale clients. All complaints have to be dealt with by the licensee in accordance with their prescribed regulatory obligations.

As Treasury is aware, AFCA continues to accept complaints from wholesale investors, even though the AFCA scheme was established to deal with complaints from retail clients. Notwithstanding that

⁴ ASIC media release 21-055MR ‘ASIC succeeds in Court action against Mayfair 101 for misleading and deceptive advertising’, 23 March 2021.

the external dispute resolution scheme was never intended for wholesale client complaints, we note that complaints against stockbrokers are low⁵. This suggests not only sound internal dispute resolution processes, but also low instances of client disaffection. This supports our contention that wholesale client views need to be sought as part of the consultation process. We stress that such research needs to cover wholesale clients who have never lodged a complaint (the majority) rather than focus on the few that have.

Managed investment schemes that fail

We note that failures of managed investment schemes have in the past caused considerable losses to investors, both retail and wholesale. To the extent that investors losses are caused by the failure of a scheme, it is the scheme operators that should be responsible for compensating investors for loss. It is important that these losses are not imposed on other industry subsectors such as financial advice. Imposing the compensation of investors who have suffered losses on other subsectors would create the moral hazard of providing those responsible for managed investment schemes with the knowledge that other parties would bear the economic consequences of consumer exposure to the risks attached to their products, which risks may be insufficiently disclosed or incorrectly marketed.

To use an example, it would be considered a moral hazard if car dealerships were held responsible for faults in motor vehicles that pose risk and danger to drivers, rather than the car manufacturers being held responsible.

How the wholesale investor test is applied in practice

There is an assumption in much of the commentary that a client can be treated as a wholesale client without either their knowledge or requiring their consent or by persuading them to become a wholesale investor by virtue of a 'push' from an adviser. This is not how the tests are applied in practice.

The asset and income test, or 'high-net-worth' test

The test that is most frequently applied to categorise a client as wholesale is the 'high-net-worth' test that is based on the asset or income threshold. Investors do not automatically become wholesale clients by virtue of their wealth or income; they must actively request this classification by obtaining a certificate from an accountant which must be renewed every two years.

Unless they choose to become a high-net-worth investor and keep their certification up to date, investors who meet the income or asset threshold are subject to the same restrictions and protections as any other retail investor.

High-net-worth investors therefore take deliberate steps to opt out of the retail investor regime and consciously sign away protections applied to retail investors by seeking the wholesale certification. Importantly, they must obtain a certificate from a qualified accountant who is required to certify that the investor satisfies either or both of the two limbs of the wealth test. Qualified accountants

⁵ For the financial year ended 30 June 2023 AFCA received 313 complaints against stockbrokers. For the same period AFCA received a record total of 97,000 complaints.

are required to be members of recognised professional accounting bodies.

As professionals, they are required to exercise their professional judgement and retain evidence in support of their certification.

The high-net-worth accountant's certificate has to be renewed every two years – it is not a 'set and forget' process. If the certificate expires and is not replaced, the client is no longer a wholesale client under the relevant section of the Corporations Act.

Such a test is easy to apply and transparent to clients. Importantly, it is objective and does not allow a client to 'self-certify' their assets or income. Both full-service and online brokers (that offer a high-volume, no advice service) rely on this test. This test is also relied upon for IPOs.

Our members consider that it is important that the accountant's certificate is provided by an accountant who is independent of the financial services licensee.

We note that the Financial Services Council in its *White Paper on Financial Advice*, issued in October 2021, advocated for the government to undertake a review, following the educational standards transition period in 2026, whether an objective threshold was necessary or should be replaced by a provision allowing financial advisers to use their professional judgement to determine who is a wholesale client. We do not support reform that would eliminate an objective test. An objective test is important for our members to achieve compliance certainty as the penalties for non-compliance are high. This is equally the case whether the licensee is providing advice to the client or not. Importantly, an objective test is necessary for online brokers as they do not provide personal advice to their clients and are not in the position to exercise professional judgement to determine whether the client is a wholesale investor on subjective grounds.

