



**WHOLESALE
INVESTOR
ADVOCACY
AUSTRALIA**

Managing conflicts of interest

ASIC's proposed update to RG 181 Licensing

WIAA Submission in Response


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Submitted by



Wholesale Investor Advocacy Australia

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Executive Summary

Wholesale Investor Advocacy Australia (WIAA) welcomes the opportunity to provide feedback to ASIC's Consultation Paper 385 and the accompanying Draft Regulatory Guide 181 (RG 181) on managing conflicts of interest.

WIAA's perspectives are fundamentally shaped by our overarching mission: to foster a regulatory environment for wholesale investment that is anchored in best practice and delivered through a principled, practical, and adaptive approach. WIAA is dedicated to advocating for a regime that not only upholds the highest standards of market integrity and investor confidence but also actively encourages innovation, efficiency, and global competitiveness within the sector.

Central to this mission is WIAA's belief that effective regulation must reflect the realities of a rapidly evolving financial landscape. Regulatory expectations should be articulated with clarity and precision, ensuring that obligations are easily understood and consistently interpreted by all market participants. At the same time, WIAA advocates for proportionality, and that regulation should be tailored to the size, complexity, and risk profile of each business, avoiding a "one-size-fits-all" approach that could stifle innovation or impose unnecessary burdens, particularly on smaller or emerging participants in the market.

WIAA also emphasises the importance of adaptability and forward-thinking in regulatory design. As business models, technologies, and market structures continue to evolve, the regulatory framework must remain responsive and flexible, incorporating mechanisms for regular review and continuous improvement. By promoting best practice, WIAA seeks to ensure that Australia's regulatory regime is benchmarked against leading global standards, supporting cross-border activity and strengthening the nation's reputation as a trusted and well-regulated centre for wholesale investment.

A critical aspect of effective conflict management, and consistently highlighted throughout WIAA's submission, is the need for genuine structural independence between the roles of fund managers and trustees. The absence of such independence is, in itself, a fundamental conflict of interest. WIAA believes where the same entity, or closely related entities, perform both fund management and trustee functions, the ability of the trustee to provide independent oversight and act solely in the best interests of investors is compromised. WIAA strongly believes that robust conflict management in the wholesale sector requires not only clear policies and procedures, but also structural safeguards that prevent misaligned incentives and ensure effective governance and WIAA acknowledges that this principle is reflected in draft RG 181, which recognises that "misaligned incentives resulting from business structures may give rise to conflicts of interest," particularly in vertically integrated or related-entity models (RG 181.41).

WIAA is committed to advocating that regulation is not only robust in principle but also practical in implementation. This includes advocating for guidance that is actionable and relevant, providing market participants with the tools, examples, and support needed to meet their obligations in real-world scenarios. By championing best practice in both policy and execution, WIAA aims to promote a regulatory environment that is resilient, future-proof, and capable of supporting sustainable growth, continuous innovation, and the long-term interests of wholesale investors across Australia's diverse and dynamic financial markets.

In reviewing ASIC's Consultation Paper 385 and draft RG 181, WIAA strongly supports ASIC's policy objective of strengthening the conflicts management regime. WIAA recognises that robust conflict management is foundational to the credibility and effectiveness of Australia's wholesale financial markets, where structures, relationships, and transactions are often more complex and less transparent than in retail markets. Throughout our submission, WIAA's feedback is guided by a commitment to ensuring that regulatory reforms are both future-proof and responsive to the realities of a dynamic sector.

WIAA's General Position on ASIC's Seven Proposals:

- WIAA welcomes ASIC's commitment to a broad interpretation of the conflicts management obligation but urges explicit recognition that a lack of structural independence between fund managers and trustees is a core conflict that must be addressed through robust, structural safeguards.
- WIAA supports comprehensive mapping of conflicts management within the broader legal and ethical framework and recommends practical tools and frameworks for resolving overlapping or conflicting obligations, particularly where structural independence is lacking.
- WIAA endorses ASIC's recognition of actual, apparent, and potential conflicts, but cautions that static lists risk overlooking emerging structural conflicts, especially those arising from vertically integrated or related-entity business models.
- WIAA values the illustrative examples provided but recommends their expansion to include scenarios involving non-independent fund manager and trustee roles, and the risks these arrangements pose to investor protection and market integrity.
- WIAA supports the structured approach to defining "adequate arrangements," and calls for clear benchmarks and sector-specific examples that address the heightened risks where structural independence is absent.
- WIAA commends ASIC's focus on proportionality and risk sensitivity and urges that the absence of structural independence be treated as a material risk factor requiring enhanced conflict management measures.
- WIAA supports ASIC's shift towards a holistic, strategic, and context-sensitive approach, and recommends practical case studies and decision frameworks that explicitly address the management of structural conflicts in complex group structures.

WIAA strongly believes ASIC can champion best practice while delivering a regulatory framework that is robust, flexible, and capable of supporting the continuous evolution of Australia's wholesale financial markets. WIAA values the opportunity to contribute to this consultation and welcomes further engagement with ASIC to ensure that the final guidance sets a clear expectation for structural independence as a foundation for effective conflict management in the sector. We would certainly welcome the opportunity to meet with ASIC to discuss these issues in more detail.

To arrange a meeting to discuss WIAA's position and recommendations within our submission, please do not hesitate to contact either, [REDACTED]

Yours sincerely

[REDACTED]

The conflicts management obligation

Proposal B1: “We propose to include guidance clarifying that the conflicts management obligation is broad and is intended to apply to all conflicts of interest other than those wholly outside the financial services business of a licensee or its representatives.”

B1 Q1)

WIAA welcomes ASIC’s commitment to ensuring that the conflicts management obligation is interpreted broadly and not undermined by technicalities or narrow readings. Draft RG 181 makes a clear and deliberate effort to communicate that the obligation is intended to encompass all conflicts of interest arising within, or in connection with, the financial services business of a licensee or its representatives, except those wholly outside the scope of that business (RG 181.10–12).

WIAA acknowledges that this breadth is vital for maintaining market integrity and investor confidence, particularly in wholesale markets where structures, relationships, and transactions are often more complex and less transparent than in retail markets. The policy objective, to prevent regulatory arbitrage and ensure robust management of all material conflicts, is well articulated in the draft’s language and supported by illustrative examples.

However, WIAA is concerned that, while draft RG 181 sets out the intended breadth, it may not provide sufficient practical guidance for licensees operating in innovative or non-traditional business models. The wholesale sector is characterised by evolving structures, cross-border activities, and increasingly sophisticated investment vehicles. The draft’s reliance on the phrase “wholly outside the financial services business” (RG 181.10) could leave room for interpretive uncertainty, particularly in cases where personal, corporate, or third-party interests are intertwined with financial services activities.

Critically, WIAA believes that the guidance must explicitly address the need for structural independence between the roles of fund managers and trustees. The absence of such independence is, in itself, a significant conflict of interest. This is demonstrable where the same entity, or closely related entities, perform both fund management and trustee functions. In this situation there is an inherent risk that the interests of investors may not be adequately protected, and that conflicts may be managed in form rather than substance. Structural independence is a fundamental safeguard to ensure that the trustee can exercise effective oversight and act in the best interests of beneficiaries, free from undue influence or alignment with the fund manager’s commercial interests.

WIAA believes that draft RG 181 is directionally clear but could be strengthened by:

- Providing more nuanced examples that address grey areas, such as joint ventures, indirect ownership interests, or personal investments by key personnel that may not be “wholly outside” the financial services business but are not obviously within it.
- Explicitly addressing scenarios where fund managers and trustees are not structurally independent and clarify that such arrangements are inherently conflicted unless robust independence is established.
- Clarifying the treatment of emerging business models (e.g. digital asset platforms, decentralised finance, or multi-jurisdictional structures) where the boundaries of the “financial services business” are less clear-cut.
- Explicitly addressing the risk of form-over-substance compliance, by making clear that attempts to structure arrangements to fall outside the obligation (without a genuine separation of interests) will not be effective from a regulatory perspective.

