



ASIC
Australian Securities &
Investments Commission

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

**Submission by the Australian
Securities and Investments
Commission**

May 2024

Contents

Executive summary	3
Need for reform to the outdated wholesale tests	4
Recommendations for reform	4
A Current wholesale investor and wholesale client tests	6
Relevance of the wholesale tests	6
Loss of statutory investor protections when meeting the wholesale tests	9
B History of the wholesale tests and previous reviews and inquiries	13
The development of the wholesale tests in Australia	13
Previous reviews and inquiries	15
C Comparison with overseas jurisdictions	19
Our observations of overseas regimes	19
Classification of clients in overseas regimes	19
D Proposals to change the wholesale tests	24
Problems with the current wholesale tests	24
Proposals to change the wholesale tests	25
Case studies	28
Stakeholder concerns	30
Additional considerations when implementing changes	32
Key terms	33

Executive summary

Overview

ASIC recommends reforms to the wholesale investor and wholesale client tests to better ensure that investors who are, in essence, retail investors are recognised as such, and receive the benefit of the important statutory protections that apply only to retail investors.

We have witnessed the harm that can arise when investors are classified as wholesale, but do not have the financial literacy or resources to weather financial loss.

In summary, we recommend:

- increasing the financial thresholds for classifying a person as wholesale to account for inflation;
- introducing a statutory mechanism to increase the financial thresholds over time;
- introducing penalties and other sanctions for misuse of the accountant's certificate mechanism for classifying wholesale investors and clients; and
- revising the current subjective test for Australian financial services (AFS) licensee assessment of an investor as wholesale to be more objective or increasing the level of prescription in the test.

- 1 The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services (Committee) inquiry into the wholesale investor and wholesale client tests.
- 2 The wholesale investor and wholesale client tests (wholesale tests) play a key role in determining the regulatory requirements applicable to investments available in Australia. As set out in Section A, only retail clients (i.e. clients who do not meet the wholesale tests) receive additional consumer protections. The underlying policy rationale is that wholesale investors and wholesale clients do not require the same level of protection, as they are better resourced and able to assess the risks involved.
- 3 In other jurisdictions, the tests to distinguish between retail and wholesale clients are based on higher financial thresholds and/or are supplemented by prohibitions on certain investments being offered to retail clients (see Section C). As Australia's more liberal regime does not generally prohibit specific investments for retail clients, it is critical that our wholesale and retail settings remain effective over time.

Need for reform to the outdated wholesale tests

- 4 The financial thresholds used in the wholesale tests have not been updated in more than two decades. During this period, the proportion of Australian adults who satisfy the individual wealth tests has grown materially. Research published by the Australian National University outlines that, as at 2002, the proportion of adults that met the individual wealth tests to be considered wholesale was 1.9%. This was predicted to grow to 16.2% by 2021 and projected to increase to 43.6% by 2041. As a result, the policy intent of the tests to protect clients with lower financial literacy and resources has been undermined.
- 5 There have been various reviews and inquiries that have recognised the need for reforms to the wholesale tests. These are summarised in Section B. However, to date, no significant changes have been implemented.
- 6 In the interim, ASIC has observed numerous instances of serious harm suffered by investors who are not financially sophisticated or considered wealthy by today's standards, after entering wholesale-only investments.
- 7 We consider that the wholesale tests should be updated to better ensure that investors who are, in essence, retail investors are recognised as such and receive the benefit of the important statutory protections that apply only to retail investors.
- 8 We recognise that some businesses and investors may wish to retain or even reduce the current settings to support fundraising and investor access to investment opportunities. Our view is that:
 - (a) under an appropriately framed increase to the wholesale tests, the impact on business will not be significant, and there would still be avenues for fundraising; and
 - (b) some investment opportunities remain too speculative, complex or risky to be accessed by clients who are truly retail clients.

Recommendations for reform

- 9 As outlined in Section D, ASIC recommends that the wholesale tests are revised to:
 - (a) increase the financial thresholds for the product value and individual wealth tests to account for inflation;
 - (b) introduce a statutory mechanism to facilitate periodic increases to the financial thresholds over time;

- (c) introduce penalties and other sanctions for misuse of the accountant's certificate mechanism for classifying wholesale investors and wholesale clients; and
- (d) revise the current subjective test for AFS licensee assessment of an investor or client as wholesale to be more objective or to increase the requirements and level of prescription within the test.

A Current wholesale investor and wholesale client tests

Key points

The wholesale investor test in Ch 6D applies to investors in securities. The test determines whether regulated disclosure needs to be provided to the investor.

The wholesale client test in Ch 7 applies to persons who acquire financial products or financial services.

Retail clients have the benefit of important statutory protections set out in Ch 7. This includes the design and distribution obligations, ASIC's product intervention powers and access to external dispute resolution. Wholesale clients do not have the benefit of these significant additional investor protections.

Relevance of the wholesale tests

Wholesale investor test (Ch 6D, s708(8) and 708(10))

- 10 The wholesale investor test in s708 of the *Corporations Act 2001* (Corporations Act) determines whether a regulated disclosure document such as a prospectus is required to be provided to an investor for an offer of securities.

Note: All legislative references are to the Corporations Act unless otherwise specified.

- 11 Under the Corporations Act, 'securities' includes shares and debentures, a legal or equitable right or interest in a share or debenture and an option to acquire any of these. The disclosure regime in Ch 6D requires issuers and sellers of securities to provide the information necessary for investors to make an informed investment decision.

- 12 A wholesale investor is a person who satisfies one of the following:
- (a) The minimum amount payable for the securities on acceptance of the offer is at least AUD500,000 (s708(8)(a)), or the sum of that amount and other amounts previously paid for securities of the same class held by the person is at least AUD500,000 (s708(8)(b)).
 - (b) The person has net assets of at least AUD2.5 million or a gross income for each of the previous two financial years of at least AUD250,000 a year (in each case as certified by a qualified accountant) (s708(8)(c) and reg 6D.2.03 of the *Corporations Regulations 2001* (Corporations Regulations)).

- (c) An offer of securities is made to the person through an AFS licensee who is satisfied on reasonable grounds that the person investing has previous experience in investing in securities which allows them to assess:
- (i) the merits of the offer;
 - (ii) the value of the securities;
 - (iii) the risks involved in accepting the offer;
 - (iv) their own information needs; and
 - (v) the adequacy of the information by the person making the offer.

The AFS licensee must also give the person a written statement of reasons for being satisfied as to those matters, and the person to whom the offer is made must sign a written acknowledgement that a disclosure document has not been provided in relation to the offer (s708(10)).

- 13 The net assets and gross income of a person include the net assets and gross income of a company or trust which is ‘controlled’ (as defined in s50AA) by the person.
- 14 There is no defined concept of ‘retail investor’ in Ch 6D but it is generally understood in this context that a retail investor is a person who is not a wholesale investor.

Note: There is also a category of wholesale investor referred to in s708(11) as ‘professional investors’.

