

Wednesday 15 May 2024

Senator Deborah O'Neill  
Committee Chair  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Dear Senator O'Neill

### **Inquiry into wholesale investor and wholesale client tests**

The Financial Advice Association of Australia<sup>1</sup> (FAAA) welcomes the establishment of the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) inquiry into wholesale investor and wholesale client tests. It is a significant step forward in ensuring the regulatory settings for the provision of financial products and services protect consumers.

This review provides an important opportunity to address some provisions in the regulatory regime which are out-of-date and not in step with the current economic environment, increasing the risks for vulnerable consumers.

The topics within the scope of the review that are of most concern to our members include:

- Whether the regulated wholesale client thresholds are appropriate and will continue to achieve the intent of the classifications into the future,
- If clients should actively provide consent to being treated as a wholesale client,
- If the current consumer protection measures are adequate for wholesale clients, and
- Whether the regulatory framework adequately protects vulnerable consumers 'on the boundary' of the retail/wholesale client distinction.

We would welcome the opportunity to discuss with the Committee the matters raised in our submission. Please contact our Senior Manager Government Relations & Policy, George John ([George.john@faaa.au](mailto:George.john@faaa.au)) or myself ([phil.anderson@faaa.au](mailto:phil.anderson@faaa.au)) on 02 9220 4500 if you have any questions.

Yours sincerely,



**Phil Anderson**  
General Manager Policy, Advocacy & Standards  
Financial Advice Association Australia (FAAA)

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<sup>1</sup> The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

# **Inquiry into wholesale investor and wholesale client tests**

Effective date: 15/05/2024

Submitted to: Parliamentary Joint Committee on Corporations and Financial Services



## **Inquiry Terms of Reference**

*Inquiry into the Corporations Act 2001 laws and related regulations on the wholesale investor test for offers of securities (Section 708 of Chapter 6D) and the wholesale client test for financial products and services (Sections 761G & 761GA of Chapter 7) (referred to collectively as the wholesale investor/client tests), including:*

- 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;*
- 2. the historical development in Australia of the wholesale investor/client tests and consideration of any previous reviews and inquiries;*
- 3. comparison with comparable overseas jurisdictions, including any proposed or recent changes to tests used in similar contexts;*
- 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;*
- 5. any potential adjustments to proposals to change the wholesale investor/client tests to address the concerns of stakeholders;*
- 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; and*
- 7. any related matters.*

## WHOLESALE CLIENT TEST IN THE FINANCIAL ADVICE CONTEXT

The Corporations Act permits the provision of financial advice to a consumer as a retail client or a wholesale client.

FAAA members are concerned about consumers who lack the necessary knowledge, understanding and experience of financial matters to make informed decisions as wholesale clients. This includes the category of consumers who do not have capability to make considered financial decisions or incur financial loss through high-risk investments. The lack of disclosure and conduct obligations that apply to advising wholesale clients creates an unacceptable risk for such consumers.

We have considered the implications the current thresholds for wholesale clients present for consumers and whether the thresholds still meet the original policy intent: to provide protections for retail clients, while providing regulatory relief for clients with the appropriate level of financial knowledge and skills to assess or capacity to incur financial loss that may come from high-risk complex investments.

A significant concern about the thresholds today is whether they have kept pace with the economic environment: they have not been indexed since they commenced in 2001. In addition, the tests currently include residential property, including the principal residence, and housing values have increased greatly in that time. As discussed below, this has resulted in a much wider group of consumers now meeting the wholesale thresholds. This raises significant consumer protection concerns.

In our view, there must be a balance between protecting vulnerable consumers and providing regulatory relief and broader options for genuine wholesale clients. Importantly, there needs to be better protections for those consumers who currently fall on the boundary between retail and wholesale clients - consumers who are asset rich, cash poor, with little capacity to lose money and who may not be financially sophisticated despite meeting the test. This is where the current thresholds are failing to meet expectations in protecting consumers.