Without further practical guidance, there is a risk that some licensees may either over or under interpret the scope of the obligation, leading to inconsistent application across the industry. Overly broad interpretations could result in unnecessary compliance costs and operational inefficiencies, while under interpretation could undermine the policy objective of robust conflict management.

Accordingly, WIAA recommends that ASIC supplement draft RG 181 with additional guidance, case studies, or FAQs that address complex or ambiguous scenarios, including those involving a lack of structural independence between fund managers and trustees, and provide a mechanism for licensees to seek clarification on specific cases. This would support a more consistent and effective application of the obligation, aligned with both the letter and the spirit of the law.

B1 Q2:

WIAA's assessment of the adequacy of ASIC's draft guidance on the broad scope of the conflicts management obligation is informed by our commitment to advancing a regulatory environment that is both principled and practical. WIAA's mission is to ensure that the wholesale investment sector operates with clarity, efficiency, and a strong foundation of investor confidence. Qualities that depend on clear regulatory expectations and guidance that can be meaningfully implemented across a diverse industry landscape.

WIAA recognises and supports ASIC's policy objective of ensuring that the conflicts management obligation is interpreted broadly, so as to capture all relevant conflicts that may arise in connection with a licensee's financial services business. This broad approach is particularly important in wholesale markets, where the complexity of structures, the prevalence of cross-border activities, and the rapid pace of financial innovation create a wide array of potential conflict scenarios (RG 181.10–12).

However, WIAA is concerned that the draft guidance, while conceptually sound, may not provide sufficient practical direction for licensees, especially those operating at the frontier of financial innovation or within multi-entity, multi-jurisdictional groups. In using the phrase "wholly outside the financial services business" (RG 181.10) ASIC looks to be setting a boundary for the obligation, yet in practice, the distinction between what is "within" and "outside" the business can be highly ambiguous. For example, personal investments by directors, indirect interests through related entities, or commercial relationships that straddle multiple jurisdictions may present conflicts that are not easily categorised. This ambiguity is particularly acute in the wholesale sector, where business models are often bespoke and rapidly evolving.

A key area where this ambiguity can have serious consequences is in the structural relationship between fund managers and trustees. WIAA strongly believes that a lack of structural independence between these roles constitutes a fundamental conflict of interest. When the same entity, or closely related entities, serve as both fund manager and trustee, the ability of the trustee to provide independent oversight and act solely in the best interests of investors is compromised. This structural conflict cannot be adequately addressed by disclosure or procedural controls alone; it requires genuine separation of roles and interests.

WIAA is also concerned that, without further clarification, where unintended ambiguity may result in divergent interpretations and inconsistent application of the conflicts management obligation across the industry. Some licensees may adopt an overly cautious approach, resulting in unnecessary compliance costs, operational inefficiencies, and a reluctance to innovate. Others may interpret the boundaries too narrowly, exposing the market to unmanaged conflicts and undermining the policy objective of robust conflict management. This risk is heightened by the increasing complexity of financial products, the use of digital platforms, and the growing importance of cross-border operations in wholesale markets.

To address these challenges and better align the guidance with the realities of the wholesale sector, WIAA recommends that ASIC take the following steps:

- ASIC should provide additional, scenario-based guidance that addresses areas of uncertainty frequently encountered by wholesale licensees. For example, the guidance should include practical illustrations of how to manage conflicts arising from personal investments by directors, cross-directorships, indirect interests in related entities, and joint ventures. It should also include explicit reference to the need for structural independence between fund managers and trustees and provide examples of the risks and conflicts that arise when such independence is lacking.

These examples should reflect the diversity of business models and the complexity of modern financial services (RG 181.32–33 demonstrates this level of complexity). Such practical guidance would help licensees to interpret the obligation consistently and confidently, regardless of their size or business model.

- The draft should specifically address how the conflicts management obligation applies to new and evolving business models, such as digital asset platforms, decentralised finance (DeFi), alternative investment vehicles, and cross-border operations.

In these contexts, the boundaries of the financial services business are often less clear-cut, and the risk of regulatory arbitrage or inadvertent non-compliance is higher (RG 181.47–48). Addressing these scenarios directly would ensure that the guidance remains relevant and future-proof.

- WIAA recommends that ASIC make explicit its expectation that licensees adopt a substance-over-form approach to conflict management. This means that arrangements should be designed and implemented to be effective in practice, not merely compliant in documentation.

Such an approach would help prevent regulatory arbitrage, whereby arrangements are structured to appear compliant while failing to address the underlying risks and reinforce the integrity of the regulatory regime (RG 181.49).

- WIAA encourages ASIC to establish a formal mechanism for licensees to seek informal guidance or clarification on complex or novel conflict scenarios. This could take the form of an industry helpdesk, regular Q&A publications, or a process for obtaining non-binding regulatory feedback.

A mechanism of this nature would promote consistency in interpretation, support a culture of proactive compliance, and foster open communication between industry and regulator.

WIAA believes that these measures would not only provide greater certainty and practical support for licensees but would also reinforce the effectiveness, integrity, and adaptability of Australia's wholesale markets. By ensuring that the guidance is both clear and responsive to the realities of a dynamic and sophisticated sector, ASIC can support the policy objectives of market integrity, investor protection, and continuous improvement. In WIAA's view, these steps are critical to maintaining Australia's reputation as a leading, well-regulated centre for wholesale investment and financial innovation.

WIAA's Position on Proposal B1:

WIAA supports ASIC's intention to interpret the conflicts management obligation broadly, recognising this as essential for maintaining market integrity and investor confidence in the wholesale sector (RG 181.10–12). WIAA agrees that draft RG 181 clearly articulates the policy

objective of preventing regulatory arbitrage and ensuring all material conflicts are robustly managed, especially given the complexity and opacity of wholesale financial services.

However, WIAA is concerned that the draft's broad language, particularly the phrase "wholly outside the financial services business" may not provide sufficient practical guidance for licensees, especially those operating in innovative, cross-border, or multi-entity business models. This ambiguity could lead to inconsistent application, with some licensees being overly cautious (resulting in unnecessary compliance costs and inefficiencies) and others interpreting the scope too narrowly (leaving conflicts unmanaged and undermining regulatory objectives).

A critical area where this risk is most pronounced is in the structural relationship between fund managers and trustees. WIAA believes that the absence of structural independence between these roles is a fundamental conflict of interest. Where the same entity, or closely related entities, act as both fund manager and trustee, there is an inherent risk that the trustee's oversight and fiduciary duties to investors may be compromised by commercial interests aligned with the fund manager. This structural conflict cannot be adequately managed by disclosure or procedural controls alone; it requires genuine separation of roles and interests to ensure effective oversight and the protection of investor interests.

To address these risks, WIAA recommends that ASIC:

- Provide more nuanced, scenario-based guidance reflecting the diversity and complexity of wholesale business models, including examples involving personal investments, cross-directorships, indirect interests, and joint ventures (RG 181.32–33).
- Explicitly address the need for structural independence between fund managers and trustees and clarify that arrangements lacking such independence are inherently conflicted and require heightened scrutiny and robust management.
- Specifically address how the obligation applies to emerging business models such as digital asset platforms, decentralised finance, alternative investment vehicles, and cross-border operations, where regulatory boundaries are less clear (RG 181.47–48).
- Clarify that licensees are expected to adopt a substance-over-form approach, ensuring conflict management is effective in practice and not just in documentation, to prevent regulatory arbitrage (RG 181.49).
- Establish a formal mechanism for licensees to seek informal guidance or clarification on complex or novel conflict scenarios, supporting consistency and proactive compliance.

WIAA believes these steps are necessary to provide greater certainty and practical support for licensees, reinforce the effectiveness and adaptability of the regulatory framework, and maintain Australia's reputation as a leading, well-regulated centre for wholesale investment and financial innovation.

Proposal B2: “We propose to include guidance clarifying how the conflicts management obligation operates in connection with other legal obligations of an AFS licensee (including other AFS licensing obligations). This guidance is supported by a non-exhaustive list of legal obligations and information (a ‘roadmap’) that may relate to the conflicts management obligation.”