Wholesale client tests (Ch 7, s761G and 761GA)

- 15 Compared with the wholesale investor test in Ch 6D, the wholesale client test in Ch 7 has broader significance beyond disclosure. The wholesale client test is relevant to a range of requirements under Ch 7 and other parts of the Corporations Act about financial products and services, with many important statutory requirements and protections applying only to retail clients and not wholesale clients.
- 16 The wholesale client test applies to financial products such as interests in managed investment schemes, general insurance and some superannuation products, non-cash payment facilities, derivatives, other products that satisfy the general financial product definition in s763A–763E, and for most purposes, securities.

Note: Securities are subject to regulation as financial products under Ch 7. However, certain securities defined under s700 such as shares and debentures are subject to the Ch 6D disclosure requirements rather than Pt 7.9.

- 17 Under s761G(4), a financial product or financial service is provided to, or acquired by, a person as a retail client unless that person is classified as a wholesale client. The key wholesale client tests are the product value, individual wealth and sophisticated investor tests outlined further below.

Note 1: There is also a category of wholesale client referred to in s761G(7)(d) as a ‘professional investor’, defined in s9.

Note 2: Different tests for determining if a person is a retail or wholesale client apply in relation to general insurance products, products and services relating to superannuation and retirement savings accounts, and traditional trustee company services.

Product value and individual wealth tests (s761G(7)(a) and (c))

- 18 An investor will be classified as a wholesale client if they satisfy one of the eligibility tests in s761G or, for sophisticated investors, s761GA (see paragraph 20). A number of these tests incorporate financial thresholds, including the following:

- (a) Product value test—a person will be a wholesale client if the price of the financial product, or the value of the financial product to which a financial service relates, is AUD500,000 or more (s761G(7)(a) and reg 7.1.18).

Note: In 2019, reg 7.1.22.AA of the Corporations Regulations was introduced to exclude contracts for difference (CFDs) from s761G(7)(a).

- (b) Individual wealth test—a person will be a wholesale client if they have net assets of at least AUD2.5 million or gross income of at least AUD250,000 per year for the last two financial years, in each case as certified by a qualified accountant (s761G(7)(c) and reg 7.1.28).

Note: The dollar values of the monetary thresholds are contained in regs 7.1.18 and 7.1.28, which commenced in March 2002.

- 19 The product value test and individual wealth test operate independently—that is, an investor need only satisfy one of these tests, or one of the limbs (net assets or gross income) of the individual wealth test, to be classified as a wholesale client.

Sophisticated investor test (s761GA)

- 20 Section 761GA provides for a further type of wholesale client referred to as a ‘sophisticated investor’. The sophisticated investor concept was introduced into Ch 7 of the Corporations Act in 2007 and focuses on the investor’s experience in relation to financial products or financial services generally. The test is similar to the wholesale investor test under s708(10) as described above in paragraph 12(c).

- 21 Under s761GA, a sophisticated investor is a client for whom the AFS licensee is satisfied on reasonable grounds has previous experience in using financial services and investing in financial products that allow the client to assess (s761GA(d)):
- (a) the merits of the product or service;
 - (b) the value of the product or service;
 - (c) the risks associated with holding the product;
 - (d) the client's own information needs; and
 - (e) the adequacy of the information given by the licensee and the product issuer.
- 22 To consider the client a sophisticated investor, the licensee must also give the client written reasons for being satisfied as to those matters (s761GA(e)) and the client must sign a written acknowledgement that, among other things, the licensee does not have obligations under Ch 7 that it would otherwise have if the client was a retail investor (s761GA(f)).

Loss of statutory investor protections when meeting the wholesale tests

- 23 There are a number of important statutory protections under Chs 5C and 7 discussed below that apply to retail clients, but are not available to wholesale clients. These protections are relevant to most financial products and financial services.

Design and distribution obligations

- 24 The design and distribution obligations (DDO) regime in Pt 7.8A requires financial product issuers to identify a target market for each of their financial products, prepare a target market determination and take reasonable steps that are reasonably likely to result in distribution of those financial products to retail clients that is consistent with the target market determination. Under the DDO regime, ASIC has the power to issue stop orders, preventing the issue and distribution of financial products, in some circumstances where product issuers fail to comply with the requirements.

Note: The DDO regime applies to financial products including products that are regulated under Pt 6D.2 and Pt 7.9, but does not apply to ordinary shares.

Product intervention orders

- 25 Financial products that are available to retail clients and may result in significant detriment to these clients are subject to ASIC's powers to make product intervention orders under Pt 7.9A. These powers are not available for wholesale products.

Financial product disclosure

- 26 Prior to the sale or issue of a financial product, retail clients are required to receive financial product information disclosure, including detailed information about the fees and costs of the financial product, in a Product Disclosure Statement (PDS).
- 27 Retail clients must also be given ongoing disclosure about material changes and significant events.

Financial Services Guide

- 28 Retail clients also receive financial services information disclosure under a Financial Services Guide (FSG). The requirement to issue an FSG applies to entities that provide personal advice and general advice, as well as entities that provide other financial services. The FSG requirements are designed to ensure that retail clients are provided sufficient information to enable them to decide whether to obtain financial services from the providing entity.

Dispute resolution

- 29 AFS licensees must have an internal dispute resolution system that covers complaints made by retail clients (s912A(1)(g) and 912A(2)).
- 30 In addition, s912A(1)(g) and 912A(2) require licensees that provide financial services to retail clients to be a member of the Australian Financial Complaints Authority (AFCA). The intent of this requirement is to ensure that retail clients have the benefit of a number of protections, including access to an external dispute resolution (EDR) scheme as a free and user-friendly alternative to the courts.
- 31 The Corporations Act does not require that access to an EDR scheme be made available to wholesale clients. Where a financial firm is licensed to deal with both retail and wholesale clients, its membership of AFCA also gives its wholesale clients potential access to the AFCA scheme. However, AFCA has the discretion to exclude complaints from wholesale clients.

Financial advice

- 32 When obtaining financial advice, retail clients also benefit from significant additional protections under the Corporations Act, when compared with obtaining the same financial advice as a wholesale client, including:
- (a) requirements that providers must act in the best interests of their client (s961B), ensure their advice is appropriate (s961G), and give priority to their client's interests when they know or ought to know that there is a conflict of interest (s961J)—in many cases, the provider must also give a retail client a Statement of Advice (s946A);
 - (b) the requirement under s949A for a general advice warning to be given whenever general advice is provided to a retail client; and
 - (c) the conflicted and other banned remuneration provisions in Divs 4 and 5 of Pt 7.7A, which primarily aim to more closely align the interests of those who provide financial product advice with the interests of their retail clients—for example, the definition of conflicted remuneration in s963A relates only to financial product advice given to retail clients.

Note: The Government is currently progressing reforms in response to the recommendations in the [Quality of advice review final report](#) on Treasury's website. The reforms implemented through that process may impact a number of these obligations.