Since the wholesale client tests came into force, not only have the thresholds not been indexed, the obligations that apply to relevant providers who provide personal advice to retail clients have increased significantly as a result of the following reforms:

- Future of Financial Advice (2012)
- Tax Agent Services Act (2014)
- Life Insurance Framework (2017)
- Professional Standards (2017)
- Hayne Royal Commission (2019 – 2023)

These reforms have created a significant gap between the regulatory burden and costs of providing advice to retail clients versus providing advice to wholesale clients, resulting in a widening of the disparity in consumer protections for retail clients versus wholesale clients, and a significant growth in wholesale only advice providers.

The consumer protections that are now relinquished when a person signs up to be treated as a wholesale client are significant and can be life-changing if things go wrong. For some clients, it may absolutely be justified, appropriate and in their best interest to be treated as a wholesale client. For other less experienced consumers, it may be giving up too many protections.

We are concerned about the lack of disclosure and conduct obligations that apply to providers when assessing consumers for the wholesale threshold tests. This puts clients who are inappropriately classified as wholesale at risk.

Wholesale clients are permitted to access more complex and sophisticated financial products and strategies. However, the *Financial Planners and Advisers Code of Ethics* only applies to those financial planners authorised to provide personal advice to retail clients ('relevant providers'); and the professional standards relating to education and training also do not apply if the financial planner is not a relevant provider. Hence the professional and ethical standards do not apply to financial advisers advising those investors that typically can access more complex and sophisticated products and strategies due to the wholesale client test and thresholds. This puts these clients at significant risk of harm when the community expects a certain level of professionalism, ethics and education of a financial planner. Consumer protections and compensation through AFCA, under the 'Notifying and remediating clients affected by reportable situations' provisions in the Corporations Act<sup>2</sup>, and the CLSR also do not apply to wholesale clients.

### **Wholesale client benefits**

Any changes to the existing requirements for the wholesale and sophisticated investor tests will have consequences for other consumers, such as 'genuine' wholesale clients. These consequences must be considered to ensure a balanced approach is recommended.

FAAA member feedback suggests that genuine wholesale clients often have an entrepreneurial mindset and are actively engaged with their financial circumstances. Such clients seek to improve their return on investment by investing in higher-risk opportunities they are comfortable with. This may include a group of friends pooling their funds to invest in assets (e.g. racehorse, investment property etc) via an unregistered MIS, for example.

When seeking financial advice, such clients generally want information pertinent to the actual advice provided. Feedback indicates that these clients do not want to be bogged down in disclosure material and consider the requirements in the retail client regime create an unnecessary burden on them as clients – it slows the advice process and wastes their time.

Generally, the FAAA accepts the recommendation by the Australian Law Reform Commission (ALRC) to retain the distinction between wholesale and retail clients. However, changes are necessary to bring the wholesale client regime in line with current economic conditions and consumer protection expectations.

**In summary, the FAAA recommends:**

- a high barrier to entry and restrictions into the wholesale client space, to protect vulnerable consumers from being mis-categorised as a wholesale client.
- the wholesale client regime (once an individual meets the higher barrier to entry) should operate under a less restrictive regime to the retail client requirements.
- A package of consumer protection enhancements to be treated as a wholesale client:
  - Modernise the wholesale threshold tests to ensure they continue to be fit for purpose.

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<sup>2</sup> Section 912EB, Corporations Act

- Retain the product value test, asset value test and income test, with reviewed values
- Introduce a financial literacy/capability test to be considered as a wholesale client or a sophisticated investor.
- Mandate a statutory client warning to be given prior to client consent to be treated as a wholesale client.
- An obligation to undertake an assessment of the suitability to be classified as a wholesale client. This should be a civil penalty provision.

These recommendations are detailed below.

## MEETING THE WHOLESALE CLIENT TESTS

The current wholesale threshold tests are based on the person having net assets of at least \$2.5 million or a gross income of at least \$250,000 per year in the last 2 financial years, supported by a certificate given by a qualified accountant.

According to modelling undertaken by the Australian National University<sup>3</sup>, at the time of the implementation of the wholesale asset/income test in 2002, only 1.9 per cent of the population were eligible to be classified as wholesale clients. However, this figure had risen to 16 per cent in 2021 (3.25 million individuals) and in the absence of any changes to the regime could rise to 29.1 per cent of the population by 2031 (6.78 million individuals) and 43.6 per cent of the population by 2041 (11.5 million individuals).