B2 Q1:

WIAA considers the clarity with which ASIC addresses the interaction between the conflicts management obligation and other legal obligations to be fundamental to the effectiveness and credibility of the regulatory framework for wholesale financial services. WIAA’s mission is to ensure that wholesale market participants can operate with confidence, knowing that their compliance efforts are both meaningful and proportionate to the risks they face.

WIAA acknowledges that draft RG 181 seeks to provide a comprehensive perspective, recognising that the conflicts management obligation is embedded within a broader network of legal and ethical duties. The references to general licensing obligations, directors’ duties, market integrity rules, fiduciary duties, and other relevant laws are a positive step toward contextualising the conflicts management obligation within the wider regulatory landscape (RG 181.13–24).

Despite these strengths, WIAA is concerned that the draft guidance, while conceptually robust, may not sufficiently address the practical challenges faced by wholesale licensees. In practice, licensees in the wholesale sector must navigate overlapping and sometimes competing obligations under the *Corporations Act 2001* (Cth), fiduciary law, prudential standards, and international regulatory requirements. The complexity of these interactions can create uncertainty regarding which obligations should take precedence or how to reconcile potentially conflicting duties in a manner that is both legally compliant and commercially sensible.

A particularly acute example of such conflicts arises where there is a lack of structural independence between the roles of fund manager and trustee. When the same entity, or closely related entities, perform both functions, there is an inherent conflict of interest: the trustee’s duty to act independently in the best interests of investors may be compromised by commercial or operational alignment with the fund manager. This structural conflict cannot be adequately managed through disclosure or procedural controls alone. Instead, genuine structural independence is required to ensure that the trustee can fulfil its oversight and fiduciary responsibilities without undue influence or divided loyalties.

WIAA notes that draft RG 181 largely catalogues relevant obligations and provides a non-exhaustive “roadmap,” but may leave licensees without adequate practical direction when confronted with real-world scenarios where obligations intersect or conflict. For example, a licensee may face a situation where the duty to act in the best interests of clients could appear to conflict with a market integrity rule requiring disclosure or restraint. While the draft guide acknowledges the need to consider such obligations (RG 181.16–18), it does not provide a clear methodology for resolving these tensions.

To ensure the guidance is truly effective and supports a robust wholesale market, WIAA recommends that ASIC:

- Explicitly address, within its guidance and practical examples, the conflicts that arise from a lack of structural independence between fund managers and trustees and clarify that such arrangements require heightened scrutiny and robust conflict management.
- Develop a decision-making framework or hierarchy for licensees to use when obligations interact or conflict, including principles for prioritising client interests, market integrity, and compliance with statutory duties.

- Provide practical case studies that illustrate how licensees should approach situations where, for example, fiduciary duties and market conduct rules may point in different directions.
- Clarify expectations for documentation and justification when licensees make judgment calls in complex scenarios, supporting both compliance and defensibility in the event of regulatory scrutiny.

By strengthening the clarity and practical utility of the guidance on how the conflicts management obligation interacts with other legal obligations, and by explicitly recognising the need for structural independence between fund managers and trustees, ASIC would reduce compliance uncertainty and foster a more resilient and innovative wholesale market.

B2 Q2:

WIAA views the adequacy of ASIC's draft guidance on the interaction between the conflicts management obligation and other legal obligations as a pivotal issue for the wholesale sector. WIAA's mission is to champion a regulatory environment that is robust, principled, and practical for sophisticated market participants. While draft RG 181's mapping of overlapping obligations is a positive foundation, WIAA believes it can be further refined to better serve the needs of the wholesale market.

Draft RG 181 provides a non-exhaustive roadmap of relevant legal obligations, including directors' duties, fiduciary duties, market integrity rules, and industry standards (RG 181.13–24). While this recognises the complexity of the regulatory environment, it does not offer practical tools for licensees to navigate situations where these obligations may overlap or conflict in practice. The wholesale sector is characterised by complex transactions, multi-jurisdictional operations, and sophisticated counterparties, often requiring licensees to exercise judgment in reconciling competing legal and ethical duties. The absence of a clear, principles-based methodology for resolving these tensions risks inconsistent application, regulatory uncertainty, and outcomes that may not align with the policy objectives of market integrity and investor protection.

A particularly significant and recurring source of conflict in the wholesale sector is the lack of structural independence between fund managers and trustees. When the same entity, or closely related entities, serve as both fund manager and trustee, there is an inherent conflict of interest that cannot be adequately addressed by disclosure or procedural controls alone. These are examples where ASIC's decision-making frameworks and case studies should address the specific conflicts that arise when fund managers and trustees are not structurally independent, and where licensees should be required to document how such conflicts are identified and managed.

To better align the guidance with the realities of the wholesale market, WIAA recommends:

- The development of a principles-based decision framework that assists licensees in prioritising obligations when they intersect, and that addresses the heightened risks and management expectations where fund managers and trustees are not structurally independent. The framework should clarify when client interests should take precedence, when market integrity considerations override other duties, and how licensees should balance statutory and fiduciary obligations in practice (RG 181.16–18).
- The inclusion of real-world case studies or hypothetical scenarios that illustrate how licensees should approach complex, multi-faceted situations, providing valuable reference points for novel or ambiguous circumstances.
- Clarification of expectations regarding documentation of decision-making processes and the role of governance structures in overseeing the reconciliation of competing obligations, supporting a culture of accountability and transparency (RG 181.47–49).

- The creation of channels for licensees to seek informal guidance or “no-action” positions on particularly complex or novel issues, fostering proactive compliance and supporting innovation without undermining regulatory objectives.

WIAA believes these measures would provide greater certainty and practical support for wholesale licensees, reinforcing the integrity and resilience of Australia’s financial markets. By equipping licensees with clear, actionable guidance on navigating intersecting obligations, ASIC can promote a culture of principled decision-making and continuous improvement.

WIAA’s Position on Proposal B2

WIAA recognises that ASIC’s draft RG 181 takes important steps to situate the conflicts management obligation within the broader landscape of legal and ethical duties, referencing general licensing obligations, directors’ duties, market integrity rules, and fiduciary duties (RG 181.13–24). WIAA supports this comprehensive perspective, as it is essential for wholesale market participants to have confidence that their compliance efforts are meaningful and proportionate to risk.

However, WIAA is concerned that the draft guidance does not go far enough in providing practical direction for licensees who must navigate overlapping or conflicting obligations in real world scenarios. The current approach catalogues relevant obligations and offers a non-exhaustive “roadmap,” but lacks a clear methodology or framework for resolving situations where duties may intersect or conflict—such as when client best interest duties and market integrity rules appear to be at odds (RG 181.16–18).

To address these gaps, WIAA recommends that ASIC:

- Develop a decision-making framework or hierarchy to guide licensees when obligations interact or conflict, including principles for structural independence, a clear prioritising of client interests, market integrity, and statutory compliance.
- Provide practical case studies illustrating how to manage situations where different legal duties may point in different directions.
- Clarify expectations for documentation and justification of decisions made in complex scenarios, supporting both compliance and defensibility.
- Establish channels for licensees to seek informal guidance or “no-action” positions on complex or novel issues.

WIAA believes these steps would provide greater certainty, consistency, and practical support for licensees, reinforcing the integrity and resilience of Australia’s wholesale markets. By equipping licensees with actionable guidance for navigating intersecting obligations, ASIC can promote principled decision-making, continuous improvement, and a genuinely risk-based, outcomes-focused approach to compliance.

Types of conflicts for licensees to consider

Proposal B3: “We propose to update our guidance on types of conflicts of interest that an AFS licensee should consider.”

B3 Q1:

Our Australian regulatory environment should be both rigorous and adaptive, ensuring all material conflicts are identified and managed in a manner that supports market integrity and investor confidence. In reviewing Proposal B3, WIAA considered whether the clarity and comprehensiveness of ASIC’s guidance on the types of conflicts that licensees should consider are effective towards provided adequate regulation of the wholesale market.

