

15 May 2024

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

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

## **INQUIRY INTO THE WHOLESALE INVESTOR AND WHOLESALE CLIENT TESTS**

Dear Senator O'Neill and members of the Committee

As the peak member organisation representing individual investors and shareholders, Australian Shareholders' Association (ASA) appreciates the opportunity to provide comments to the above inquiry.

### **ASA's position**

**ASA believes the rights of Australian retail shareholders are at risk with the proposed reforms to sophisticated investment being circulated. Any proposed changes require further consultation.**

We believe the tests need to be abolished for all Australians investing in ASX listed companies and that more evidence needs to be presented to suggest a change in the current thresholds or processes underpinning wholesale investment.

We are concerned that reported changes to limits may go further than necessary, without sufficient data to support such an approach.

A significant number of retirees rely upon the current wholesale investor tests to support their self-funded retirements, and embrace the opportunity to engage in a broader range of investments, such as hybrid securities and notes. Many of these sophisticated investors have significant investing experience, and are drawing down on these assets to support their day-to-day costs.

There has been no suggestion to date that limiting the involvement of these retirees is justified, or that they do not have the capacity to make informed decisions on these assets, but broad changes to the thresholds could restrict their participation unnecessarily.

Notwithstanding this, the Association believes that a few steps that might be taken to provide greater protection for individual investors, and to reduce some of the risks of wholesale investing.

### **ASA's recommendations**

#### **1. *Demonstrate that there is a problem***

The Australian Government must show that the current arrangements are not working and that there is a need for intervention.

To date no evidence has been put forward suggesting that there needs to be a change or that more government intervention is required.

#### **2. *Empower the regulators to act***

Regulators such as ASIC need to be enforcing current regulations.

For example, while the collapse of Mayfair has been mentioned by some as a justification for change, the misrepresentation of the investment opportunity by the company should have been picked up through powers already held by the regulators.

**3. Consider reviewing the definition of a “sophisticated investor”**

Sophistication, when it comes to investment, may have very little to do with a person’s assets or income.

A person may be on a high salary, but have no idea about investment – conflating the two ideas is a poor substitute for clarifying what “sophistication” actually means.

While the wholesale investor test was designed to allow offers of securities to be made without the need for a prospectus or product disclosure statement, the current thresholds do not adequately determine whether someone has the skills and knowledge to make an informed decision.

ASIC’s proposal to lift the thresholds to \$450,000 income per annum over an average two years and \$4.5 million in assets is too big a jump and will exclude a range of investors who have successfully managed sophisticated wholesale investments for many years.

If the Committee were to accept ASIC’s proposal, ASA would seek some form of grandfathering, so that people already investing in these vehicles are not suddenly excluded.

**4. Consider applying CPI**

The current thresholds were set in 2001 and have stayed at the same level despite a rise in the consumer price index, average weekly earnings and residential property prices.

This has significantly weakened the test, and the level of information that promoters must provide to some potential investors is, perhaps, inadequate as a result.

If there is a case for change, the Government may simply be able to apply CPI to the thresholds from this point on to raise the bar in line with the growth of the economy.

Regular indexation of the thresholds would reduce the risk of bracket creep from occurring.

**5. Consider removing the family home and other non-financial assets from the threshold**

A \$2.5 million home in Sydney or Melbourne is not necessarily a sign that someone is a sophisticated investor.

Nor is a holiday home, farm, artwork collection, car collection, or inheritance.

The current price of property in many residential markets means that the threshold currently has little meaning.

If there is a case for change, the threshold should exclude the family home and non-financial assets.

**6. Consider removing the thresholds altogether and requiring demonstrated financial knowledge instead**

As noted earlier, a high income does not correlate with investor knowledge and awareness.

Just because someone has a high salary or an expensive house, it doesn’t mean that they understand the inherent risks in certain investments, or that they have the capacity to make sound decisions.

Thresholds for sophistication should come down to skills and knowledge, not non-financial assets or salary bands. Section 708(10) already considers these issues and might be reviewed and expanded.

**7. Apply a financial literacy test**

A financial literacy test carried out every two years will demonstrate knowledge and avoid situations where any investors are led into difficult circumstances beyond their capacity.

It would also ascertain the investor's understanding of risk and awareness of their exposure.

Such a test could be developed in collaboration with representatives of the investment community, to ensure that all relevant considerations are included.

ASA is concerned that the proposed reforms to sophisticated investment being circulated may be based on assumptions rather than strong empirical evidence.

We believe that a strong case for change is needed if the investment opportunities and returns of existing wholesale investors are to be protected.

While there may be some value in moving away from thresholds to more skills and knowledge-based benchmarks, this requires consultation with investor representatives.

We would welcome the opportunity to discuss these issues further.

If you have any questions about these comments or other matters, please do not hesitate to contact me on [ceo@asa.asn.au](mailto:ceo@asa.asn.au), or Fiona Balzer, Policy & Advocacy Manager, on [policy@asa.asn.au](mailto:policy@asa.asn.au).

Yours sincerely



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*Australian Shareholders' Association (ASA) is an independent not-for-profit organisation funded by and operating in the interests of its members. It represents primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees, and investors, promoting good public policy and safeguarding their interests and financial wellbeing.*