As demonstrated in the table below, these thresholds would be much higher if adjusted for CPI increases.

Measure	Amount in law	Hypothetical CPI adjusted to Dec 2023
Product value test	\$500,000	\$874,593
Income test	\$250,000	\$437,297
Net assets test	\$2,500,000	\$4,372,967
Professional investor	\$10,000,000	\$17,491,867

The legislated threshold tests have not kept pace with the economic environment as they have not been indexed since they commenced. This has placed more vulnerable consumers at greater risk of being mis-classified as a wholesale client.

<sup>3</sup> Source: <https://insideinvestor.com.au/wholesale-investor-boom-sparks-concerns>

## Product value test

The current product value test applies for individuals who invest \$500,000 or more in a single investment. This is a large amount of money to invest in one product, even for genuine wholesale clients. If the *product value test* was increased it would impact the ability of genuine wholesale clients to appropriately diversify their investment portfolio, increasing the risk for the client.

The FAAA suggests increasing the product asset test may not be the most effective means to improving protections in relation to mis-categorisation of retail clients. Please refer to our recommendations below for solutions to address this issue.

**The FAAA recommends the product value test remain at its current level of \$500,000 and be indexed every 5 years based on AWOTE, in minimum increments of \$5,000.**

## Net asset value test

The *net asset value test* currently includes residential property which has considerably increased in value over time and resulted in the wholesale test being applied to a much wider group of consumers, raising consumer protection concerns.

The following graph from the Australian Bureau of Statistics (ABS) is indicative of the significant and continuous increasing property values across Australia since December 2011.



Source: Australian Bureau of Statistics, Residential Property Price Indexes: Eight Capital Cities December 2021

These significant changes in the housing market are important considerations for the wholesale thresholds. As stated in the ANU research:

*The analysis that we undertake does indicate that in the years between 2002 and 2018 the potential pool of sophisticated investors is dominated by the wealth component. With strong house price and superannuation fund growth there is an increasingly large share of households and individuals with a stock of net wealth greater than \$2.5 million.<sup>4</sup>*

<sup>4</sup> Associate Professor Phillips, B. (October 2021) *Research Note: Sophisticated Investor Projections*, ANU Centre for Social Research and Methods

The lack of indexation or review applied to the original measures has resulted in the values in the tests falling behind the growth in the Australian economy, housing and investment market, household wealth, and wage growth.

The FAAA is aware of debate over whether the value of the home (principal place of residence) should be included or excluded in the *net asset value test*. The principal place of residence is usually the largest asset held by a consumer, however we have the following concerns about including the home in the *net asset value test*:

- Equitability and fairness - as indicated by the above graph, property values vary greatly across Australia. Creating an asset value test that is significantly weighted by the value of the home will result in an inequitable system that may exclude genuine wholesale clients with a lower property value but capture vulnerable consumers whose property value has substantially increased. We question the fairness and equity of a threshold that knowingly includes disparity in an asset value based on location.
- Exposes unsophisticated clients - The principal place of residence is not just a financial asset; it is a person's home. As such, it is commonly a 'tightly held' asset and can be passed down through generations. It is also an asset that has seen, and continues to see, significant growth in Australia. According to data from the Australian Bureau of Statistics, the median house price in Sydney in 1980 was \$76,500. As of January 2024, the median house price in Sydney was approximately \$1.365 million. Creating a wholesale test that relies on the home puts unsophisticated clients at risk of misclassification, particularly if they have owned their home for an extended period of time.
- Longevity - Given the variability and continuous growth in property values, excluding the home from the *net asset value test* offers greater stability and assurance that the test will remain fit for purpose over the longer term.

Excluding the home from the *net asset value test* is simple to do. Excluding the principal place of residence will not add complexity as it is exempt from CGT and a well-understood term by industry and consumers, which simplifies the classification for the purposes of the wholesale test. It also provides greater fairness in how the test is applied

The FAAA recommends the *Net Asset Value Test* should:

- exclude the net asset value of the home (principal place of residence)
- be increased to \$2 million for an individual, doubled for a couple (ie. \$4 million). This reflects a value broadly similar to the Transfer Balance Cap (TBC), currently \$1.9 million applied to the individual (e.g. \$1.9m); or doubled for a couple (e.g. \$3.8m combined).
- be indexed in line with AWOTE and increased in multiples of \$5,000 increments every five years.