WIAA acknowledges that the draft RG 181 represents a significant advancement in articulating the breadth of conflicts relevant to the financial services sector. The Guide’s recognition of actual, apparent, and potential conflicts, as well as its acknowledgement that conflicts can arise from a wide range of sources, including business structures, remuneration practices, and third-party relationships demonstrates a sophisticated understanding of the realities faced by wholesale market participants (RG 181.28–32).

The illustrative examples in Table 1 are particularly valuable, highlighting the diversity of conflict scenarios from client-related conflicts to structural, proprietary, and third-party conflicts (RG 181.34). WIAA believes this approach will assist to demystify conflicts of interest and provide a practical reference for licensees seeking to benchmark their own arrangements.

However, WIAA notes that the wholesale sector is characterised by rapid innovation, complex investment structures, and evolving business models. The types of conflicts that arise in this environment may not always be captured by traditional examples or static lists. As previously mentioned, the rise of digital platforms, algorithmic trading, and cross-border investment vehicles introduces new vectors for conflicts that WIAA believes may not be fully anticipated by the proposed guidance.

WIAA has formed the view, that while the guidance is clear and well structured, its adequacy will ultimately depend on its ability to remain relevant and responsive to market developments. Without mechanisms for regular review and update, the guidance could become outdated or fail to address emerging risks. The unique features of the wholesale market, such as the prevalence of sophisticated counterparties, bespoke arrangements, and multi-layered investment structures demand a more dynamic and principles-based approach to conflict identification.

WIAA’s view is that clarity in guidance must be matched by adaptability and forward thinking. Licensees should be encouraged not only to reference the provided examples but also to apply a critical, risk-based lens to their own operations, actively seeking out and addressing new forms of conflict as they arise. This is particularly important in wholesale markets, where unmanaged conflicts can have systemic and far-reaching consequences.

B3 Q2:

WIAA believes that the adequacy of ASIC’s guidance on the types of conflicts that licensees should consider must be assessed not only by its regulatory completeness but also by its practical relevance, adaptability, and capacity to support a forward looking, resilient wholesale market.

While WIAA recognises that draft RG 181 provides a strong foundation by cataloguing a broad array of conflict types and offering practical examples (RG 181.34), the wholesale sector is distinguished by its rapid pace of change, the sophistication of its participants, and the complexity of its products and relationships. In this environment, a static list of conflict types, no

matter how comprehensive at inception, will inevitably become outdated and may fail to capture new and emerging risks.

Draft RG 181 recognises the importance of identifying structural conflicts, including those arising from business structures, vertical integration, and the influence of related entities (see RG 181.41). The illustrative examples in Table 1 (RG 181.34) and the discussion of misaligned incentives between business units or intra-group structures (RG 181.41) provide a foundation for this, but WIAA recommends that ASIC make explicit reference to the risks associated with non-independent fund manager and trustee roles, and provide practical guidance on how such conflicts should be managed in accordance with the principles of effective oversight and fiduciary responsibility

WIAA is also concerned that the current guidance may inadvertently encourage a “checklist” mentality, where licensees focus on the specific examples provided rather than adopting a dynamic, risk-based approach to conflict identification. This could result in missed or underappreciated conflicts, particularly as new business models, technologies, and market practices emerge. The risk is that licensees may not be sufficiently proactive in identifying novel or sector specific conflicts, which could undermine the effectiveness of the conflicts management regime and expose the market to unmanaged risks.

To address these concerns and better align the guidance with the realities of the wholesale market, WIAA recommends the following changes:

- Explicitly identify the lack of structural independence between fund managers and trustees as a key type of structural conflict and provide illustrative examples of the risks and management strategies associated with such arrangements.
- Clearly state that the examples provided in draft RG 181 are illustrative and not exhaustive. Licensees should be expected to actively monitor for new types of conflicts as business practices, technologies, and market structures evolve. This expectation should be explicitly stated in the guidance, reinforcing that proactive, ongoing conflict identification is a core regulatory expectation (RG 181.30, RG 181.44).
- Commit to a process of regular review and update of the guidance, including the list of conflict types and examples, in consultation with industry stakeholders. This will ensure that the guidance remains relevant and responsive to innovation, structural change, and the emergence of new risks in the wholesale sector (RG 181.47).
- Supplement the guidance with sector-specific examples, particularly for areas experiencing rapid change such as digital assets, algorithmic trading, and cross-border investment vehicles. By including examples that reflect the unique risks and structures of the wholesale market, ASIC can help licensees better understand and manage conflicts that may not be present in more traditional or retail-focused contexts (RG 181.41–43).
- Advocate for a principles-based, risk-oriented approach to conflict identification, encouraging licensees to use critical judgment and tailor their conflict management frameworks to the specific risks and complexities of their business models, rather than relying solely on prescriptive lists.
- Establish mechanisms for ongoing industry dialogue and feedback regarding emerging conflict scenarios, such as regular industry roundtables, consultation papers, or digital platforms for sharing new examples and best practices. Such engagement would help ensure that the guidance evolves in step with market developments and supports a culture of continuous improvement.

WIAA believes these steps would provide greater clarity, relevance, and practical support for licensees, reinforcing the integrity, adaptability, and competitiveness of Australia’s wholesale markets. By equipping licensees with the tools, expectations, and industry engagement necessary

to identify and address both current and emerging conflicts, ASIC can promote a culture of proactive risk management and continuous improvement.

WIAA Position on Proposal B3:

WIAA supports ASIC's efforts in the draft RG 181 to provide clear and comprehensive guidance on the types of conflicts that licensees should consider, recognising this as fundamental for effective wholesale market regulation (RG 181.28–34). WIAA values the Guide's recognition of actual, apparent, and potential conflicts, and its inclusion of diverse examples that reflect the realities of wholesale financial services.

However, WIAA is concerned that the current guidance may not be sufficiently dynamic to keep pace with rapid innovation, complex investment structures, and evolving business models in the wholesale sector. WIAA warns that a static list of conflict types risks encouraging a "checklist" mentality, potentially leading licensees to overlook emerging or sector-specific conflicts, especially as new technologies and market practices develop.

To address these concerns, WIAA recommends that ASIC:

- Recognise the absence of structural independence between fund managers and trustees as a significant form of structural conflict and include practical examples that illustrate the associated risks and outline effective management strategies for addressing these arrangements.
- Clearly state that the conflict examples are illustrative, not exhaustive, and explicitly expect licensees to proactively identify new types of conflicts as the market evolves (RG 181.30, RG 181.44).
- Commit to regularly reviewing and updating the guidance and examples in consultation with industry, to ensure continued relevance and responsiveness to innovation and structural change (RG 181.47).
- Supplement the guidance with sector-specific and emerging risk examples—such as those related to digital assets, algorithmic trading, and cross-border investment vehicles—to better reflect the unique risks of the wholesale market (RG 181.41–43).
- Advocate for a principle based, risk-oriented approach to conflict identification, encouraging licensees to use critical judgment and tailor their frameworks to their specific business models, rather than relying solely on prescriptive lists.
- Establish mechanisms for ongoing industry dialogue and feedback, such as roundtables or digital platforms, to ensure the guidance evolves with market developments and supports continuous improvement.

WIAA believes these measures would enhance clarity, relevance, and practical support for licensees, reinforcing the integrity, adaptability, and competitiveness of Australia's wholesale markets. By promoting proactive risk management and continuous improvement, ASIC can ensure the regulatory framework remains fit for purpose in a rapidly changing environment.

Proposal B4: “We propose to include illustrative examples of the types of conflicts of interest that an AFS licensee may need to consider.”

B4 Q1: Is ASIC’s guidance clear?

WIAA has reviewed Proposal B4 from the perspective of practical utility of ASIC’s illustrative examples in ensuring the regulatory framework is both understood and effectively implemented across the wholesale sector.