Other wholesale investor tests

Some members also apply the \$500,000 product test. Again, their view is that it works well and is a simple 'bright line' test. The client either has that money to invest or they do not.

The 'professional investor' test is often relied upon by institutional stockbrokers.

The 'sophisticated investor' test is subjective and not many firms rely solely on it for this reason.

How clients are categorised

In developing our paper, and in subsequent discussions with our members, we discovered that in practice, licensees providing advice in our industry take a nuanced approach to categorising clients as wholesale. They rely on the asset or income threshold test as an objective measure while also taking into account the sophistication and financial knowledge of the client.

Licensees understand that a client's asset level is not always a reliable indicator of financial knowledge or sophistication. A client who is able to satisfy the asset threshold can be certified as a wholesale client, but this is often just the start of a journey, with the licensee going beyond the Corporations Act definition.

Some licensees have a matrix test that is used to evaluate whether a client who satisfies the asset or income threshold should be treated as wholesale once their investment experience and knowledge is taken into account. Another approach that is taken is to have a sophisticated investor panel that solicits details of the investor's experience, which includes years of investing, qualifications and occupation and assesses whether they are to be categorised as wholesale. One example of an investor with a high level of financial literacy would be a director of a public company, given that they have a duty to be able to review and understand financial statements.

Licensees in our industry have in many instances developed robust processes for onboarding wholesale clients that ensure they are aware of the consequences of no longer being categorised as retail, with clients required to sign and return an acknowledgement letter. Clients are advised as part of this process that they can 'opt-in' to retail if they decide they no longer want to be classified as wholesale.

Importantly, under these processes, an adviser cannot simply categorise a client as wholesale — the application must be put before compliance personnel and a control process is applied. The licensee adds the client as a wholesale investor and the adviser cannot interfere in that process. Any queries are referred to compliance.

These processes form part of a licensee's overall compliance and risk management framework and ensure that decisions about wholesale clients are made by the licensee, not the adviser, and there is appropriate supervision and monitoring of the client's account and the risks involved.

Some of our members who offer an online service and who rely on the high-net-worth test also require their wholesale clients to sign a form acknowledging that they have been categorised as a wholesale client and the consequences of that decision.

Impact of any change on investors

According to the *ASX Investor Study 2023*, 51% of Australian adults, or 10.2 million people, hold investments outside their primary residence and superannuation. Of these, 7.7 million people hold investments through a stock exchange. An estimated 1.2 million investors have started investing since 2020.

It is important to note that calls for change to the wholesale investor tests and asset thresholds are not coming from investors. Evidence that licensees are 'pushing' clients into becoming wholesale or systematically gaming the system has not been put forward. Opinion pieces that call for change say much about the fact that the thresholds have not changed since 2001, but provide no evidence of harm other than references to the failed management investment schemes noted earlier where the structure of the scheme was the problem or Mayfair, which resulted from misleading and deceptive conduct.

We consider that clients would need to be surveyed to obtain their perspective on changes to the test. This is because any change to the wholesale client monetary thresholds would have a significant impact on clients, if the consequence of the change was that they would no longer be classified as wholesale. Such a change could disadvantage a significant cohort of Australian investors who have not been consulted on their views of whether such a change is welcomed by them.

In the wholesale advice sector, the relationship between adviser and client is often closely fostered by the adviser and is based on trust developed over a number of years. Changes to the test could result in them losing access to their adviser of choice.

Why is this?

Licensees have aligned their business model to the current regulatory framework, including the wholesale client definitions. Advisers who have adopted a wholesale-client-only business model are not required to have satisfied the professional standards (FASEA) educational and exam requirements that would allow them to provide advice to retail clients. Any wholesale-client-only adviser who has not satisfied the professional standards (FASEA) education standards and who subsequently wants to advise retail clients would, for the purposes of the education standards, be considered a new entrant, subject not only to the education and exam requirements but the requirements of the Professional Year. They would in effect be required to undertake an apprenticeship. This would leave them without a livelihood for a period of time, making it unlikely that a wholesale-client-only adviser would re-train.