If the Committee recommends that the value of the home (principal place of residence) should be included in the wholesale client *net asset value test*, the test should be:

- increased to a minimum of \$4 million for an individual, doubled for a couple (ie. \$8million).
- indexed in line with AWOTE and increased in multiples of \$5,000 increments every five years.

However, this is not the FAAA's preferred *net asset value test*.

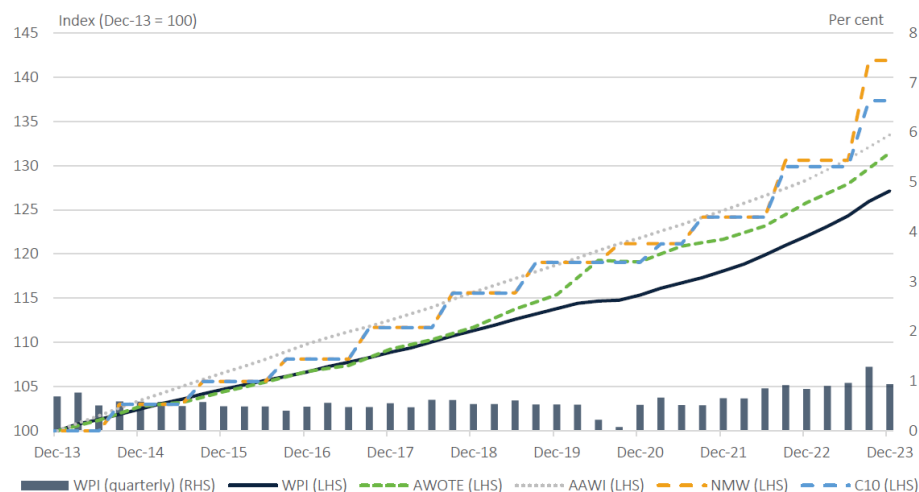


## Income test

As the *income test* has not been increased since it was introduced, we believe it is no longer fit for purpose as it is out of step with wage growth.

As indicated by the following graph, Australia has seen steady wage growth since 2013.<sup>5</sup> Based on this increase in wages, it is reasonable to assume that the number of Australians now earning more than \$250,000 has also increased significantly.

Chart 5.1: Measures of nominal wages growth, quarterly and cumulative growth rates, index



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In contrast, the wholesale client *income test* has remained static.

FAAA recommends the *Income Test* should be:

- based on the individual's income of the prior 2 years, as demonstrated by the **ATO's income tax assessment of income**
- increased to \$450,000 (\$250,000 in 2001 indexed to December 2023 is \$437,297)
- indexed in line with AWOTE and increased in multiples of \$5,000 increments every five years
- an individual test.

## Accountant certificate

The FAAA is aware of calls to:

- remove the requirement for an accountant to provide a certificate certifying that a client meets the *net value assets tests* and *income test* and can be deemed a wholesale client.
- transfer the requirement to provide a certifying certificate to financial advisers or product providers.

<sup>5</sup> [Wage Price Index, Australia, December 2023 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au)

<sup>6</sup> Fair Work Commission, Statistical report - Annual Wage Review 2023–24, Version 4, 26 April 2024

The FAAA supports the requirement for a client's financial circumstances to be certified as meeting the income or asset test to be treated as a wholesale client. Requiring a professional to verify client information is a vital safety net for consumers and emphasises the importance of being classified as a wholesale client. Clients should also be required to declare that they meet the wholesale client threshold test.

Feedback from FAAA members highlights concerns that transferring the accountant certificate requirement in s761G to financial advisers may increase consumer risk as it would remove separate additional professional consideration/review of the client's circumstances in relation to the wholesale client tests. The treatment of a consumer as a wholesale client must be undertaken with due care and consideration.