WIAA acknowledges that the illustrative examples provided in draft RG 181 are a valuable tool for translating abstract regulatory expectations into practical, real-world scenarios. The breadth of examples, spanning client relationships, structural arrangements, proprietary interests, and third-party relationships demonstrates an appreciation for the diversity and complexity of conflicts that can arise in wholesale financial services (RG 181.34).

These examples serve as practical reference points for licensees, particularly those operating in complex or innovative business models. By situating the guidance in realistic contexts, ASIC helps bridge the gap between regulatory theory and operational practice.

However, WIAA is concerned that the current guidance does not explicitly address one of the most significant and recurring sources of structural conflict in the wholesale sector: the lack of structural independence between fund managers and trustees. Structural risk is referenced in draft RG 181, when noting that “misaligned incentives resulting from business structures may give rise to conflicts of interest,” including those arising from “vertical integration of product issuers, product manufacturers, product sales or advisory roles” and “the influence of related entities” (RG 181.41) .

WIAA strongly believes that ASIC’s guidance should clearly recognise the absence of structural independence between fund managers and trustees as a primary form of structural conflict. The illustrative examples should be expanded to include practical scenarios that highlight the risks this creates, such as compromised oversight, misaligned incentives, and diminished investor protection and outline effective management strategies, including the establishment of genuine structural separation or robust independent governance mechanisms.

While the current examples within draft RG 181 are helpful, WIAA cautions that without explicit reference to these structural issues, there is a risk that licensees may overlook or underestimate the importance of independent roles, particularly as business models become more complex and vertically integrated. This could undermine the effectiveness of the conflicts management regime and expose the market to unmanaged risks.

B4 Q2:

WIAA believes that the adequacy of ASIC’s illustrative examples in draft RG 181 should be measured not only by their regulatory completeness but also by their ongoing relevance, adaptability, and ability to promote a forward-looking, risk-based culture within the wholesale sector.

While the current examples are valuable, WIAA is concerned that the guidance does not explicitly address one of the most significant and persistent sources of structural conflict in the wholesale sector, the lack of structural independence between fund managers and trustees where an inherent conflict of interest arises that cannot be adequately managed through disclosure or procedural controls alone. WIAA acknowledges that ASIC has sought to reference the risk in RG 181.41, However, WIAA strongly believes that ASIC’s illustrative examples should be expanded to clearly recognise the absence of structural independence between fund managers and trustees as a primary form of structural conflict. The guidance should include practical scenarios that demonstrate the risks this creates, such as compromised oversight, misaligned incentives, and

diminished investor protection and outline effective management strategies, including the establishment of genuine structural separation or robust independent governance mechanisms.

WIAA is also concerned that, without explicit reference to these structural issues, the examples may inadvertently encourage a “tick-the-box” mentality, where licensees focus on the specific scenarios provided rather than adopting a dynamic, risk-based approach to conflict identification and management. This could result in licensees overlooking or underestimating the importance of independent roles, particularly as business models become more complex and vertically integrated, ultimately undermining the effectiveness of the conflicts management regime and exposing the market to unmanaged risks.

To address these concerns and ensure the guidance remains fit for purpose, WIAA recommends the following actions:

- Expand the illustrative examples to specifically address conflicts arising from a lack of structural independence between fund managers and trustees, consistent with the guidance in RG 181.41.
- Clearly identify this as a key type of structural conflict and provide practical examples that demonstrate the risks and outline effective management strategies for such arrangements.
- Commit to a process of periodic review and update of the illustrative examples, in close consultation with industry stakeholders, to ensure ongoing relevance and responsiveness to innovation, structural change, and the emergence of new risks in the wholesale sector (see RG 181.47).
- Reinforce that the examples are not exhaustive, and explicitly expect licensees to apply a forward-looking, risk-based approach to conflict identification, actively seeking out new and emerging sources of conflict as market practices and technologies evolve (see RG 181.30).
- Establish mechanisms for ongoing industry feedback and collaboration, such as roundtables or digital platforms, to keep the guidance current and support a culture of continuous improvement.

WIAA believes these steps would provide greater clarity, relevance, and practical support for licensees, reinforcing the adaptability and integrity of Australia’s wholesale markets. By equipping licensees with up to date, sector relevant examples and encouraging a culture of proactive risk management and industry collaboration, ASIC can better support the policy objectives of market integrity, investor protection, and continuous improvement.

WIAA Position on Proposal B4:

WIAA supports ASIC’s use of illustrative examples in RG 181, recognising their value in translating regulatory expectations into practical, real-world scenarios for the wholesale sector (RG 181.34). WIAA believes these examples help bridge the gap between theory and practice, especially for licensees operating in complex or innovative business models and are essential for fostering a culture of proactive and effective conflict management.

However, WIAA cautions that the wholesale market is dynamic, with frequent innovation and evolving business models. Static or infrequently updated examples risk becoming outdated and may not capture new or unique sources of conflict. WIAA is concerned that licensees might treat the current examples as exhaustive, leading to a “tick-the-box” approach rather than a dynamic, risk-based assessment. This could result in missed or underestimated conflicts, undermining comprehensive risk management and exposing the market to unmanaged risks.

To address these concerns, WIAA recommends that ASIC:

- Broaden the illustrative examples to directly address conflicts that result from a lack of structural independence between fund managers and trustees, in line with the guidance provided in RG 181.41.
- Commit to regularly reviewing and updating the illustrative examples in consultation with industry, ensuring ongoing relevance and responsiveness to innovation and emerging risks (RG 181.47).
- Supplement the guidance with sector specific and emerging scenarios, such as digital asset platforms, algorithmic trading, cross-border investment vehicles, and complex group structures, to reflect the unique risks of the wholesale market (RG 181.41–43).
- Clearly state that the examples are not exhaustive, and explicitly expect licensees to apply a forward-looking, risk-based approach to conflict identification (RG 181.30).
- Establish mechanisms for ongoing industry feedback and collaboration, such as roundtables or digital platforms, to keep the guidance current and support a culture of continuous improvement.

WIAA believes these steps would enhance the clarity, relevance, and practical support provided by the guidance, reinforcing the adaptability and integrity of Australia's wholesale markets and supporting the objectives of market integrity, investor protection, and continuous improvement.

Ensuring adequate arrangements are in place

Proposal B5: “We propose to include additional guidance on what ‘adequate arrangements’ involve. That is, adequate arrangements:

- (a) should *identify, assess and respond* to (i.e. effectively manage) conflicts of interest; and
- (b) require an AFS licensee to *implement, monitor, maintain, and review* these arrangements.”

B5 Q1: Is ASIC’s guidance clear?

WIAA’s approach to Proposal 5 was to evaluate the regime licensees would work within to ensure arrangements are robust, risk based and proportionate to the complexity and scale of a licensee’s operations.

WIAA acknowledges that the draft RG 181 provides a detailed and structured approach to defining ‘adequate arrangements,’ emphasising the need for arrangements to be robust, effective, and tailored to the licensee’s specific circumstances (RG 181.45–47). The guidance recognises that adequacy is not a one-size-fits-all concept and that arrangements must be proportionate to the risks posed by different types of conflicts and the nature of the licensee’s business (RG 181.48–49).

The inclusion of practical steps, such as identifying, assessing and responding to conflicts, and implementing, monitoring, maintaining, and reviewing arrangements offers a clear operational framework for licensees.

However, WIAA is mindful that, while the guidance is conceptually clear, its practical adequacy will depend on its accessibility and adaptability for the diverse range of entities operating in the wholesale sector. The sector encompasses everything from large, multi-jurisdictional financial institutions to smaller, highly specialised firms.

WIAA strongly believes that, for arrangements to be considered truly adequate, ASIC’s guidance should clearly recognise the absence of structural independence between fund managers and trustees as a primary form of structural conflict. The guidance should include practical examples and benchmarks for managing such conflicts, such as requiring genuine structural separation, independent governance mechanisms, or enhanced oversight where independence cannot be achieved.

Without further practical examples or sector specific guidance, some licensees, particularly smaller or less resourced entities, may struggle to interpret what is ‘adequate’ in their context, potentially leading to either undercompliance or unnecessary over engineering of arrangements.