That would mean that a wholesale client who is re-classified as a retail client is very likely to lose their adviser. This may not be such a significant issue if there were sufficient numbers of retail client advisers. However, that is not the case. **As of 28 September 2023 there are 15, 710 financial advisers.**⁶ In comparison, in 2018 there were 28,353. Indeed, since we released our discussion paper in February 2022, adviser numbers have crashed by 2,864. A wholesale client who is re-classified as a retail client and consequently loses their adviser will find it very challenging to find a retail client adviser to provide them with financial advice. This would compound the existing problem of Australians having limited access to financial advice.

On the reverse side of this and as a result of the professional standards (FASEA) education standards, wholesale-only advisers whose clients are reclassified as retail will lose their client base and their business.

We recognise that there are calls to increase the assets and income test and implement a transition period of two years in which people with assets between \$2.5 million and the oft-quoted figure of \$5 million can opt in to remain accredited as wholesale if they choose.⁷ However, the fundamental problem would remain that after the two-year period, if some of the clients chose not to remain wholesale and became retail clients, it is unlikely that their advisers would choose to be deemed new entrants and their clients would therefore become orphaned and unlikely to find a retail client adviser able to take them on. Yet again, even fewer Australians would have access to advice.

In its *2021 Financial Advice Report*, Investment Trends estimates that although 1.8 million people receive advice each year, that represents only about 10% of adults. Estimates of \$3.5 trillion or an average of about \$175 billion per year is expected to transfer between generations in the next two decades.⁸ According to recent data from the Australian Bureau of Statistics, some 140,000 people

⁶ Colin Williams, 'ASIC — Adviser Movement', *Wealth Data*, 28 September 2023

⁷ The Financial Services Council in its *White paper on Financial Advice*, issued in October 2021, advocated for the increase of the threshold for the assets test from \$2.5 million to \$5 million and thereafter indexing it to the Consumer Price Index.

⁸ Productivity Commission, *Wealth transfers and their economic effects: research paper*, November 2021.

retired in 2020. Over 670,000 people intend to retire in the next five years, with 220,000 in the next two years.

There has never been a time when access to financial advice is more important to so many Australians.

Access to wholesale products and strategies

The wholesale client classification enables clients to access wholesale client opportunities and products. Licensees have structured their businesses to meet this demand. Advisers and clients have built their investing strategy on the current model. Any change that results in a wholesale client being re-classified will impact on the products and strategies they can invest in and could result in them having to sell out of their wholesale products. This will cause significant disruption and attendant costs.

Our online broking members tell us that this would also impact their self-directed wholesale clients who chose to access wholesale products on a no-advice basis.

Impact on other provisions of the Corporations Act

The wholesale client definition in Chapter 7 of the Corporations Act mirrors definitional provisions in Chapter 6 of the Corporations Act. Any changes in the wholesale investor definitions in Chapter 7 that lead to inconsistency between the two chapters would result in clients who are classified as wholesale for one purpose being ineligible to be treated as wholesale for another. This would be unworkable for stockbrokers and investment advisers as well as being confusing and frustrating for their clients. It would also have significant consequences for capital raising.

It is important to realise that the regulatory distinction between retail and wholesale clients is applicable to a range of circumstances in the financial services sector. It has much broader implications than just for managed investment schemes. It would be unfortunate if concerns about the legislative framework of managed investment schemes lead to changes to the wholesale investor definitions in general that did not take into account the impacts such a change would have on financial markets as a whole.

Any review of the wholesale client definition should be subject to a standalone consultation to enable participation by all relevant industry stakeholders to ensure it takes into account all possible consequential impacts.

The impact that DDO has had on the financial services industry.

Our members consider that DDO has been a 'game changer' in the provision of financial products. ASIC has been very active in surveillance and enforcement of DDO and has issued 81 interim stop orders. This is an important context to consider when reviewing the wholesale client thresholds.