While some wholesale clients have a financial adviser, other wholesale clients do not. Non-advised consumers would still be required to obtain a certificate certifying that a client meets the *net value assets tests* and *income test* and can be deemed a wholesale client and can invest in wholesale products directly with the product provider. If they do not have an adviser or wish to seek financial advice, such consumers would most likely need to access an accountant to obtain this certificate.

Currently financial advisers have no access or very restricted access to Government and other systems in order to verify a client's income information for the wholesale client threshold test certification. Accountants can verify client income information via their access to the ATO Portal.

FAAA members have highlighted the need for the certification requirements to focus on client choice and the best interest of the client, rather than speed of compliance and regulatory process.

Should a decision be made to share the accountant certificate obligation between accountants and financial advisers, to be able to verify a client's circumstances in meeting the wholesale client thresholds, all financial advisers would require access to the ATO Portal to enable them to view the client income information to be verified for certification.

The FAAA would oppose the application of the certification requirement to financial advisers unless all advisers were given access to the ATO Portal.

A similar obligation would need to apply to the client to provide verifiable documentation to the financial adviser, such as lodged tax returns, superannuation statements, etc, and a declaration by the client to confirm that they meet the wholesale client criteria. This could be provided as part of the informed client consent recommendation below (QAR Recommendation 11).

### Financial literacy/capability test

Eligibility test reliance on the set wealth factors alone is insufficient to protect vulnerable consumers from inappropriately being misclassified as a wholesale client. Such tests do not adequately reflect the person's levels of debt, tolerance to risk, capacity to lose capital, or experience and capability to understand financial matters.

The wholesale client model operates under a light-touch regulatory environment and requires clients to be more responsible for the decisions that they make. While this model serves a purpose and may be appropriate for genuine wholesale clients, there is evidence to suggest that consumers are being classified as wholesale investors as they meet these thresholds, despite having low financial literacy and little experience in investing.

Section 761GA sets out the sophisticated investor test that requires (among other matters) the client to be provided with:

*a written statement of the licensee's reasons why it is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess:*

- *the merits of the product or service*
- *the value of the product or service*
- *the risks associated with holding the product*
- *the client's own information needs, and*
- *the adequacy of the information given by the licensee and the product issuer.*

However, s761G(1) permits a client to be treated as a wholesale client if they meet just one of the prescribed tests. Hence, the sophisticated investor test may not be applied if the client meets one of the wholesale wealth tests and there is no requirement to assess if the client has the requisite financial literacy and experience to make suitable financial decisions and understand the risks associated with the products and services available to wholesale clients.

As discussed below, clients who are misclassified as wholesale. have limited access to consumer redress unless the provider of the financial product or service is also licensed to operate in the retail client space and is therefore a member of the Australian Financial Complaints Authority (AFCA).

FAAA recommends that

- The law should be changed to introduce a financial literacy/capability test for a person to be treated as a wholesale client or sophisticated investor.
- All clients must satisfy the financial literacy/capability test in addition to meeting a wealth threshold test (eg. product value test, income test, net asset value test), unless they are a sophisticated investor.
- The financial literacy/capability test should be:
  - used prior to providing a consumer with the wholesale client warning, gaining informed consent, and providing a financial product or service.
  - a subjective test
  - permit reliance on professional judgement, and
  - also require a client self-declaration.
- If during the provision of a product or service, the provider becomes concerned about the financial capability of the client, the provider should reassess the appropriateness to treat the person as a wholesale client.
- Consideration should be given to the provision of regulatory guidance based on professional judgement, to facilitate the consistent application of the financial literacy/capability test.

- Consideration to be given to the enforcement of this test for wholesale only providers and access to AFCA for consumer complaints relating to incorrect classification as a wholesale client.

### Sophisticated test

There is a level of concern that some providers may be inappropriately classifying and directly selling to 'on-the boundary investors', who are vulnerable consumers, high risk products, by gaining client consent to be treated as a sophisticated investor if they do not meet the wholesale investor thresholds. However, there is a lack of data to understand the accuracy and extent of this issue.

To address this issue, the Act would need to be amended to require clients to sign an enhanced consent document (described below), and also to make a declaration that they have the knowledge and experience to be treated as a wholesale client under the sophisticated investor test.