WIAA also notes that the guidance could do more to address the role of technology and data driven solutions in supporting adequate arrangements, especially as digital transformation accelerates across the sector (RG 181.47, RG 181.53).

B5 Q2:

From WIAA’s perspective, the adequacy of ASIC’s guidance on what constitutes ‘adequate arrangements’ must be measured not only by regulatory clarity but also by practical effectiveness and proportionality.

While WIAA recognises the strengths of draft RG 181 in outlining the principles of robust and tailored arrangements (RG 181.45–47), the guidance could be further refined to better reflect the diversity and evolving nature of the wholesale sector. The sector comprises a wide spectrum of

licensees, from large, complex institutions to smaller, specialised firms, each facing distinct operational realities and risk profiles.

WIAA strongly believes that ASIC's guidance on adequate arrangements should clearly identify the absence of structural independence between fund managers and trustees as a primary form of structural conflict. The guidance should set expectations for managing such conflicts, including the need for genuine structural separation, independent governance mechanisms, or enhanced oversight and controls where full independence cannot be achieved.

Moreover, WIAA is particularly mindful that the guidance, as currently drafted, may not provide sufficient practical direction for smaller or resource constrained licensees, who may be uncertain about how to scale structural arrangements appropriately, seek to minimise their compliance costs or inadvertently falling short of regulatory expectations.

Similarly, the guidance could do more to address the integration of technological solutions, such as RegTech and data analytics which are increasingly central to effective conflict management in modern financial services (RG 181.47, RG 181.53).

To better align the guidance with the realities of the wholesale market, WIAA recommends:

- ASIC should provide additional, sector specific examples and case studies that illustrate how 'adequate arrangements' can be implemented in different contexts, ranging from large, multi-jurisdictional firms to small, boutique licensees. This would help ensure that the guidance is accessible and actionable for all market participants (RG 181.54).
- Clearly identify the lack of structural independence between fund managers and trustees as a key structural conflict that requires robust and specific arrangements. This could be supported by providing practical examples and benchmarks for managing such conflicts, including requirements for structural separation and independent oversight;
- The guidance should explicitly recognise the role of technology and data-driven tools in supporting adequate arrangements and encourage licensees to leverage innovative solutions for conflict identification, monitoring, and reporting (RG 181.47, RG 181.53).
- ASIC should further clarify how the principle of proportionality should be applied in practice, perhaps by offering indicative benchmarks or risk indicators that licensees can use to self-assess the adequacy of their arrangements (RG 181.48–49).
- The guidance should reinforce the expectation that arrangements are not static but should be regularly reviewed and adapted in response to changes in business models, market conditions, and emerging risks (RG 181.56–57).

WIAA believes these steps would provide greater clarity and practical support for licensees, reinforcing the adaptability and resilience of Australia's wholesale markets. By equipping licensees with clear, actionable guidance tailored to their unique circumstances, ASIC can better support the policy objectives of market integrity, investor protection, and continuous improvement.

WIAA's Position on Proposal B5:

WIAA supports ASIC's detailed and structured approach in draft RG 181 to defining 'adequate arrangements' for managing conflicts of interest, recognising this clarity as fundamental to effective regulation in the wholesale sector (RG 181.45–49). WIAA values the guidance's emphasis on robust, effective, and tailored arrangements, and its recognition that adequacy should be proportionate to the risks and complexity of each licensee's business.

WIAA notes that the inclusion of practical steps, such as identifying, assessing, and responding to conflicts, and implementing, monitoring, maintaining, and reviewing arrangements provides a clear operational framework for licensees.

However, WIAA is concerned that, without further sector specific examples or practical guidance, some licensees (especially smaller or less resourced entities) may struggle to interpret what is 'adequate' in their context. This could lead to either under compliance or unnecessary over engineering of arrangements.

WIAA also highlights that the guidance could do more to address the role of technology and data driven solutions, which are increasingly important as digital transformation accelerates in the sector (RG 181.47, RG 181.53).

To address these concerns, WIAA recommends that ASIC:

- Provide sector specific and scalable examples and case studies, illustrating how 'adequate arrangements' can be implemented across a range of business types and sizes (RG 181.54).
- Clearly identify the lack of structural independence between fund managers and trustees as a key structural conflict that requires robust and specific arrangements, and provide practical examples and benchmarks for managing such conflicts,
- Explicitly recognise and encourage the use of technology and data driven tools for conflict identification, monitoring, and reporting (RG 181.47, RG 181.53).
- Clarify how proportionality should be applied in practice, potentially by offering benchmarks or risk indicators to help licensees self-assess adequacy (RG 181.48–49).
- Reinforce the expectation that arrangements should be regularly reviewed and adapted in response to changes in business models, market conditions, and emerging risks (RG 181.56–57).

WIAA believes these steps would enhance clarity, practicality, and flexibility for licensees, supporting the adaptability and resilience of Australia's wholesale markets and advancing the policy objectives of market integrity, investor protection, and continuous improvement.

Proposal B6: “We propose to include guidance on a proportionate and risk-based approach to having and applying adequate arrangements.”

B6 Q1:

WIAA acknowledges that draft RG 181 recognises the importance of proportionality and risk sensitivity in the design and implementation of conflict management arrangements. The guidance makes clear that arrangements should be tailored to the nature, scale, and complexity of the licensee’s business, as well as to the materiality and seriousness of the conflicts encountered (RG 181.48–54). This principle is critical, as it supports efficient allocation of compliance resources and ensures that regulatory efforts are focused where they are most needed.

By stating that adequacy is a “question of fact in each case” and that arrangements should be “robust and effective,” the guidance avoids unnecessary prescription and recognises the sophistication of wholesale market participants (RG 181.49). This approach helps prevent a “one-size-fits-all” mentality, which could otherwise stifle innovation and impose disproportionate burdens on smaller or more specialised licensees.

However, WIAA is mindful that, while the guidance is conceptually clear, its practical adequacy will depend on how well it enables licensees to translate these principles into action. WIAA strongly believes that for a proportionate and risk-based approach to be effective, ASIC’s guidance should clearly recognise the absence of structural independence between fund managers and trustees as a material risk factor requiring enhanced conflict management measures. The guidance should include practical examples and benchmarks for managing such conflicts, such as requiring genuine structural separation, independent governance mechanisms, or heightened oversight where independence cannot be achieved.

Without explicit reference to these structural issues, more concrete guidance or benchmarks some licensees may struggle to confidently determine what is “proportionate” or “risk-based” in their specific context, potentially leading to either over-compliance or regulatory uncertainty.

WIAA also notes that the guidance could do more to encourage the use of data-driven risk assessment tools and to provide examples of how proportionality can be operationalised in practice, particularly for emerging business models and technologies (RG 181.47, RG 181.53).

B6 Q2:

From WIAA’s perspective, the adequacy of ASIC’s guidance on a proportionate and risk-based approach is pivotal to achieving a regulatory environment that is both effective and enabling for wholesale market participants.

While WIAA commends ASIC for seeking to embed the principle of proportionality and risk sensitivity within draft RG 181 (RG 181.48–54), there is a concern that the guidance does not explicitly address one of the most significant and recurring sources of structural conflict in the wholesale sector, the lack of structural independence between fund managers and trustees and therefore does not go far enough in providing licensees with the practical tools and confidence needed to operationalise these principles.

WIAA strongly believes that ASIC’s guidance on a proportionate and risk-based approach should clearly identify the absence of structural independence between fund managers and trustees as a material risk that requires robust and specific conflict management arrangements. The guidance should set expectations for managing such conflicts, including the need for genuine structural separation, independent governance mechanisms, or enhanced oversight and controls where full independence cannot be achieved.

Without further practical direction, there is a risk that some licensees, particularly smaller or less resourced entities, may either over engineer their arrangements (leading to unnecessary compliance costs) or under respond to risk (potentially undermining regulatory objectives).