Our members report that they have responded to the DDO regime by making the following changes to their operations:

- Updating processes for DDO complaints reporting and increasing the number of times per year they seek complaints data from their network.
- Reviewing their DDO policy and Target Market Determinations (where applicable) on a

regular basis.

- Conducting regular DDO training of staff and advisers.
- Reviewing client files to ensure adherence to DDO as part of the audit process.
- Updating record keeping templates (such as ROA templates).

While DDO only applies to products offered to retail clients, a product that is aimed at both retail and wholesale clients must comply with the DDO regime. The introduction of DDO moves the focus from a wholesale investor test to the appropriateness of a financial product.

Our feedback to the questions in the Consultation Paper on the wholesale client thresholds is set out in Appendix A.

Conclusion

If you require additional information or wish to discuss this matter in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Kind regards

A handwritten signature in black ink, appearing to be 'JF' with a stylized flourish and the letters 'Gx' below it.

Judith Fox
Chief Executive Officer

REVIEW OF THE REGULATORY FRAMEWORK FOR MANAGED INVESTMENT SCHEMES APPENDIX A

Wholesale client thresholds

QUESTION 1 – Should the financial threshold for the product value test be increased? If so, increased to what value and why?

We do not consider that the financial threshold for the product value test should be increased. As we stated previously, our members report that the product value test works well and is a simple 'bright line' test. The client either has that money to invest or they do not.

A limit of \$500,000 to invest in one product is quite high. There are concerns that raising the \$500,000 limit will make wholesale investments even less accessible to investors. Some product issuers rely solely on the product value test. The distribution potential for their products would be severely impacted if the threshold was increased.

Any increase in the product test will have an impact on capital markets, including the market for OTC products. It will also impact the ability of banks to raise capital.

Again, we question if complaints have arisen from clients investing under this classification. To date, none has come to our attention.

QUESTION 2 – Should the financial thresholds for the net assets and/or gross income in the individual wealth test be increased? If so, increased to what value and why?

We do not consider that there is any evidence that supports an increase in the financial thresholds for the net assets and/or gross income wealth test.

There has been very little wage inflation in recent years in Australia. A gross income of \$250,000 is a significant multiple of average earnings. The Australian Bureau of Statistics reports the average weekly ordinary time earnings for full-time adults at currently \$1,838.10 (\$95,581.20 per annum), with skilled and experienced workers earning \$108,000 per annum.

House prices

The strongest driver for the calls for changes to the assets test threshold is the increase in house prices in Sydney and Melbourne. Those wanting an increase to the \$2.5 million net asset threshold argue that it is easy for clients who own a house in Sydney or Melbourne to satisfy the test, even if they lack financial knowledge. While house prices have increased substantially in Australia's largest cities since the threshold was introduced, house prices in Australia's regional and rural areas or in capital cities such as Perth and Adelaide have not reached the heights of those on the eastern seaboard. Increasing the threshold for the net assets test will have a disproportionate impact on clients who own real estate in those areas, excluding investors in the regions and a number of capital

cities from accessing investment opportunities available to wholesale clients. A Sydney/Melbourne-centric view of Australian investors is narrow and does not take into account the perspectives of those living outside of these cities.

Clients in regional and rural areas and other capital cities would need to be consulted as to whether they support a change to the wholesale investor test.

As with the proposal to increase the product value test, increasing the thresholds would reduce accessibility to investors who could benefit from wholesale products. It would also restrict the market for wholesale products with a resultant reduction in supply.

International comparisons

It is worth noting that Australia’s monetary thresholds are not outliers when it comes to the threshold for wholesale investors.

| Country | Net Asset Worth (in equivalent AUD) | Gross Income (in equivalent AUD) |
|-----------|--|---|
| Australia | \$2.5 million | \$250,000 |
| USA | \$1.55 million (approximately) (USD1 million) | \$232,838 single or \$465,676 couple/partners (USD300,000 combined) |
| UK | \$492,500 excluding home & super (Pnd250,000 excluding home & pensions) | \$200,000 (Pnd100,000) |

Indexation

Stakeholders at the Treasury roundtables raised the issue of whether the monetary thresholds could be subject to indexation. Applying an index to the asset or income thresholds increases complexity and reduces transparency. It would add uncertainty to determining whether a client meets the requirements or not and would not take into account financial market corrections. Our members have told us that indexation would create a constantly moving goalpost which would significantly impact their business, particularly their compliance operations.