The FAAA would further suggest that consideration should be given to an obligation that would apply to providers not to treat a client as a wholesale client where there are reasonable grounds to question the evidence that has been provided by the client to demonstrate qualification with the sophisticated investor test, or if there are grounds to believe that the client does not understand the product(s) or the basis for being treated as a wholesale client.

The sophisticated client test is particularly problematic in relation to couples where only one partner meets the sophisticated investor test. There can be significant ramifications in situations involving financial control, relationship breakdowns, or when the financially sophisticated partner, or the controller in the relationship, passes away. This puts the unsophisticated partner at significant risk.

FAAA recommends that the law should require:

- an enhanced informed consent document (as described below)
- a client declaration that they have the knowledge and experience to be treated as a 'sophisticated client' (as described above)
- both members of a couple need to meet the sophisticated investor test to be treated as a wholesale client.

### Wholesale client warning and informed consent

The current obligations lack a clear informed client consent requirement to be classified as a wholesale client, regardless of the client's financial capability and experience. This results in greater risk being borne by the client, not only due to the lack of retail protections, but as the products offered to wholesale clients are often riskier and time sensitive.

A wholesale client warning, clearly and specifically detailing the consumer protections that will be forfeited as a wholesale client, should be provided prior to informed consent being given and before a financial service or product is provided.

Consideration should be given to a prescribed wholesale client warning to standardise the information provided to consumers and ensure it appropriately, clearly and simply explains the risks, and the protections that will be lost.

The Quality of Advice Review (QAR) recommendation 11 stated:

*The Corporations Act should be amended to require a client who meets the assets and income threshold and who has an accountant's certificate to provide a written consent to being treated as a wholesale client.*

*The written consent should contain an acknowledgment that is given before they are provided with a financial product or service that:*

- *the advice provider is not required to be a relevant provider and accordingly they will not have to comply with the professional standards;*
- *the advice provider will not have a duty to give good advice or to act in the best interests of the client under the Corporations Act;*
- *the advice provider is not required to give the client a product disclosure statement or financial services guide; and*
- *the client will not be entitled to complain about the advice under the AFS licensee's internal dispute resolution procedures or to AFCA.*

*The existing consent requirements for sophisticated clients should be amended to require a written acknowledgement in the same terms.*

*The objectives of this reform are to ensure that wholesale clients who meet the assets and income threshold and sophisticated clients are aware of and agree to the protections they lose by not being a retail client.*

We are conscious that the Government has not elected to implement all the recommendations proposed by the Quality of Advice Review, and therefore some of the wording above would need to be modified.

FAAA recommends all consumers considering being treated as a wholesale client should be given a 'wholesale client warning'. Such a warning must:

- clearly and specifically detail the consumer protections that will be forfeited as a wholesale client
- be provided prior to informed consent being given and before a financial service or product is provided.
- allow the financial services provider to be satisfied that the client understands the following matters, particularly in comparison to if they were treated as a retail client:
  - the disclosure documents the client will not receive and the importance of these documents in making an informed decision
  - restrictions on accessing dispute resolution systems
  - the licensing safeguards in the Corporations Act, designed to protect retail clients, that do not apply to wholesale clients
  - that the *Financial Planners and Advisers Code of Ethics* does not apply unless the provider is a relevant provider also providing advice to retail clients
  - that a wholesale adviser does not need to comply the education and training requirements – ie, degree requirement, exam, professional year, CPD.

- that the client should have the requisite financial literacy and experience to understand the risks associated with the products available to wholesale clients and make suitable financial decisions
- use a prescribed wholesale client warning to standardise the information provided to consumers and ensure it appropriately, clearly and simply explains the risks, and the protections that will be lost.

The FAAA also recommends the introduction of 'informed consent' to be treated as a wholesale or sophisticated client, broadly in line with QAR recommendation 11.

The consent should also acknowledge the lack of any documentation that a wholesale client will receive with respect to the advice being provided. This is in line with the Government's intention to still require some form of advice record.

Informed consent to be treated as a wholesale client must be individual informed consent – i.e. both parties of a couple must individually provide informed consent.