Compensation

- 33 Retail investors also have access to the Compensation Scheme of Last Resort (CSLR) for loss suffered in connection with personal financial advice, dealing in securities, credit provision and credit intermediation. The CSLR is designed to make payments on a last-resort basis to eligible consumers where AFCA determinations remain unpaid. The CSLR commenced on 2 April 2024.

Note: Certain financial services and products are excluded, including managed investment schemes, foreign exchange or derivatives trading, insurance and scams.

Requirements for registration and operation of managed investment schemes

- 34 Additional protections apply under Ch 5C when a managed investment scheme (also known as a managed fund) has retail clients who are scheme members. These include:
- (a) the requirement to register the scheme with ASIC, providing ASIC with important knowledge and information in relation to the scheme;
 - (b) specific obligations in relation to the content of the compliance plan and constitution of the scheme, with restrictions on the ability of the operator of the scheme (i.e. the responsible entity) to amend the constitution;

- (c) statutory fiduciary duties imposed on the responsible entity itself, as well as its directors and officers;
- (d) obligations in relation to the management of liquidity by the scheme; and
- (e) financial reporting and compliance plan audit obligations.

35 Scheme members also receive the benefit of the other protections for retail clients under Ch 7. These statutory protections do not apply to schemes where the members are wholesale clients (referred to generally as ‘wholesale schemes’).

36 Wholesale corporate collective investment vehicles (CCIVs) have some additional protections that are not available to wholesale schemes. However, similar to managed investment schemes, there are additional statutory protections that apply to retail CCIVs that do not apply to wholesale CCIVs.

Other protections

37 Other statutory protections for retail clients include:

- (a) entitlements to receive periodic statements (s1017D) and transaction confirmations (s1017F) for their financial products;
- (b) protection from hawking of financial products (s992A);
- (c) a cooling-off period in relation to some financial products (s1019B) and shares issued under the crowd-sourced funding (CSF) framework in Pt 6D.3A (s738ZD); and
- (d) protection of an investment cap of AUD10,000 for any 12-month period for shares issued under the CSF framework in Pt 6D.3A (s738ZC).

B History of the wholesale tests and previous reviews and inquiries

Key points

The wholesale tests have been a feature of the corporations legislation for over 20 years. The policy rationale for the introduction of the tests was to delineate between clients who required additional regulatory protections and those who did not.

Various reviews and inquiries have considered the appropriateness of the wholesale tests and highlighted the need for reform. Some have identified possible approaches for changing the current retail client and wholesale client tests. However, there have been no substantive changes to these tests since their introduction.

The development of the wholesale tests in Australia

Development of Ch 6D wholesale investor test

- 38 The current wholesale investor test was preceded by a similar test that existed in the former Corporations Law (i.e. the predecessor legislation to the Corporations Act).
- 39 Qualifying as a wholesale investor meant that offers of securities and debentures were exempt from disclosure requirements, such that a prospectus was not generally required to make the offer to wholesale investors.
- 40 Issues, offers and invitations where the minimum subscription amount for each person was AUD500,000 were excluded from the prospectus provisions: see s66(2)(a), 66(3)(a), 66(3)(ba) and 1017 of the Corporations Law.
- 41 The *Corporate Law Economic Reform Program Act 1999* (CLERP Act) repealed s66 and created a new Ch 6D to replace the fundraising provisions. The reforms were designed to minimise the costs of fundraising while improving investor protection. The AUD500,000 threshold (the ‘product value test’) was retained, with amendments to address avoidance problems.

Note: See paragraph 8.1 of the Explanatory Memorandum to the Corporate Law Economic Reform Program Bill 1998 and s708(8)(a), 708(8)(b) and 708(9) of the Corporations Law.

- 42 The CLERP Act also introduced new income and asset thresholds (individual wealth test) into s708(8)(c) of the Corporations Law, such that an offer of securities did not require disclosure if the investor had:
- (a) net assets of at least AUD2.5 million; or
 - (b) gross income for each of the last two financial years of at least AUD250,000 a year.

- 43 A further category of wholesale investors was also introduced, being investors to whom an offer is made through a licensed dealer who is satisfied that the investor has relevant experience in investing in securities: see s708(10) of the Corporations Law.

- 44 The policy rationale for excluding offers to wholesale investors from the disclosure requirements was that such investors are ‘considered to have sufficient resources to obtain independent professional advice or who, because of the size of their potential investment, have sufficient leverage over the issuer to obtain the required information’. Further, relying on ‘experience [in investing in securities] as a test for sophistication will allow issuers to offer securities to those who do not fit the threshold income and asset tests ... but are “sophisticated” because of their experience in investing in securities without the need for a disclosure document’.

Note: See pp 62–63, paragraphs 8.3 and 8.5 of the Explanatory Memorandum to the Corporate Law Economic Reform Program Bill 1998.

- 45 The above wholesale investor provisions in the Corporations Law were then replicated in the Corporations Act when it was enacted in 2001.

Development of Ch 7 wholesale client test

- 46 The *Financial Services Reform Act 2001* (FSR Act) commenced in March 2002 and replaced Ch 7 of the Corporations Act. It introduced the distinction between retail and wholesale clients for financial products and services. The revised Ch 7 applied to financial products such as general insurance, superannuation, derivatives, securities, managed funds, non-cash payment facilities and products that satisfy the general financial product definition in s763A–763E. The fundraising provisions of Ch 6D continued to apply to certain securities.

- 47 The reforms under the FSR Act resulted from the [1997 Financial System Inquiry](#) and were introduced to clearly demarcate between investors who were considered in need of additional regulatory protections (retail clients) and those wishing to participate in wholesale markets (wholesale clients).

48 As noted at paragraph 2.25 of the Revised Explanatory Memorandum to the Financial Services Reform Bill 2001:

The FSR Bill draws a distinction between retail and wholesale clients. Generally, the consumer protection provisions will apply only to retail clients, as it is recognised that wholesale clients do not require the same level of protection, as they are better informed and better able to assess the risks involved in financial transactions.

49 In 2007, the sophisticated investor test was introduced into Ch 7 of the Corporations Act (s761GA), which enabled an AFS licensee to exclude a client from being classified as a retail client, consistent with Ch 6D. As noted at paragraph 1.18 of the Explanatory Memorandum to the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007:

Although the existing tests adequately address the circumstances of many investors, there are some investors who are defined in the legislation as retail investors and are unable to access wholesale status. For reasons such as experience or professional training, these investors may wish to be treated as wholesale investors. Such investors may consider retail disclosure an unnecessary hindrance to activities they well understand and would prefer to access wholesale investor status. They may also wish to access wholesale-only products.

Previous reviews and inquiries

50 Various reviews and inquiries have considered the appropriateness of the existing wholesale tests and highlighted the need for reform. However, to date, there have been no substantive changes to the tests as a result of any reviews or inquiries.

