



29 September 2023

Director  
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The Treasury  
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By email: [misreview@treasury.gov.au](mailto:misreview@treasury.gov.au)

### **Review of the Regulatory framework for managed investment schemes**

The Australian Financial Markets Association (**AFMA**) is providing comment on the Review of the Regulatory framework for managed investment schemes Consultation paper (Review).

The focus of AFMA's comment is on the Review's discussion of the 'wholesale client' definition dealt with in Chapter 1. Our key point is that the distinction between retail and wholesale clients has much broader implications than just for managed investment schemes. We agree with the broad proposition that the wholesale client definition needs to be reviewed. How this should be done is of great importance to the financial services industry as a whole. We note that the Review itself recognises this point as it says under section1.1:

*...the regulatory distinction between retail and wholesale clients is applicable to a range of circumstances in the financial services sector (see Appendix A). Related considerations for other financial products and financial services may also need to be considered in this review.*

To illustrate the types of effects the 'wholesale client' definition gives rise to we cite the following example areas:

- The provision of advice (eg. research distribution).
- The marketing of structured products.
- Funds management.

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- Complaints -
  - internal complaints handling
  - complaints reporting to ASIC
  - Impact on AFCA
- Compensation scheme of last resort (CLSR).
- Due diligence obligations (DDO)
- Offer documentation regime (PDS, information memoranda and prospectus)
- impact for other key regulators eg. ASX Operating Rules (specifically with reference to retail clients); ASIC Market Integrity Rules.
- Foreign financial service providers (including potential impact to the different exemptions that are currently available for offshore issuers)
- Quality of Advice Review – the concerns that this paper sought to address may become an issue if retail clients, albeit better protected, are afforded less access to tailored advice
- Interplay between retail, wholesale and small business definitions Commercial implications – a lot of financial services firms are set up to be wholesale only hence moving the boundaries in any material way may potentially have a significant impact
- grandfathering and indexation of products already issued

Other consequential impacts include:

- AML / KYC processes
- Client documentation
- The extension of credit facilities
- Collateral and margining requirements

It needs to also be borne in mind that the retail / wholesale distinction is now supplemented by a number of small business definitions. This situation greatly increases the operational and compliance complexity of dealing with the law and needs attention as well.

Accordingly, AFMA firmly requests that the change to the definition of 'wholesale client' be the subject of a standalone consultation for which any proposed changes are afforded the opportunity to comment by all relevant industry stakeholders and reviewed in a holistic and considered manner. This includes providing full context of proposed changes and the mapping of all consequential impacts as well as addressing issues with the small business definition in the context of financial products.

Regarding how a consultation process might take place we have the following proposal which builds upon our response to the Interim the Australian Law Reform Commission's (ALRC) Report C on Financial Services Legislation – ALRC Report 40. This Report included a recommendation to take substantive policy reform work forward once the ALRC produces its final report in November this year through a Taskforce. AFMA has strongly advocated for continued sufficient resourcing by the Government of an ongoing process to take the needed legislative reforms to the financial services legislation forward and advise on substantive policy issues that will necessarily arise in the course of such work. In this regard, we have previously suggested that a body inspired by the defunct Corporations and Markets Advisory Committee as a form for a taskforce to be created as proposed by the ALRC, to assist Treasury in advising the Government on the details of the reforms. One of the most important immediate topics would be to look at how retail /small business consumer protection is distinguished from wholesale market regulation.

Please contact David Love either on 02 9776 7995 or by email [dlove@afma.com.au](mailto:dlove@afma.com.au) regarding this letter.

Yours sincerely

A handwritten signature in blue ink that reads "David Love". The signature is written in a cursive style with a long, sweeping tail on the letter "e".

**David Love**  
**General Counsel**