



Financial Planning



Wholesale and Retail Clients	
Future of Financial Advice, Options Paper, January 2011	
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1. Introduction

This document has been prepared in response to the Treasury options paper titled 'Wholesale and Retail Clients Future of Financial Advice' as part of its Future of Financial Advice (FOFA) reforms. We are responding on behalf of AXA Financial Planning and Charter Financial Planning.

As members of the FPA, the AXA Financial Advice Network represents one of the largest adviser groups in Australia. As such, we have a keen interest in the development of the definitions for wholesale and retail clients, as they will have an impact on how our advisers interact with their clients and our Licensee procedures.

We note that our Licensees only permit advisers who have been accredited and maintain the highest level of financial advice standards, to provide advice to wholesale clients or sophisticated investors. The remainder of our advisers must treat all their clients as retail clients.

2. Comments

The Options Paper discusses:

- The deficiencies with the current definition of wholesale and retail clients contained in sections 761G and 761GA of the Corps Act 2001;
- How other regimes in the US, UK, NZ, Hong Kong and Canada distinguish between retail and wholesale clients and the merits of each one; and
- The three options for reforming the current regime for differentiating between wholesale and retail clients.

We agree that the current retail/wholesale distinction has a number of shortcomings, including the fact that the thresholds for the product value, asset and income test, are determined on 1991 figures and have become too low. We also believe that a client's income or assets may have no relevance to their level of literacy.

When reviewing the tests to distinguish wholesale clients from retail clients, the following factors must also be taken into consideration:

- Providing adequate protection and disclosure to clients that need it.
- Ensuring that any test takes into account the financial literacy of the client.
- Ensuring the client is aware of their status as a retail or wholesale client.
- Ensuring the tests are easy to use.

3. Detailed response to the proposed options

The following table provides specific feedback on the four options proposed in the options paper.

Option	Comment
<p>1 – Retain and update the current system</p>	<p>This option involves updating the current system by doing one or more of the following:</p> <ul style="list-style-type: none"> • <i>Updating the monetary threshold for the product value test to \$1,000,000 or, frequently updating the monetary thresholds for the product value, income and asset thresholds to take inflation into account.</i> <p>Yes, we agree for the product value test to be increased to \$1,000,000 and for the introduction of an indexing mechanism. This would ensure that each of the wealth and product value tests remain relevant into the future.</p> <ul style="list-style-type: none"> • <i>Excluding illiquid assets (eg family home and superannuation balance) from the assets test to ensure clients whose wealth consists mainly of real estate or superannuation would be retail clients.</i> <p>Our current licensee guidelines exclude a client's primary house or residence and/or holiday home. The only problem with excluding a client's primary residence and superannuation; is that it could favour clients who have decided to invest their monies in other assets.</p> <ul style="list-style-type: none"> • <i>Requiring that clients acknowledge that they will not receive protection given to retail clients before being treated as wholesale clients.</i> <p>Our current licensee guidelines provides a client template letter where they acknowledge they will not receive the protections given to retail clients. We believe this is beneficial to both the client and the adviser, as it promotes open communication about a client's legal entitlements.</p> <ul style="list-style-type: none"> • <i>Requiring that clients satisfy at least two of the threshold tests in section 761G(7) to be treated as wholesale clients. Currently, clients only need to satisfy one test to be treated as wholesale clients.</i> <p>We believe that meeting one of the three requirements is sufficient. Imposing a stricter obligation may exclude clients who have a high financial literacy and want to access wholesale products but do not have the funds.</p>

Option	Comment
	<ul style="list-style-type: none"> • <i>Requiring that clients satisfy additional requirements to be considered wholesale clients in relation to certain complex financial products.</i> <p>We believe it would be difficult in determining which products are considered to be complex or risky enough to have the additional requirements imposed on.</p> <ul style="list-style-type: none"> • <i>Repealing the sophisticated investor test in section 761GA on the basis that it is too subjective.</i> <p>This change has the benefit of ensuring that the tests are not subjective and minimise the risk to the licensee if a client has been incorrectly classified as a wholesale client.</p> <p>The issue with the removal of this test is that clients who have a high financial literacy but less wealth are not able to access wholesale products.</p>
<p>2 – Remove the distinction between wholesale and retail clients</p>	<p>Under this option, all investors would be given protections and disclosures currently given to retail clients. Although this option appears to offer a simple solution, it may also create greater inefficiencies in financial advice industry – as intermediaries would no longer be able to offer financial products promptly or inexpensively to large investors. Removing the distinction between the different classes of investors, may result in increased obligations for advisers i.e. verifying the suitability of investments for each client.</p>
<p>3- Introducing a ‘sophisticated investor’ test as the sole way to distinguish between wholesale and retail clients</p>	<p>Under this option, the financial literacy of the client would determine the status of a wholesale client. This option may also see the removal of the wealth threshold tests, which may be beneficial to clients. However, under this option the applied test would be subjective, which may result an over cautious approach with too few clients being classified as wholesale clients.</p> <p>We would also question whether the test under section 7611GA is the only true measure of a client’s financial literacy.</p>
<p>4 – Do nothing</p>	<p>This option does not address any of the shortcomings of the current retail/wholesale client distinction. It also fails to address the current problem of outdated wealth thresholds.</p>

5. Conclusion

We acknowledge the Treasury's efforts to improve consumer protection in light of recent experiences and the Global Financial Crisis. We favour Option 1 and have provided our reasons for believing why this option will work for Licensees, Advisers and Clients. Updating the current system takes into account previous experiences, especially during the GFC where investors were not adequately protected.

We ask that Treasury also provide greater clarification in regards to the following:

Is the professional investor definition still applicable?

Whether advice relating to a life insurance policy held within a self managed superannuation fund (SMSF) is considered a superannuation product under section 761G of the Corporations Act? Our guidelines currently instruct advisers to treat Trustees of SMSF's receiving advice as retail clients, unless the fund has net assets of at least \$10 million.

We trust the above feedback is well received and encourage the Treasury to contact Simon Wallace on (03) 8688 4264, to discuss our comments.