51 ASIC's previous submissions to a number of reviews and inquiries have consistently outlined our position that the current wholesale tests are outdated and should be revised. We have raised concerns about the harm that arises from investment in risky or complex products that are more suitable for wholesale clients, rather than investors who are truly retail clients. We refer the Committee to [our public submission](#) (PDF 692 KB) to the review of the regulatory framework for managed investment schemes (MIS review) and our further comments in Section D of this submission.

Future of Financial Advice options paper (2011)

52 In 2011, the wholesale client test in Ch 7 was examined as part of the Future of Financial Advice (FOFA) reforms. Treasury published the [Wholesale and retail clients future of financial advice options paper](#) (options paper) to seek stakeholder views on the appropriateness of the distinctions between wholesale and retail clients and the options for reform presented.

- 53 The options paper observed that problems with the wholesale client test became apparent during the global financial crisis as clients who did not have the necessary experience to invest in complex financial products were able to access these on the wholesale market and suffered loss: see pp 8–10 of the options paper.
- 54 The four options raised in the options paper were to:
- (a) update the test by:
 - (i) increasing the product value threshold to AUD1 million;
 - (ii) introducing an indexing mechanism for the financial thresholds within the test;
 - (iii) excluding illiquid assets from the individual wealth test’s net assets threshold, such as the client’s primary residence and superannuation;
 - (iv) requiring the client to specifically acknowledge instances when they will be classed as a wholesale client;
 - (v) requiring clients to meet two of the three thresholds for classification as a wholesale client, rather than just one;
 - (vi) introducing extra requirements for certain complex products; and/or
 - (vii) repealing the sophisticated investor test under s761GA;
 - (b) remove the distinction between wholesale and retail clients;
 - (c) introduce a subjective sophisticated investor test as the sole way to distinguish between wholesale and retail clients; or
 - (d) make no change to the existing test.
- 55 The FOFA reforms did not ultimately include any change to the wholesale client test.

Senate Economics References Committee inquiry into the performance of ASIC (2014)

- 56 In June 2013, the Senate referred the performance of ASIC to the Senate Economics References Committee for inquiry. In its June 2014 [final report](#), the committee made two recommendations to Government in relation to the wholesale/retail distinction:
- (a) Clarify the definitions of retail and wholesale investors: see Recommendation 59.
 - (b) Consider measures that would ensure investors are informed of their assessment as a retail or wholesale investor and the consumer protections that accompany the classification. This would require financial advisers to ensure that such information is displayed prominently, initialled by the client and retained on file: see Recommendation 60.

57 Our understanding is that the committee’s recommendations above refer to the wholesale client definition in Ch 7, and not to the wholesale investor definition in Ch 6D.

58 In contextualising these recommendations, the committee noted that the ‘submissions that have expressed the most dissatisfaction with ASIC’s performance often relate to financial products that should not have been available to retail clients’: see paragraph 27.2 of the final report.

Review of the Legislative Framework for Corporations and Financial Services Regulation (2020 to 2024)

59 In September 2020, the Australian Law Reform Commission (ALRC) commenced the *Review of the legislative framework for corporations and financial services regulation*.

60 Ch 12 of [Interim Report A](#) published by the ALRC in November 2021 invited views on how the definitions of retail client and wholesale client could be amended to achieve greater clarity, simplicity and coherence. The interim report proposed amending s761G to remove the product value and individual wealth tests, as well as the product-specific provisions in s761G(5), (6) and (6A): see Question A16. The ALRC also invited comment on the sophisticated investor definition in s761GA: see Question A17.

61 In discussing the proposal to remove the product value and individual wealth tests, the ALRC observed at paragraph 12.51 of the interim report that, contrary to the underlying policy rationale for the tests:

experience over the past decade suggests that ... persons who can afford to acquire financial products or services with a value above a certain prescribed amount or whose net assets or income is above certain threshold amounts cannot be presumed to have the requisite knowledge of the product or service to make an informed decision, and are no more inclined to acquire appropriate financial advice than people who qualify as retail clients.

62 In their discussion of the submissions received in response to the interim report, the ALRC noted there was mixed support for the proposal to amend the retail client definition in s761G, and there were divergent views on the criteria or conditions for the sophisticated investor definition in s761GA: see ALRC, [Reflecting on reforms: Submissions to Interim report A](#) [background paper FSL6], May 2022, paragraphs 189–214.

63 In light of stakeholder feedback, as well as then ongoing consultations relating to the regulation of managed investment schemes and financial advice, which also considered these wholesale definition issues, the ALRC decided not to formalise the proposals in Questions A16 and A17 of the interim report as recommendations: see ALRC, [Confronting complexity: Reforming corporations and financial services legislation](#) [final report], November 2023, p 227, footnote 69.

Quality of advice review (2022)

- 64 In March 2022, the Government commenced a review into the effectiveness of measures to improve the quality of financial advice (QAR review). The QAR review considered whether the wholesale tests were working effectively for the purposes of financial advice.
- 65 The [QAR review final report](#) released in December 2022 recommended amending the Corporations Act to require a client who meets the individual wealth test to provide a written consent to being treated as a wholesale client, including an acknowledgement of loss of certain protections: see Recommendation 11. The recommendation also proposed that existing consent requirements for wholesale investors should be updated for consistency. The final report acknowledged that disclosure and consent are not a perfect solution.
- 66 The Government determined to consider the introduction of revised consent requirements in connection with Treasury’s review into managed investment schemes (see paragraph 69).

Inquiries into managed investment scheme collapses

- 67 There have been various inquiries examining managed investment scheme collapses that resulted in significant investor losses, including the [Forestry managed investment schemes inquiry](#) (2014–16) and the [Sterling Income Trust inquiry](#) (2021–22). While these inquiries did not directly consider the wholesale tests, a number of them did explore issues relating to the lack of investor understanding of the often complex, high-risk products they were investing in.
- 68 These inquiries recognised that catastrophic investor harms can result from inappropriate investments, and called for broader consideration by Government of the regulatory settings for managed investment schemes. The harm caused by these collapses highlights the need to ensure the law remains fit for purpose and provides important statutory protections to investors who need it.

Managed investment schemes review (2023—ongoing)

- 69 Treasury is currently undertaking a review of the regulatory framework for managed investment schemes (i.e. the MIS review). In August 2023, Treasury published a [consultation paper](#) seeking feedback on a range of issues, including the appropriateness of the wholesale client test in Ch 7. Treasury is considering the submissions received.

C Comparison with overseas jurisdictions

Key points

Some key jurisdictions use concepts similar to Australia's wholesale client and retail client tests, with each jurisdiction setting its own parameters to determine wholesale and retail status.

In many jurisdictions, the wholesale and retail classification tests are supplemented by additional restrictions on retail offerings such as prohibited products, as well as diversification and liquidity requirements, to facilitate consumer protection.