Our members advise that the cost of numerous regulatory reforms over the past few years has resulted in significant investment resources being allocated to ensuring compliance with a multiplicity of obligations, many of which have been shown to be of no benefit to the client. The investment required to keep track of a constantly moving goalpost if indexation was applied to the test would be very significant indeed.

As we have previously stated moving existing wholesale clients to a retail client category would also

have a significant impact on their investment strategies as they would no longer be able to access various product offerings.

QUESTION 3 -Should certain assets be excluded when determining an individual's net assets for the purposes of the individual wealth test? If so, which assets and why?

The family home

Excluding the family home when determining an individual's net assets for the purposes of the individual wealth test would have the following impacts:

- Advantage those clients who do not own a home and have invested in other assets while disadvantaging those who have decided to place their wealth in their family home.
- Exclude a number of clients who are currently classified as wholesale and wish to remain categorised as such and create a disconnect between homeowners in Sydney and Melbourne and the rest of Australia.
- Create an additional layer of complexity for investors who own a business, particularly in circumstances where the family home serves a dual purpose such as, for example, rural property that includes the family home and the business.

We consider that the regulatory focus should not be on the manner in which clients choose to invest their wealth.

QUESTION 4 – If consent requirements were to be introduced:

(a) How could these be designed to ensure investors understand the consequences of being considered a wholesale client?

(b) Should the same consent requirements be introduced for each wholesale client test (or revised in the case of the sophisticated investor test) in Chapter 7 of the Corporations Act? If not, why not?

We do not consider that consent is necessary or appropriate for the professional investor category.

As we have stated previously, many of our members obtain a consent or acknowledgement from the client in addition to the high-net-worth test and, in some cases, the product value test.

For this reason, SIAA supports Recommendation 11 of the Quality of Advice Review Final Report as it is not out of step with the practice of many of our members. We consider that this additional disclosure will allow clients to make more informed decisions in this regard.

We note that Recommendation 11 only refers to the high-net-worth test and the sophisticated investor test and does not refer to the product value test. The proposed wording of the consent refers to an advice provider and would not be appropriate in a self-directed setting. Therefore, if Recommendation 11 was adopted more broadly, it would need to be adapted for the various wholesale investor categories and to take into account whether the investor is receiving advice.

For self-directed clients, for whom the Recommendation 11 consent may not be relevant, it would be important that the consent contains acknowledgment of the loss of retail protections (including

the provision of disclosure documents such as the Financial Service Guide, Statement of Advice, Product Disclosure Statement as well as other protections such as access to AFCA) and the consequences of this. It may also be helpful for the client to confirm that they have the knowledge and or experience to make decisions without these disclosure documents.

We understand the desire to protect investors from harm and support regulation that gives effect to this. A wholesale or sophisticated investor is deemed to be in a position to assess and understand the risks of an investment offer. While there is recognition that a monetary threshold test is not a proxy for financial literacy, a consent form invokes investor responsibility, which should be encouraged. It should also be recognised that if investors do not understand the offer or the risk attached to it, they should not be investing in it. This applies whether an investor has \$2.5 million or \$5 million.

Placing a positive obligation upon investors to provide consent before becoming a wholesale client, provides evidence that the client has the necessary knowledge and experience to be a wholesale investor as well as an understanding of the retail protections they have relinquished.

While the content for the consent should be standardised, we recommend that any change to the wholesale investor test to introduce requirements regarding client consent should be at a high level to avoid the significant issues resulting from the over-prescriptive nature of the FDS consent forms. Consent forms are best developed by licensees in a way that best suits their business and clients. Professional bodies can also play a useful role in developing consistent forms.

We would not want to see different product issuers developing different consent forms. This will cause confusion for investors.