The existing consent requirements for sophisticated investors should also be amended broadly in line with QAR recommendation 11.

## WHOLESALE ONLY PROVIDERS

### Wholesales only provider obligations

Under the wholesale model, clients are more responsible for the decisions that they make. This model serves a purpose and is appropriate for genuine wholesale clients. The regulatory requirements for providing financial advice within that model should be simple to ensure genuine wholesale clients' needs and expectations can be met. Within the model it should be 'easy to do business with' genuine wholesale clients.

As previously mentioned, the regulatory regime should focus on ensuring high barriers to entry into the wholesale market. In addition to the wholesale test thresholds, consideration should be given to a new obligation to undertake an assessment of the suitability to be classified as a wholesale client. This should apply to wholesale only providers as 'relevant providers' have existing best interest obligations in the Corporations Act and under the Code of Ethics.

The FAAA recommends the introduction of a new obligation that would apply specifically to wholesale only financial advice providers, mandating that:

- a client is not treated as a wholesale client where there are reasonable grounds to question the evidence that has been provided (by the client) to demonstrate qualification with the wholesale client threshold tests, and
- the provider must be satisfied that the client has the requisite financial literacy and experience to:
  - understand the basis for being treated as a wholesale client and has understood the wholesale client warning (detailed above),
  - the risks associated with the products available to wholesale clients, and

- to understand and make suitable financial decisions as a wholesale client.

This should be a civil penalty provision and also apply under the sophisticated investor test.

### AFCA membership

Currently AFCA can assess complaints from consumers about being incorrectly categorised as a wholesale client if the provider is licensed to provide products/services to retail clients and is therefore a member of the scheme.

Wholesale only advice and product providers are not required to be registered with AFCA. This leaves a gap in the protection of vulnerable consumers.

The FAAA supports AFCA being permitted to use their discretion to consider complaints involving inappropriate classification of a client as wholesale client, including by wholesale only providers.

Consideration must be given to AFCA membership of wholesale only providers to ensure:

- AFCA can consider complaints of inappropriate classification as a wholesale client by all providers.

The FAAA recommends:

- AFCA's jurisdiction should be expanded through a limited category to include wholesale products and wholesale only advice providers. AFCA's jurisdiction over these providers should be limited to the consideration of complaints of inappropriate classification as a wholesale client. We acknowledge that this would require material changes to the core obligations for AFSLs with authorisations to provide services to wholesale clients only.

## APPLICATION AND TRANSITION

### Consistency across all products and services

It is important that financial planners, brokers, intermediaries and issuers of securities are all operating from the same classifications and a client defined as 'wholesale' would be classified as such across all products and services.

FAAA recommends the Corporations Act be amended for consistency between Chapters 6D and 7, so the wholesale client threshold tests are applied uniformly across all financial products and services and securities. This includes the above recommendations.

### General insurance products, superannuation products, RSA products and traditional trustee company services

FAAA recommends that the Corporations law continues to treat individuals as retail clients for the purchase of general insurance products, superannuation products, RSA products and traditional trustee company services, as required under s761G of the Corporations Act.

## SMSF clients

The FAAA recommends:

- clear guidance on the circumstances of when a SMSF can be treated as a wholesale client.
- a SMSF should be permitted to be treated as a wholesale client if all the trustees of the fund meet the wholesale client thresholds.

## Transition arrangements

The FAAA suggests appropriate transition arrangements must be considered as part of any changes to the retail/wholesale client provisions with consideration of the impact of the changes on consumers and investment holdings.

The FAAA suggests the following requirements to simplify transition arrangements:

- for advised clients, a financial adviser should re-assess the wholesale client status when new advice is being provided.
- for direct clients, existing wholesale clients should not be required to meet the new thresholds unless a new wholesale product investment is made by the client (excluding an additional/'top up' of an existing investment).
- investments made under previous wholesale thresholds should not be subject to the new threshold limits.
- a new accountant's certificate should not be required under the new threshold for existing wholesale clients unless a new investment is recommended.

This would remove the need for continuous monitoring or for wholesale clients who no longer meet the wholesale test to sell down wholesale investments, which would be impractical and have potential significant investment and tax implications for consumers.