Our observations of overseas regimes

- 70 The regulatory regimes in other key jurisdictions apply different regulatory settings for retail clients and wholesale clients, using different terminology.
- 71 The jurisdictions discussed below either apply financial thresholds that are higher than those in Australia or include adjustments to those thresholds to exclude the primary place of residence and other amounts from the calculation of an investor's net wealth. In some cases, the tests to determine wholesale client status include criteria that take into account relevant qualifications and experience.
- 72 In contrast to Australia, some jurisdictions have mechanisms in place to periodically update the tests used to classify wholesale clients.
- 73 In addition to the relevant tests, other jurisdictions also apply limitations on retail offerings to facilitate consumer protection, such as restrictions on direct investment in certain products. For example, for collective investment schemes (i.e. managed funds), the United States, United Kingdom and European Union expressly restrict general investment by retail investors in funds with more illiquid and complex assets. In contrast, Australia's regime under Ch 5C does not restrict or prohibit any investments by managed funds.
- 74 The Committee may wish to contact the overseas regulatory bodies directly to obtain further information on the application of the tests and their experiences.

Classification of clients in overseas regimes

- 75 A summary of publicly available information about the relevant tests in other jurisdictions is outlined below.

United States

- 76 In the United States, a retail client is any investor that does not meet the accredited investor test. An accredited investor includes:
- (a) banks, investment companies, investment advisers; and
 - (b) a person with an annual income in each of the preceding two years of more than USD200,000 (AUD303,186) individually or USD300,000 (AUD454,808) jointly with a spouse or partner, or with a net worth (excluding the primary residence) above USD1 million (AUD1.5 million), or who meet professional certifications, designations or other credentials issued by an accredited educational institution, which the Securities and Exchange Commission (SEC) may designate from time to time by order.

Note: AUD conversions are as at 13 May 2024.

- 77 There are provisions for this test to be reviewed every four years. In December 2023, the SEC released a staff report for feedback highlighting issues on whether the test remains appropriate, whether the financial thresholds should be indexed for inflation, and whether the use of professional credentials is justified: see [Press release 2023-253](#) on the SEC website.

- 78 Generally, only accredited investors can invest in certain products, such as:
- (a) securities that are not registered with the SEC; or
 - (b) collective investment schemes that invest significantly in illiquid asset classes (e.g. real estate, private debt) and/or employ leveraged trading strategies (e.g. hedge funds).

- 79 In addition, for retail offerings of collective investment schemes, additional requirements are imposed such as:
- (a) limiting leverage to 33.3% of the assets;
 - (b) daily redemptions, with payment within seven calendar days; and
 - (c) a cap on illiquid assets (i.e. those unable to be disposed of within seven calendar days) to no more than 15% of scheme assets.

- 80 The SEC last made amendments to the accredited investor definition in August 2020 to expand the categories of investors who may qualify as accredited investors: see [Press release 2020-191](#) on the SEC website. In 2023, legislative reforms were also initiated for the introduction of a prescribed examination to meet the professional education requirements to be an accredited investor, but the reforms have not yet taken effect: see the [Equal Opportunity for All Investors Act of 2023](#) (United States).

United Kingdom

- 81 In the United Kingdom, a retail client is any investor that does not meet the professional client test. A professional client includes:
- (a) governments, banks, pension funds, investment firms, insurance companies, operators of a collective investment scheme and other institutional investors; and
 - (b) high net worth individuals who sign a statement certifying annual income above GBP100,000 (AUD189,905) or net assets above GBP250,000 (AUD474,765) excluding the primary residence, pension savings and some other assets.
- 82 Individuals can also self-certify as a ‘sophisticated investor’ (as defined in the UK regime) in some circumstances, which excludes the application of specific regulatory requirements. For example, in relation to the promotion of certain investments, an individual can elect to be classified as a self-certified sophisticated investor if they have specific financial work experience, company director experience for a company with a prescribed minimum annual turnover or specified investment experience.
- 83 On 31 January 2024, the [*Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) \(No 2\) Order 2023*](#) (United Kingdom) came into effect. It increased the financial thresholds for high net worth individuals set out at paragraph 81(b) above and self-certified sophisticated investors set out at paragraph 82 above for the purposes of financial promotion exemptions. The financial promotion exemptions enable investment offers for unlisted companies to be communicated to high net worth individuals and self-certified sophisticated investors without meeting prescribed authorisation and approval requirements.
- 84 These increases to the financial thresholds were subsequently reversed in March 2024 by the [*Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment and Transitional Provision\) Order 2024*](#) (United Kingdom). The [*Explanatory Memorandum*](#) for this order referred to significant concerns raised by stakeholders about unintended impacts of the changes as follows:
- Specifically, the technology, angel investing, and theatre sectors have raised new concerns that the changes to the eligibility criteria for the exemptions could affect the ability of start-up businesses to obtain investment, and the ability to finance theatre productions through small-scale investors.
- 85 Separate to the professional client and sophisticated investor classifications, additional restrictions are imposed on retail offerings. For example, for Undertakings for Collective Investment in Transferable Securities (a type of collective investment scheme), investment in gold, real property, unregulated and illiquid funds (where at least 50% of assets are illiquid) is prohibited.

Concentration limits are also imposed to restrict exposure to particular investments, such as a limit of 10% of assets invested in unlisted securities.

European Union

- 86 In the European Union, a retail client is any investor that does not meet the professional investor test. A professional investor includes:
- (a) governments, banks, pension funds, investment firms, insurance companies, operators of a collective investment scheme and other institutional investors; and
 - (b) elective professional investors who satisfy two of the following criteria and are informed of the rights they will lose:
 - (i) the client has carried out significant transactions in the relevant market at an average frequency of ten per quarter over the previous four quarters;
 - (ii) the size of the client's financial instrument portfolio exceeds EUR500,000 (AUD816,419); or
 - (iii) the client has worked for at least one year in a professional position in the relevant financial sector.
- 87 Similar to the United Kingdom, additional restrictions are also imposed on retail offerings. For example, retail investment in alternative investment funds that offer more illiquid and complex investments such as hedge funds, private equity funds and real estate is generally prohibited unless permitted by a member state.

Singapore

- 88 In Singapore, a retail client is a client other than an accredited investor, expert investor or institutional investor as defined below:
- (a) 'Accredited investor' means an individual with:
 - (i) net personal assets exceeding SG2 million (AUD2.2 million), with the primary place of residence capped at SG1 million (AUD1.1 million) for the purposes of calculating net personal assets;
 - (ii) financial assets (investments) net of any related liabilities exceeding SG1 million (AUD1.1 million); or
 - (iii) an income in the preceding 12 months of at least SG300,000 (AUD335,681).
 - (b) 'Expert investor' includes a person whose work involves the management of capital markets products as a principal or agent.

- (c) 'Institutional investor' includes governments, banks, pension funds and investment firms.

89 In addition to the above classifications, additional restrictions are imposed on retail offerings. For example, for retail offerings in collective investment schemes, concentration limits apply and specialist funds (such as hedge funds, private equity and property funds) must generally apply specified minimum investment levels and meet other additional requirements.