WIAA also notes that the guidance could do more to address how proportionality should be applied in the context of rapidly evolving business models, digital transformation, and the increasing use of data-driven risk assessment tools.

To better align the guidance with the realities of the wholesale market, WIAA recommends:

- ASIC should offer indicative benchmarks, risk indicators, or decision frameworks to help licensees self-assess the appropriate level of arrangements for their specific business model and risk profile (RG 181.48–49). This could include illustrative matrices or checklists that map business size, structural independence and governance, complexity, and risk exposure to minimum standards of conflict management.
- The guidance should be supplemented with practical case studies that demonstrate how proportionality and risk-based thinking can be applied in different contexts, including requirements for structural separation and independent oversight, emerging business models and technologies (RG 181.53–54).
- ASIC should encourage the use of technology and data analytics in risk assessment and conflict management and provide guidance on how digital tools can support a proportionate and risk-based approach (RG 181.47, RG 181.53).
- The guidance should reinforce that proportionality is not static, and that arrangements should be regularly reviewed and adapted in response to changes in business operations, market conditions, and regulatory developments (RG 181.56–57).

WIAA believes these steps would provide greater clarity and practical support for licensees, reinforcing the adaptability and resilience of Australia's wholesale markets. By equipping licensees with actionable guidance tailored to their unique circumstances, ASIC can better support the policy objectives of market integrity, investor protection, and innovation.

WIAA's Position on Proposal B6:

WIAA supports ASIC's emphasis in draft RG 181 on a proportionate and risk-based approach to conflict management, recognising this as fundamental for a credible and effective regulatory framework in the wholesale sector (RG 181.48–54). WIAA values the guidance's recognition that arrangements should be tailored to the nature, scale, and complexity of each licensee's business, and that adequacy is a "question of fact in each case" (RG 181.49). This principles-based approach helps avoid a "one-size-fits-all" mentality, supporting both innovation and efficient allocation of compliance resources.

However, WIAA notes that while the guidance is conceptually clear, its practical adequacy depends on how well it enables licensees to operationalise these principles. The diversity of business models, structures, governance practices and risk profiles in the wholesale sector means some licensees may struggle to determine what is "proportionate" or "risk-based" for their context, risking either over-compliance or governance and regulatory uncertainty. WIAA also observes that the guidance could do more to encourage the use of technology and data-driven risk assessment tools, and to provide practical examples for emerging business models and technologies (RG 181.47, RG 181.53).

To address these issues, WIAA recommends that ASIC:

- Provide practical benchmarks, risk indicators, or decision frameworks to help licensees self-assess the appropriate level of arrangements for their business model, governance and risk profile (RG 181.48–49).

- Supplement the guidance with case studies that demonstrate how proportionality and risk-based thinking can be applied in different contexts, including for new business models and technologies (RG 181.53–54).
- Explicitly encourage the use of technology and data analytics in risk assessment and conflict management (RG 181.47, RG 181.53).
- Reinforce that proportionality is not static, and that arrangements should be regularly reviewed and adapted as business operations, market conditions, and regulatory developments change (RG 181.56–57).

WIAA believes these steps would provide greater clarity and practical support for licensees, reinforcing the adaptability and resilience of Australia's wholesale markets and supporting the policy objectives of market integrity, investor protection, and innovation.

Effective management of conflicts

Proposal B7: “We propose to update our guidance to outline a more holistic and nuanced approach that AFS licensees can adopt to effectively manage their conflicts, consistent with existing legal principles and policy.”

B7 Q1:

WIAA holds the view that ASIC should require high standards but also empower licensees to exercise informed judgment and adapt to evolving risks and business models. In ASIC adopting a holistic and nuanced approach to conflict management, WIAA recognises that the ASIC’s position in the draft guidance is a fundamental step to the long-term effectiveness and credibility of the regulatory regime governing wholesale markets.

As was mentioned earlier, WIAA acknowledges that in draft RG 181 ASIC’s proposed regime moves beyond a prescriptive, “tick-the-box” approach by advocating for a holistic, strategic, and context-sensitive framework for managing conflicts of interest (see RG 181.59–61). The guidance recognises that effective conflict management cannot be achieved through disclosure alone, and moreover, it requires a combination of avoidance, control, and disclosure measures tailored to the specific circumstances and risks faced by each licensee (RG 181.60–63).

By encouraging licensees to consider the full spectrum of available tools and to apply them in a manner proportionate to the risks and complexities involved, ASIC is signalling to licensees that it supports the development of conflict management frameworks that are genuinely effective in practice, rather than merely compliant in form. Without further practical direction, there is a risk that some licensees may default to disclosure as the primary (or sole) management tool, rather than fully considering the circumstances in which avoidance or control measures are necessary or preferable.

WIAA also notes that, while the guidance is conceptually clear and directionally sound, its practical adequacy will ultimately depend on how well it enables licensees to operationalise these principles. The wholesale sector is characterised by diversity in business models, transaction types, governance arrangements and risk exposures. However, WIAA is concerned that the guidance does not explicitly address the lack of structural independence between fund managers and trustees.

For a holistic and nuanced approach to be effective, WIAA strongly believes that ASIC’s guidance should clearly recognise the absence of structural independence between fund managers and trustees as a fundamental conflict of interest that requires robust management. The guidance should include practical case studies and decision frameworks that illustrate how licensees should address such conflicts, including the need for genuine structural separation, independent governance mechanisms, or enhanced oversight where independence cannot be achieved.

Additionally, WIAA observes that the guidance could further address the challenges of implementing holistic conflict management frameworks in complex, multi-entity, or cross-border structures, where the interplay of different legal and regulatory regimes may complicate decision-making.

WIAA’s policy concern is that, for the guidance to be truly effective, it must not only articulate the principles of holistic and nuanced conflict management but also provide licensees with the practical tools and examples needed to apply these principles in diverse and evolving contexts.

B7 Q2:

WIAA has considered whether the adequacy of ASIC’s guidance on a holistic and nuanced approach to conflict management is not simply a matter of regulatory completeness, but whether

it ensures that the framework is genuinely effective, adaptable, and supportive of best practice in the wholesale sector.

While WIAA welcomes ASIC's recognition that effective conflict management requires more than mere disclosure and must involve a strategic blend of avoidance, control, and disclosure measures (RG 181.59–63), there is concern that the guidance could be further enhanced to provide greater practical depth and operational clarity, especially through explicitly addressing the lack of structural independence between fund managers and trustees, one of the most significant and recurring sources of structural conflict in the wholesale sector.

In the wholesale sector, the complexity and diversity of business models, transaction types, and group structures mean that a "holistic" approach must be both flexible and actionable. Yet, WIAA strongly believes that ASIC's guidance on a holistic and nuanced approach should clearly identify the absence of structural independence between fund managers and trustees as a fundamental conflict of interest that requires robust and specific management strategies.

WIAA is particularly mindful that, without more detailed practical guidance, some licensees may struggle to determine when conflict avoidance is necessary (e.g. when the same entity, or closely related entities, serve as both fund manager and trustee, and an inherent conflict of interest arises that cannot be adequately managed through disclosure or procedural controls alone), when procedural control is sufficient, and when disclosure alone may be appropriate. There is also a risk that, in the absence of concrete examples, the principle of "holistic management" could be interpreted inconsistently across the market, undermining both regulatory certainty and the policy objective of robust conflict management.

To better align the guidance with the realities of the wholesale market, WIAA recommends the following enhancements:

- ASIC should supplement the guidance with practical case studies and decision frameworks that illustrate how licensees can determine the most appropriate mix of conflict avoidance, control, and disclosure measures in different scenarios (see RG 181.60–68). This would help bridge the gap between principle and practice, especially for complex or novel conflict situations.
- The guidance should more explicitly address the limitations of disclosure as a conflict management tool and provide clearer criteria for when avoidance or control is required, particularly in situations where the interests of clients or market integrity are at significant risk (RG 181.71–73).
- ASIC should include guidance on managing conflicts in complex group structures and cross-border operations, where legal, regulatory, and cultural differences may complicate the implementation of holistic frameworks (RG 181.76).
- The guidance should reinforce that holistic conflict management is an ongoing process, requiring regular review and adaptation in response to changes in business models, market conditions, and emerging risks (RG 181.56–57).