New Zealand

90 In New Zealand, a retail client is any investor that does not meet the wholesale client test. A wholesale client includes:

- (a) governments, banks, pension funds, investment firms, insurance companies, operators of a collective investment scheme and other institutional investors;
- (b) a person that invests at least NZD750,000 (AUD683,120), or the investment amount plus any amounts previously invested for the same financial product from the same provider totals at least NZD750,000 (AUD683,120);
- (c) a person that holds or in the past two years held an investment portfolio of NZD1 million (AUD910,826) or more;
- (d) a person with net assets or consolidated turnover over the past two financial years of NZD5 million (AUD4.5 million) or more;
- (e) in relation to an offer of a derivative, where the notional value of the derivative is at least NZD5 million (AUD4.5 million); or
- (f) an eligible investor who self-certifies (as overseen by a financial adviser, accountant or lawyer) that there are reasonable grounds to conclude they have sufficient experience in using financial services and investing in financial products to assess the product and risks and have been informed of the consequences of self-certification.

91 The consequences of being a wholesale client are similar to Australia. For example, the client will not receive initial or ongoing prescribed disclosure, will not have access to independent dispute resolution, and may not be dealing with a firm licensed by the regulator, the Financial Markets Authority.

D Proposals to change the wholesale tests

Key points

When the wholesale tests were set, only a small number of investors would have met the individual wealth tests to qualify as wholesale.

The financial thresholds used in these wholesale tests have not been increased since their introduction into the Corporations Act in the early 2000s or earlier for some thresholds.

We consider that the financial thresholds in each of the product value tests and the individual wealth tests should be updated to account for inflation, and that a statutory mechanism should be introduced to facilitate periodic increases to the financial thresholds over time.

We also suggest the introduction of penalties and other sanctions for misuse of the accountant's certificate mechanism for classifying wholesale investors and wholesale clients. Consideration should also be given to revising the current subjective test for AFS licensee assessment of an investor or client as wholesale.

We do not consider such increases would have a material impact on the fund raising community. We support appropriate consultation with impacted stakeholders and a suitable transition period for any reforms.

Problems with the current wholesale tests

Financial thresholds

92 Since their introduction into the Corporations Act in the early 2000s, the current financial thresholds in the wholesale tests have been significantly impacted by:

- (a) inflation, which has eroded the value of the current thresholds (for example, as stated at paragraph 102, AUD2.5 million in 2001 is equivalent to approximately AUD4.61 million in 2024); and
- (b) the property boom across much of Australia, with growth in house prices boosting the net worth of home owners; and
- (c) the continued growth in superannuation balances following the introduction of compulsory superannuation in 1992.

93 These changes have resulted in investors who may not have financial knowledge or experience, a high net worth by today's standards or a high risk appetite being classified as wholesale. An immediate consequence of this classification is that such investors are no longer treated as retail, and so do not have the benefit of important statutory protections, such as those discussed at paragraphs 24–37.

Accountant's certificates

- 94 As discussed in Section A, a qualified accountant may attest that a person satisfies the individual wealth test under s708(8)(c) and similarly under s761G(7)(c), by providing an accountant's certificate attesting to the person's assets or income.
- 95 We have seen instances of the accountant's certificate mechanism being misused, including in the fundraising context where trust or company structures have been used to enable the inappropriate certification of investors as sophisticated investors, and instances where accountant's certificates have been forged (see examples in paragraph 121).

AFS licensee assessment of wholesale investors and wholesale clients

- 96 We have concerns with the wholesale tests in s708(10) and 761GA, which rely on an AFS licensee's assessment of the investment experience of the investor. Our experience suggests that these tests are not widely used, but may be used in relation to offers of more complex and novel products such as CFDs.
- 97 There is a subjective element to the test (i.e. the licensee must be 'satisfied on reasonable grounds'), which may be open to abuse, particularly in relation to complex and novel product offerings such as CFDs.
- 98 The test also relies on the client themselves presenting evidence to demonstrate their experience in using financial services. In ASIC's view, this is a means by which licensees can pass risk on to investors, leading to the risk of investors being inappropriately treated as wholesale, particularly when the investor is vulnerable or subject to pressure selling tactics.

Proposals to change the wholesale tests

Increasing the financial thresholds

- 99 We consider that the financial thresholds in each of the product value tests and individual wealth tests in Ch 6D and Ch 7 are outdated and should be increased.
- 100 The financial thresholds used in these tests have not been increased since their introduction into the Corporations Act in the early 2000s. The failure to increase the thresholds over time has meant that the wholesale tests have become easier to satisfy, resulting in a much larger number of investors meeting the tests, including many who may not be financially sophisticated or wealthy by today's standards, undermining the original policy intent.

101 We also refer to research findings by the Australian National University in 2021 that highlight the continued growth in the percentage of Australian adults that meet the individual wealth tests to be classified as wholesale. In 2002, the percentage was 1.9%. This was predicted to grow to 16.2% by 2021. It was also forecast that 43.6% of adults will meet the individual wealth tests by 2041.

Note: B Phillips, 'Sophisticated investor projections', Centre for Social Research and Methods, Australian National University, October 2021.

102 We recommend increasing the financial thresholds to account for inflation since their introduction into the Corporations Act. If adjusted to account for inflation based on CPI increases from 2001 to 2024, the thresholds would increase as follows:

- (a) product value test threshold—from AUD500,000 to approximately AUD922,000; and
- (b) individual wealth tests:
 - (i) net asset threshold—from AUD2.5 million to approximately AUD4.61 million; and
 - (ii) gross income threshold—from AUD250,000 to approximately AUD461,000.

103 In addition to a point-in-time increase to account for inflation since 2001, we recommend a legislative mechanism be introduced to facilitate periodic increases to the thresholds over time. This should ensure the thresholds at least keep pace with inflation and remain up to date.

104 Increasing the financial thresholds will not prevent all harm resulting from products marketed or sold, or financial advice given, to clients who should be treated as retail clients. However, this increase should help mitigate harms, as it will better ensure that investors who are in essence retail clients are recognised as such and benefit from the statutory protections applicable to retail clients.

105 Overseas jurisdictions also use tests that employ financial thresholds to distinguish between retail and wholesale clients. Other jurisdictions generally impose higher financial thresholds or exclude certain assets when determining whether an individual meets the relevant wealth tests. Further, some jurisdictions have mechanisms in place for periodic updates to the tests applied. For further information, see Section C of this submission.

Exclusion of derivatives and leveraged financial products

106 In the case of derivatives, the product value test applies where the face value or notional amount of the derivative is AUD500,000 or more when the parties enter into the derivative: see regs 7.1.22(2)(a) and 7.1.22(3). This creates a risk of perverse outcomes, because a consumer need only provide a

small initial margin (as little as AUD1,000) to enter into a leveraged derivative that has a notional value of AUD500,000, to be classified as a wholesale client.

- 107 In 2019, reg 7.1.22.AA was introduced to exclude CFDs from s761G(7)(a) to address this problem in relation to CFDs. We recommend that other leveraged financial products—including derivatives—also be excluded from the product value test in s761G(7)(a).

Enhanced obligations for accountant’s certificates

- 108 The Corporations Act does not currently prescribe penalties or other sanctions for misuse of the accountant’s certificate mechanism—for example, where an accountant falsely or negligently certifies that a client meets the applicable assets or income when they do not.
- 109 We consider that the introduction of penalties and other meaningful sanctions into the primary legislation would help improve practices and deter misconduct in relation to the certificate mechanism. It would also assist ASIC to take direct action where this mechanism is misused (see examples in paragraph 121 concerning Kwickie International Ltd and Guvera Group).

Revising the AFS licensee assessment of wholesale investors and wholesale clients

- 110 As a general proposition, we support the use of more objective tests for determining whether a client is a wholesale client or wholesale investor, instead of enabling the AFS licensee to assess a person as being wholesale.
- 111 If the current tests in s708(10) and 761GA are retained, consideration could be given to increasing the requirements and level of prescription within these tests. We note that other jurisdictions such as the European Union prescribe in legislation the financial experience and qualifications requirements for an individual to be classified as a sophisticated investor. From our observations of other jurisdictions, we consider that such requirements are more appropriately dealt with in legislation, rather than in guidance, to ensure enforceability.
- 112 However, we would have concerns with the introduction of individual self-certification for sophisticated investors, given the inherent difficulty for an investor to assess their own knowledge and experience, and the scope for abuse.

Consent requirements

- 113 The [QAR review final report](#) recommended that a written consent requirement be introduced for wholesale clients who meet the individual wealth test or sophisticated investor test.
- 114 Given the inherent limitations of disclosure as a consumer protection tool, we do not consider that the imposition of a consent requirement will be an effective means of ensuring that investors fully understand the consequences of being classified as wholesale.
- 115 Further, Report 632 *Disclosure: Why it shouldn't be the default* ([REP 632](#))—jointly published by ASIC and the Dutch Authority for Financial Markets—explains why disclosure and warnings do not necessarily result in informed consumers, and sometimes do not correlate with good consumer outcomes. The report concludes that disclosure is necessary, but not sufficient, to protect consumers and drive good consumer outcomes, as it:
- (a) does not solve or reduce inherent complexity (e.g. underlying complexity in financial products and services);
 - (b) must compete with other attempts to capture an investor's attention and influence their decisions; and
 - (c) is not one size fits all, as the effects of disclosure differ from person to person and situation to situation.
- 116 However, if consent requirements are introduced for the wholesale tests, we recommend that they be applied consistently across the individual wealth, product value and sophisticated investor tests. Consideration will need to be given to the different contexts in which investor consent may be sought, and the consequences of being considered wholesale for different products and services.

Consistency

- 117 More generally, we suggest that consideration should be given to ensuring that the wholesale tests in Ch 6D and Ch 7 are consistent, as far as practicable, to avoid confusion and on the basis that they are intended to achieve broadly similar objectives (noting that the test in Ch 6D is used for a narrower, disclosure-focused purpose).

Case studies

- 118 ASIC has very limited oversight and regulatory powers in respect of financial products offered to wholesale clients and wholesale investors. Nonetheless, we have observed situations where investors have been classified as wholesale clients or wholesale investors under the current tests

and have suffered harm and financial loss. In these situations, investors did not understand the risks of the relevant investment, were vulnerable or did not have the financial resources to weather the financial loss. Some relevant examples are outlined below.

Wholesale schemes

119 In addition to the significant collapses of a number of registered managed investment schemes, there have been a range of wholesale scheme collapses resulting in significant financial losses for investors classified as wholesale clients under the current tests. Examples include:

- (a) the [LM Managed Performance Fund](#) where more than AUD400 million was invested by over 4,500 members (based locally and overseas); and
- (b) the [Equititrust Premium Fund](#) where approximately AUD56.7 million remained owing to members when administrators were appointed.

Misuse of the current tests

120 ASIC's surveillance and enforcement work has also included a number of matters where investors who were retail were misclassified by entities as wholesale, or there was other misuse of the wholesale tests. As a consequence, these investors were not afforded the important additional protections that apply to retail clients.

121 Examples of ASIC's work includes the following:

- (a) In the matter of Oztures Trading Pty Ltd, trading as Binance Australia Derivatives (Binance), we identified that retail clients were invested in complex derivatives and had been incorrectly classified as wholesale clients. We oversaw the payment of compensation of AUD13.1 million to 532 clients and cancelled Binance's AFS licence on its request: see Media Release ([23-298MR](#)) *ASIC oversees more than \$17.4 million in compensation to retail investors by OTC derivative issuers* (9 November 2023) and Media Release ([23-091MR](#)) *Binance Australia Derivatives—AFS licence cancelled* (6 April 2023).
- (b) In the matter of Kwickie International Ltd (Kwickie), we became aware of a small number of accountants who had acted as trustees for trusts set up for the apparent sole purpose of enabling their clients to be classified as wholesale investors. The clients then received offers for shares in Kwickie—an unlisted company—without a prospectus being provided. We used our modification powers to ensure that shares in Kwickie could not be offered via a trust structure. This meant that the wholesale investor test continued to be applied consistently with the policy rationale, and safeguards for retail clients continued to apply: see Media Release ([17-228MR](#)) *ASIC takes action over misuse of 'sophisticated investor' certificates* (7 July 2017).

- (c) In the matter of Guvera Group, we became aware of accountants who advised their clients of an investment opportunity in Guvera Limited (Guvera), an unlisted public company. Clients invested in Guvera through a private investment company and in some cases were classified as wholesale investors through use of trust and company structures, to avoid treatment as retail clients. Guvera ultimately collapsed after incurring significant losses.

ASIC wrote to a range of accountants and accounting professional associations in relation to both the Guvera and Kwickie matters, warning against the practice of accountants using trust or company structures to circumvent the prohibition on offering shares without a prospectus to non-wholesale investors: see [17-228MR](#).

- (d) Former financial adviser Ezzat-Daniel Nesseim was sentenced for criminal offending, and was also permanently banned from providing financial services, in relation to conduct including use of three forged wholesale client certificates: see Media Release ([18-142MR](#)) *ASIC permanently bans financial adviser for providing false evidence to ASIC* (17 May 2018) and Media Release ([22-110MR](#)) *Former NSW financial adviser sentenced to three-year intensive correctional order for dishonesty offences* (16 May 2022).