These steps would not only provide greater clarity and practical support for licensees but also reinforce the adaptability and resilience of Australia's wholesale markets. By equipping licensees with actionable, context-sensitive guidance, ASIC can better support the policy objectives of market integrity, investor protection, and innovation.

WIAA's Position on Proposal B7:

WIAA supports ASIC's move in draft RG 181 towards a holistic, strategic, and context-sensitive approach to managing conflicts of interest, moving beyond a prescriptive or "tick-the-box" methodology. WIAA agrees that effective conflict management should not rely solely on

disclosure but should also include avoidance and control measures tailored to the specific risks and circumstances of each licensee.

WIAA's position is that while ASIC's guidance is conceptually clear and aligns with the goal of fostering proactive risk management and continuous improvement, its practical effectiveness depends on how well licensees can operationalise these principles. WIAA is concerned that, without more practical direction and examples, some licensees may default to disclosure as the main tool, rather than fully considering when avoidance or control is required. WIAA also highlights challenges in applying holistic conflict management in complex, multi-entity, or cross-border contexts.

To address these issues and ensure the guidance is genuinely effective and adaptable, WIAA recommends that ASIC:

- Provide practical case studies and decision frameworks to illustrate the appropriate mix of avoidance, control, and disclosure in various scenarios (RG 181.60–68).
- Clearly identify the lack of structural independence between fund managers and trustees as a key structural conflict that requires enhanced conflict management arrangements.
- Clarify the limitations of disclosure and specify when avoidance or control is required, especially where client interests or market integrity are at risk (RG 181.71–73).
- Address the management of conflicts in complex group structures and cross-border operations (RG 181.76).
- Emphasise the need for continuous review and adaptation of conflict management frameworks in response to evolving business models and risks (RG 181.56–57).

WIAA believes implementing this approach will help licensees apply the principles in practice, support best practice and innovation, and reinforce the integrity and resilience of Australia's wholesale markets.

Regulatory and Financial Impact

WIAA has evaluated the regulatory and financial impact of the draft RG 181 not only in terms of legal compliance, but also through the lens of policy effectiveness, market fairness, and the long-term sustainability of Australia's wholesale capital markets.

Compliance Costs

WIAA acknowledges that the transition to the holistic conflict management framework proposed in draft RG 181 will require a significant investment of resources by licensees. This is especially true for arrangements where there is no structural independence between fund managers and trustees. In such cases, WIAA believes the inherent conflict of interest cannot be adequately managed through disclosure or procedural controls alone, and instead requires more robust, resource-intensive arrangements to ensure effective oversight and investor protection. This aligns with RG 181.41, which states that "misaligned incentives resulting from business structures may give rise to conflicts of interest," particularly in vertically integrated or related-entity models (RG 181.41).

The initial compliance burden is likely to be most acute for firms that have historically relied on disclosure as the primary tool for managing conflicts of interest, and for those where fund management and trustee roles are not structurally independent. These firms will need to implement more rigorous governance, independent oversight mechanisms, and potentially restructure their operations to meet the expectations of robust conflict management. While these requirements may increase upfront costs, they are justified by the need to address the elevated risks posed by structural conflicts and to improve market integrity and investor protection.

Ongoing compliance costs, while less pronounced than the initial outlay, remain substantial. The draft Guide's emphasis on continuous monitoring, record-keeping, and periodic review of conflict management frameworks means that licensees must commit to a sustained program of compliance activity, as highlighted in RG 181.56–57. For entities lacking structural independence between key roles, ongoing costs may include maintaining independent governance structures, regular third-party reviews, and enhanced reporting to ensure conflicts are effectively managed over time.

WIAA is also attentive to the impact of these requirements on smaller licensees. While ASIC's stated commitment to proportionality in compliance expectations (RG 181.10–12) is welcome, WIAA believes that proportionality must be operationalised with greater clarity. Without more explicit guidance and practical examples tailored to the realities of small firms, there is a risk that compliance uncertainty and cost will remain disproportionately high for this segment. WIAA urges ASIC to provide further detail on what constitutes minimum standards for small licensees, to ensure that the regulatory burden does not inadvertently stifle competition or innovation.

Effect on Competition

WIAA recognises that robust and consistent conflict management standards, as envisaged in draft RG 181, have the potential to level the playing field across the wholesale market. By setting clear expectations, particularly around the need for structural independence between fund managers and trustees and ASIC can reduce the risk that some entities gain a competitive advantage by internalising both roles and exposing investors to unmanaged conflicts. Requiring structural independence both supports fairer competition, strengthens market integrity, and aligns with global best practice.

However, WIAA is mindful of the risk that compliance costs, if not managed with a genuinely proportional approach, could create barriers to entry or ongoing participation for smaller firms. The principle of proportionality, as articulated in RG 181.48–49, must be more than aspirational, it must be embedded in practical guidance and regulatory oversight. WIAA recommends that ASIC provide clear, scalable benchmarks for structural independence and conflict management,

ensuring that smaller licensees can meet their obligations without being unduly disadvantaged or forced to adopt unnecessarily complex arrangements.

Other Impacts, Costs, and Benefits

The broader impacts of draft RG 181 are, in WIAA's view, overwhelmingly positive from a policy standpoint. The adoption of a holistic and context-sensitive approach to conflict management and should ASIC consider implementing WIAA's recommendations on structural independence between fund managers and trustees, does support the core objectives of investor protection and market confidence. By requiring licensees to move beyond disclosure and consider the full spectrum of avoidance, control, and disclosure measures, the Guide does address longstanding weaknesses in the regulatory regime and helps to mitigate the risk of misconduct and poor investor outcomes (RG 181.59–63).

Nevertheless, WIAA cautions that these benefits are not costless. The administrative and operational obligations imposed by the new framework, particularly in the early stages of implementation, will require additional resources, both human and financial. The challenge for policymakers is to ensure that these costs are justified by the improvements in market conduct and investor outcomes, and that they do not fall disproportionately on any one segment of the market.

WIAA also highlights several additional considerations that are critical to the success of the new regime. First, global consistency must be a guiding principle, particularly for licensees operating in cross-border contexts. RG 181.41 recognises the importance of aligning with international best practices, and WIAA urges ASIC to continue benchmarking its guidance against leading overseas jurisdictions to ensure Australia remains globally competitive. Second, the Guide must remain attuned to the specific risks and conflicts that arise in wholesale and sophisticated investor markets, which may differ markedly from those in retail contexts. Tailoring guidance to these unique dynamics is essential for effective policy.

Finally, WIAA strongly encourages ASIC to commit to the ongoing review and periodic updating of RG 181. The financial landscape is dynamic, and regulatory frameworks must evolve in step with new risks, business models, and market practices. The mechanisms for continuous improvement outlined in RG 181.56–57 are a positive step but must be supported by regular stakeholder engagement and transparent feedback loops.

WIAA's Position on Regulatory and Financial Impact:

WIAA supports the policy objectives of draft RG 181, recognising that a holistic approach to conflict management will improve market integrity and investor protection. However, WIAA highlights that the initial and ongoing compliance costs, especially for smaller licensees, are significant, requiring upgrades to systems, new policies, staff training, and continuous monitoring (RG 181.10–12, RG 181.56–57).

WIAA urges ASIC to provide clearer, more practical guidance to ensure proportionality is genuinely applied and does not disadvantage smaller firms or stifle competition.

WIAA also stresses the need for:

- Regular review and updating of RG 181 to keep pace with market changes (RG 181.56–57).
- Guidance tailored to the unique risks of wholesale and sophisticated investor markets.
- Alignment with international best practices for global competitiveness (RG 181.76).

WIAA believes that while the benefits of RG 181 are substantial, practical and proportional implementation is essential to avoid undue burdens and to support a resilient, competitive, and innovative wholesale market.

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