Stakeholder concerns

- 122 ASIC understands concerns have recently been raised by stakeholders in response to the MIS review about potential changes to the wholesale tests and the impact on the investment and venture capital industry. Specific concerns have arisen from the angel investing community.
- 123 Our understanding is that an angel investor is an individual who invests their own money in a scheme or company that is in the early stage of its development, such as a start-up. This can include a broad range of investors, from those with limited experience and resources to experienced investors or those of high net worth. Angel investors may be attracted to projected higher returns or unique investment opportunities. Angel investors can be subject to increased investment risks given the nature of the underlying investment and inherent uncertainty on viability of the scheme or company while it is being established.
- 124 Concerns raised by the angel investing community include the following:
- (a) The number of wholesale investors and wholesale clients under the new tests would not be sufficient to support new ventures, particularly angel investment opportunities.

- (b) A greater number of investors would not be able to access wholesale-only investments, some of which may be marketed or perceived as offering greater investment returns and/or lower management fees.

125 There is a range of existing avenues available in the Corporations Act for those seeking to raise capital for limited offerings to clients with reduced compliance obligations. These avenues would not be impacted by our recommended reforms to the wholesale tests and would remain available for fundraising as explained below:

- (a) For small-to-medium sized capital raisings by companies, the CSF framework in Pt 6D.3A may be available to companies seeking to raise and contribute capital. The CSF framework enables eligible small, unlisted companies to raise up to AUD5 million from retail clients (using the test in Ch 7), via the platform of a CSF intermediary (which holds an AFS licence, authorising it to act as such). The CSF framework is not available to offers of interests in managed investment schemes.
- (b) In some cases, a start-up or small-scale capital raising can raise funds from retail investors without requiring a prospectus or PDS to be issued. Generally, no prospectus or PDS is required to be given for fundraisings up to AUD2 million where offers of securities or financial products are made to up to 20 retail investors over a rolling 12-month period. Wholesale investors are excluded from the 20 investor limit.

126 The recommendation to update the financial thresholds would only operate to appropriately widen the category of clients classified as retail, consistent with the original policy intent. We recognise that an entity may wish to provide an investment opportunity to the client and the client may wish to have access to the investment opportunity. However, we consider that some investment opportunities are too speculative, complex or risky for general distribution to clients who are truly retail, without the additional regulatory protections that apply in respect of retail investors.

127 The reforms to the wholesale tests would not otherwise impede the ability for entities to raise money from wholesale investors or wholesale clients under the current reduced compliance obligations provided for by the Corporations Act.

128 The following types of investors would continue to be able to invest in wholesale offerings:

- (a) high net worth individuals with income and assets exceeding any updated thresholds;
- (b) professional investors; and
- (c) investors classified as a ‘sophisticated investor’ under s761GA or 708(10), under any revised definition of those terms.

129 Further, we consider that any increased compliance costs that would apply should the wholesale tests be revised are outweighed by the resulting consumer protection benefits (see paragraphs 132–133).

Additional considerations when implementing changes

Consultation

130 We support further consultation with all relevant stakeholders in relation to any reform of the wholesale tests. This should include industry and consumer representatives. Changes to the tests would represent a material change to the regulatory settings for financial services and markets, and require additional discussion and feedback.

Transitional arrangements

131 We consider that appropriate transitional arrangements should apply to any reform of the wholesale tests. This would allow entities to adapt their systems and processes to the new tests and ensure that existing investment arrangements are not unduly impacted.

Compliance costs

132 Any additional compliance costs resulting from our recommended reforms would be the ordinary costs applicable to offerings to retail clients. We consider the costs are outweighed by the benefits of ensuring that important consumer protections apply to investors who are, in essence, retail clients, but are not currently classified as such.

133 Specific compliance costs for industry would likely involve:

- (a) some legal costs, including those associated with understanding the change in the tests and any transitional arrangement;
- (b) some lost production time while business changes are implemented;
- (c) for some entities, legal and ASIC fees associated with obtaining an AFS licence or varying licence authorisations under an existing AFS licence to cover retail clients; and
- (d) implementing or adapting compliance systems or processes to meet additional obligations that apply in relation to retail clients (as discussed at paragraphs 24–37).

134 We do not expect that updating the outdated thresholds will threaten the viability of some wholesale-only businesses for the reasons discussed at paragraphs 125–128.

Key terms

Term	Meaning in this document
AFCA	Australian Financial Complaints Authority—the EDR scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition in s9.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ALRC	Australian Law Reform Commission
ASIC	Australian Securities and Investments Commission
CCIV	A corporate collective investment vehicle—a company that is registered as a corporate collective investment vehicle under the Corporations Act Note: This is a definition in s9.
CFD	A contract for difference
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
CLERP Act	<i>Corporate Law Economic Reform Program Act 1999</i>
Committee	The Parliamentary Joint Committee on Corporations and Financial Services
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
CSF	Crowd-sourced funding
CSLR	Compensation Scheme of Last Resort
design and distribution obligations (DDO)	The obligations in Pt 7.8A of the Corporations Act
EDR	External dispute resolution
financial product	Has the meaning given in s9 of the Corporations Act
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act

Term	Meaning in this document
FSG	A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: This is a definition in s761A.
FSR Act	<i>Financial Services Reform Act 2001</i>
individual wealth test	<ul style="list-style-type: none"> • In relation to Ch 6D of the Corporations Act, the test in s708(8)(c); and • In relation to Ch 7 of the Corporations Act, the test in s761G(7)(c)
managed investment scheme (MIS)	Has the meaning given in s9 of the Corporations Act
MIS review	Treasury-led review of the regulatory framework for managed investment schemes commenced in August 2023
PDS	A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s9 for the exact definition
product intervention power	Means the power in Pt 7.9A of the Corporations Act and Pt 6-7A of the National Credit Act
product value test	<ul style="list-style-type: none"> • In relation to Ch 6D of the Corporations Act, the test in s708(8)(a) and (b); and • In relation to Ch 7 of the Corporations Act, the test in s761G(7)(a)
professional investor	Has the meaning given in s9 of the Corporations Act
Pt 7.7A (for example)	A part of the Corporations Act (in this example numbered 7.7A), unless otherwise specified
QAR review	Quality of advice review—a review into the effectiveness of measures to improve the quality of financial advice commenced in March 2022
reg 7.1.22 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.1.22), unless otherwise specified
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
retail client	A client as defined in s761G and 761GA of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
s761G (for example)	A section of the Corporations Act (in this example numbered s761G), unless otherwise specified
SEC	Securities and Exchange Commission (United States)

Term	Meaning in this document
security	Has the meaning given in s92 of the Corporations Act
sophisticated investor	A person who satisfies one of the sophisticated investor tests
sophisticated investor test	<ul style="list-style-type: none"> • In relation to Ch 6D of the Corporations Act, the test in s708(10) • In relation to Ch 7 of the Corporations Act, the test in s761GA
target market determination	Has the meaning given in s994B of the Corporations Act
wholesale investor	A person in relation to whom an offer of a body's securities does not need disclosure in accordance with the tests in s708(8)–(10) of the Corporations Act
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
wholesale tests	The tests in s708, 761G and 761GA of the Corporations Act under which a person may be classified as a wholesale investor or wholesale client